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RETHINKING RADICALIZATION

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INTRODUCTION

In recent years, Americans have grown increasingly concerned about the threat of "homegrown" terrorist attacks. Most notably, the near-detonation of a car bomb in Times Square in 2010 raised alarms that the next phase in terrorism would be directed by Americans, at Americans, in America. Government at all levels has stepped up efforts to prevent such violence.

As part of this drive, government officials have sought to understand "radicalization," which they define as the process by which American citizens and residents turn to violence, using Islam as an ideological or religious justification.[1] They hope that by understanding radicalization, they can identify homegrown terrorists before they strike.[2] Combating radicalization is now a specific goal of the National Security Policy articulated by President Barack Obama.[3] In Congress, the new chair of the House Homeland Security Committee has launched hearings on the subject.[4]

Officials and experts divide sharply on the extent of the threat posed by homegrown terrorism. The Intelligence Community has traditionally judged the threat to be limited. Local law enforcement agencies and the Federal Bureau of Investigation (FBI), on the other hand, have suggested it is more widespread. The consensus within government, however, is that the homegrown threat demands attention. Myriad federal and state agencies have devoted extensive resources to studying radicalization and designing a response.

Radicalization is complex. Yet a thinly-sourced, reductionist view of how people become terrorists has gained unwarranted legitimacy in some counterterrorism circles. This view corresponds with—and seems to legitimize—"counter-radicalization" measures that rely heavily on non-threat-based intelligence collection, a tactic that may be ineffective or even counterproductive. Only by analyzing what we know about radicalization and the government's response to it can we be sure that these reactions are grounded in fact rather than stereotypes and truly advance our efforts to combat terrorism.

The Department of Homeland Security (DHS) and the National Counterterrorism Center (NCTC) are the federal government's lead agencies to combat radicalization.[5] These expert agencies have made public statements that recognize the complexity of the radicalization process. But they have not expressly repudiated theories suggesting that it is possible to detect radicalization long before people take concrete steps toward violence. Nor have they proposed a unified set of responses that take account of the difficulty of combating radicalization without impinging on the Constitution.[6]

Domestic law enforcement agencies, including the FBI and state and local police departments,[7] have stepped into the breach. They have developed simplistic theories of how American Muslims become radicalized. These theories suggest, contrary to empirical social science studies, that the path to terrorism has a fixed trajectory and that each step of the process has specific, identifiable markers. They imply that by closely monitoring the communities deemed susceptible to radicalization, law enforcement officials can spot nascent terrorists and prevent future

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attacks. Since the markers of radicalization they identify are inextricably linked to Muslim religious behavior, these theories justify broad monitoring of American Muslim communities,[8] including in their places of worship. Indeed, the theories are characterized by the view that there is a sort of "religious conveyor belt" that leads from grievance or personal crisis to religiosity to the adoption of radical beliefs to terrorism, with each step along that continuum identifiable to law enforcement officials who know how to recognize the signs.

Although the "religious conveyor belt" theory has not been adopted by the Intelligence Community, its influence is evident. In addition to the FBI and state and local law enforcement agencies,[9] the Senate Committee on Homeland Security and Governmental Affairs has embraced the theory.[10] Moreover, the broad intelligence gathering in and about American Muslim communities that the theory supports is becoming increasingly evident. To be sure, it is hard to untangle intelligence gathering driven by fear of radicalization from the overall post-9/11 expansion of intelligence operations. But radicalization concerns seem to be directly connected to the expansion of certain aspects of the FBI's domestic intelligence mandate and the way in which it is carried out.[11] For example, changes to the FBI's mandate implemented by former Attorney General Michael Mukasey, and the FBI's internal rules, encourage the Bureau to gather information about social, religious, and political patterns.[12] There are reports that the FBI has used this authority to collect, with no predicate in suspicious activity or behavior, information about whether "radicalization" is occurring in American Muslim communities.[13]

More generally, the accepted understanding of how someone becomes a terrorist influences the selection of investigative techniques. For example, the assumed link between religiosity and terrorism encourages intrusion into mosques, traditionally considered off-limits to the government absent a specific connection to suspected criminal or terrorist activity. Reports have emerged that the FBI has infiltrated mosques simply to learn about what was being said by the imam leading prayers and by those attending.[14]

This emphasis on intelligence collection about radicalization, much of which involves First Amendment-protected speech and activities, has undermined another much-touted prong of the government's strategy—the attempt to engage American Muslim communities in the fight against terrorism. Many American Muslims believe their communities are treated as inherently suspicious by the government.[15] As a result, while American Muslim communities have been invaluable partners in the government's counterterrorism efforts, some American Muslims are becoming more guarded in their relations with law enforcement agencies. The obvious tension between the government's various responses to radicalization is increasingly noted,[16] but remains unaddressed: Can a community simultaneously be treated as suspect and also be expected to function as a partner?

To be sure, intelligence collection often is vital to fighting terrorism. But the blunderbuss intelligence collection response to radicalization poses real questions. Is our understanding of radicalization so complete that we can

detect incipient terrorists and stop them before they take overt steps toward violence? Is the "religious conveyor belt" theory, and the hallmarks of radicalization it identifies, supported by empirical evidence or does this theory simply reflect religious stereotypes? Is broad intelligence collection about American Muslims the appropriate response to the threat posed by radicalization? Or is targeted intelligence collection and normal police work a better response? How do we grapple with the fact that an expansive approach to intelligence gathering results in the monitoring of protected First Amendment activity and may well chill American Muslims' free speech, association, and free exercise rights? Does the emphasis on collecting intelligence about radicalization alienate the very communities whose help is so clearly needed in the fight against terrorism and perhaps even affect American Muslims' generally positive view of their place in American society? In sum, given our understanding of radicalization, is our response rational—or, in any event, sufficiently tailored?

...

This report explores how the unsubstantiated "religious conveyor belt" theory has influenced our response to radicalization among American Muslims and the consequences that have ensued. Since much of the government's response to radicalization is driven by perceptions of the risk of homegrown terrorist attacks, the report begins by demonstrating the differences of opinion between the Intelligence Community and law enforcement agencies regarding this threat.

The next section reviews studies by psychologists, social scientists, the security services of the United Kingdom, and security experts, all of which point to a widespread consensus that radicalization is a multi-faceted and fluid process. It is simply not possible to identify "markers" of radicalization (as opposed to actual connections to terrorist networks or plots) that allow early identification of would-be terrorists. This section also observes that empirical studies largely debunk the claim that religiosity is linked to a propensity for terrorism.

The report's third section turns to our own government's efforts to understand radicalization. It shows that, despite the apparent understanding of the lead agencies on radicalization (i.e., DHS and NCTC) of the state of research on the subject, the "religious conveyor belt" model has never been repudiated. It further demonstrates that the FBI, along with many state and local law enforcement agencies, have followed the lead of the New York City Police Department (NYPD) in affirmatively embracing the "religious conveyer belt" model.

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The fourth section of the report examines the interplay between the "religious conveyor belt" model and counterterrorism policy. It argues that this model reinforces intelligence gathering that focuses on religious beliefs and behavior. American Muslims are understandably alienated by this approach (and reluctant to provide information about protected religious practices). This has led to a growing wariness in their relationships with law enforce-

ment agencies and undermined outreach efforts that the government holds up as ways to curtail radicalization and fight terrorism.

Finally, the report sets out recommendations for developing and strengthening institutional mechanisms to ensure that our response to radicalization takes account of the investigative needs of law enforcement agencies, as well as the ways in which the current approach to intelligence collection affects American Muslim communities. It also calls for an accounting of the First Amendment and ethnic/religious profiling implications of current anti-radicalization tactics.

I. THE THREAT OF HOMEGROWN TERRORISM: DIVERGENT ASSESSMENTS

Homegrown terrorists are "terrorist operatives who are U.S. persons … who were radicalized in the United States and learned terrorist tactics either here or in training camps [abroad]."[17] Although the number of attacks allegedly attempted by these types of individuals remains very small, the past two years have seen a wave of high-profile incidents. The effect of these incidents is readily apparent in media coverage and public opinion. Headlines about "American Jihadis" have proliferated.[18] According to an April 2010 poll conducted by CBS News, 38 percent of Americans believe that homegrown violence is the gravest terrorist threat.[19] That number reflects an increase of eight points since CBS News' last poll on the subject. Meanwhile, the percentage of Americans who believe that the greatest threat comes from international terrorism dropped ten points.

While fear of homegrown terrorism is on the rise, the Intelligence Community's February 2010 analysis of the threats facing the United States reflects its assessment that the greatest risk continues to be an attack by Al Qaeda and affiliated groups abroad, acting directly or through American intermediaries. Local law enforcement agencies, however, emphasize the threat from radicalized American Muslims who are inspired by, but operate independently from, foreign terrorist groups. The FBI, for its part, has trod carefully. Although it has not repudiated the assessment of the Intelligence Community, it has consistently placed strong emphasis on the risk of attacks by independent homegrown cells. Experts outside the government divide sharply on the issue.

The NYPD and the FBI have put forward radicalization theories that are congruent with efforts to penetrate American Muslim communities. These theories, however, are unduly reductionist and are contrary to research conducted by governments, social scientists, and psychologists.

The Intelligence Community's 2010 Annual Threat Assessment focuses on whether terrorists have support structures and networks in the United States that would enable them to carry out attacks without operational support from a foreign terrorist group. Given the scant evidence of these types of structures, the assessment found only a limited likelihood of attacks by homegrown terrorists.[20] "A handful of individuals and small, discrete cells will seek to mount attacks each year, with only a small portion of that activity materializing into violence against the Homeland."[21]

The terrorist plots in 2009 and 2010 have led some federal agencies to note the "diversification" of threats in terms of sources, tactics, and targets.[22] The new sources include groups that have not previously attacked the United States, as well as a few U.S. persons with no known operational links to a foreign terrorist organization.[23] In their February 2011 testimony before the House Homeland Security Committee, both the head of the NCTC and the Secretary of DHS asserted that the homegrown threat had increased.[24]

Several prominent security experts argue that the homegrown threat is of modest scope. For example, the Rand Corporation's analysis of data on homegrown terrorism ("Rand Study") concluded that the risk, as evidenced by the number of terrorism plots and data on attitudes among American Muslims, is limited. Prosecutions for

homegrown terrorism have averaged approximately six per year since September 2001.[25] In contrast, the 1970s saw an average of 60 to 70 terrorist incidents on U.S. soil each year, "a level of terrorist activity 15 to 20 times that seen in most of the years since 9/11."[26] The Rand Study noted the increase in activity in 2009, with 13 cases reported;[27] however, it concluded that even this number was very low and "hardly represents an explosion of radical fervor."[28]

This conclusion is entirely consistent with that of a detailed analysis by Duke University and the University of North Carolina at Chapel Hill ("Duke/UNC Study").[29] An update to the Duke/UNC Study published in February 2011 found that even the reported increase in incidents in 2009 could well have been an aberration because, in 2010, the number of incidents dropped close to the levels seen prior to 2009.[30]

The Rand Study found no evidence that American Muslims were becoming more radical. It pointed to the results of a 2007 Pew Research Center survey, "Muslim Americans: Middle Class and Mostly Mainstream,"[31] which showed that an overwhelming majority of American Muslims express negative views of Al Qaeda. It also noted that, unlike in certain other Western countries, "expressions of Muslim militancy are muted and rare" in the United States.[32] The Rand Study concluded that individuals turning toward violence would find little support in American Muslim communities; "They are not Mao's guerrillas swimming in a friendly sea."[33]

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On the other side of the debate, important voices claim that the threat posed by radicalization is greater than the empirical data on indictments and prosecutions suggest. Those who take this position argue that 1) the availability of information and support on the Internet obviates the need for a domestic operational support network; or 2) American Muslims are radicalized and provide the necessary support base. They point to the availability of Al Qaeda-inspired ideology on the Internet as evidence of radicalization and assert that recent incidents of domestic terrorism are harbingers of a coming wave of attacks.

The most prominent local law enforcement agency to argue that the radicalization of American Muslims poses a greater risk than suggested by the empirical data is the NYPD.[34] Police chiefs from California, Kansas, and New Jersey,[35] as well as Senator Joseph Lieberman, the Chairman of the Senate's Homeland Security and Governmental Affairs Committee, share this assessment.[36] Senator Lieberman's new counterpart in the House, Representative Peter King, has likewise expressed serious concern about the potential for attacks by American Muslims and has commenced a series of hearings to explore the threat.[37]

Although the FBI has not explicitly diverged from the assessment of the Intelligence Community, it too consistently highlights how the domestic threat has evolved from one driven by Al Qaeda and affiliated organizations to one merely inspired by Al Qaeda ideology. For example, in September 2009, FBI Director Robert Mueller testified that the nature of the terrorist threat facing the United States had changed over the past eight years. In

addition to the threat from Al Qaeda, "we also face a challenge in dealing with homegrown extremists in the United States who while not formally part of these terrorist organizations, believe in their ideologies and wish to harm the United States."[38] Testifying a year later, he echoed many of the same themes.[39]

The view that the risk of homegrown terrorism is increasing in importance, relative to that of plots driven from abroad, also has its supporters among national security experts. These experts differ, however, on whether the danger comes from autonomous self-radicalized Americans,[40] or whether Al Qaeda and similar organizations have managed to develop a U.S. support and recruitment structure.[41]

Given the piecemeal and contradictory information that is publicly available, an outside observer can hardly evaluate who is right in this ongoing discourse. The debate nonetheless plays an important role in resource allocation and policy development. It influences which parts of the federal and state counterterrorism bureaucracies that have sprung up since 9/11[42] get the largest share of resources.[43] Equally important, police and intelligence agencies select investigative techniques depending on their understanding of the configuration of the risks they face.[44]

The divergent threat assessments outlined above seep into the understandings of radicalization put forward by various U.S. government agencies. In particular, the NYPD and the FBI have put forward radicalization theories that are congruent with efforts to penetrate American Muslim communities. These theories, however, are unduly reductionist and are contrary to research conducted by governments, social scientists, and psychologists.

II. THE PATH TO TERRORISM: NEITHER PREDICTABLE, NOR RELIGIOUS

Since 9/11, research aimed at understanding radicalization among Muslim communities in Western countries has proliferated. Although our understanding is far from complete and continues to evolve as the phenomenon is studied from a variety of perspectives, there is overwhelming support for two propositions:

1) There is no profile of the type of person who becomes a terrorist; indeed, the process by which a person embraces violence is fluid, making it nearly impossible to predict who will move from espousing "radical" views to committing violent acts; and

2) Although the view that Islam requires attacks on Western targets (frequently described as *jihadism*) may provide an organizing principle or worldview that supports terrorism, Islam itself does not drive terrorism. In fact, the most recent research suggests that a well-developed Muslim identity actually counteracts *jihadism.*

The first finding suggests that indiscriminately collecting intelligence on American Muslims where there is no indication of a link to terrorism or crime is unlikely to prove useful in identifying "would-be" terrorists. By questioning the view that Islam drives terrorism and that religiosity is an indicator of incipient violence, the second finding undercuts the justification for collecting intelligence about religious behavior and targeting venues where people might discuss or practice their religion.

A. No Identifiable Terrorist Profile or Hallmarks of Radicalization

Despite the impetus to find a terrorist profile or hallmarks of radicalization to hone in on incipient terrorists, empirical research has emphatically and repeatedly concluded that there is no such profile and no such easily identifiable hallmarks.

An in-depth empirical study by the United Kingdom's security service MI5 ("British MI5 Study")[45] found there was no typical profile of the British terrorist,[46] and that the process by which people came to embrace violence was complex. It emphasized that "there is no single pathway to extremism," and that all those studied "had taken strikingly different journeys to violent extremist activity."[47] In 2010, another key U.K. government agency cautioned,

> We do not believe that it is accurate to regard radicalization in this country as a linear "conveyor belt" moving from grievance, through radicalization, to violence … This thesis seems to both misread the radicalization process and to give undue weight to ideological factors.[48]

The conclusions of MI5 are largely consistent with the analysis in *Leaderless Jihad: Terror Networks in the Twentieth Century,* in which former CIA case officer and psychologist Marc Sageman analyzed more than 500 cases to

understand how people "evolve into terrorists."[49] While Sageman described the radicalization process as having several stages,[50] he emphasized that there was no linear progression from one stage to the next and that "[o]ne cannot simply draw a line, put markers on it and gauge where people are along this path to see whether they are close to committing atrocities.[51] Similarly, 14 years of "research conducted at [the Rand Corporation] and elsewhere suggests that no single pathway towards terrorism exists, making it somewhat difficult to identify overarching patterns in how and why individuals are susceptible to terrorist recruitment as well as intervention strategies."[52] Rand's model was unable to predict who among similarly situated people would adopt radical views, or to identify the smaller sub-set of individuals who would commit violence.[53] Indeed, the latter was the most difficult to isolate and was "often a matter of happenstance."[54]

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These conclusions are fully supported by decades of research on the various waves of terrorism that have emerged in the twentieth and twenty-first centuries.[55] A DHS-supported academic study of pathways to terrorism and political violence identified 12 separate mechanisms of radicalization that operate at the individual, group, and mass levels and that can interact in a variety of ways.[56] The study concluded

> There is no one path, no "trajectory profile" to political radicalization. Rather there are many different paths… . Some of these paths do not include radical ideas or activism on the way to radical action, so the radicalization progression cannot be understood as an invariable set of steps or "stages" from sympathy to radicalism.[57]

The complexity of the pathways to terrorism is aptly summarized in John Horgan's classic text on the subject: "The reality is that there are many factors (often so complex in their combination that it can be difficult to delineate them) that can come to bear on an individual's intentional or unintentional socialization into involvement with terrorism."[58] Indeed, as a recent report by the U.S. Department of Defense emphasized, it is notoriously difficult to predict violent behavior of any sort. "Identifying potentially dangerous people before they act is difficult. Examinations after the fact show that people who commit violence usually have one or more risk factors for violence. Few people in the population who have risk factors, however, actually [commit violent acts]."[59]

In short, government studies and scholars have repeatedly highlighted the difficulty of predicting which individuals are likely to commit violent acts. They have cautioned against viewing radicalization as a "conveyor belt" that starts with grievances and ends with violence, with easily discernible signposts along the way.

B. Terrorism's Connection to Islam is Generally Overstated and Misunderstood

Given the rhetoric used by the 9/11 attackers and those who have come in their wake, it is no surprise that "religion is assumed to lie at the heart of Islamist terrorism."[60] This assumption has led some to suggest that we should look to Muslim communities to find incipient terrorists and that expressions of devout faith are signs that someone is likely to become a terrorist. The notion that the practice of Islam is, in and of itself, a precursor to terrorism appears to have gained a hold on the American psyche, as demonstrated by the recent furor over plans to build an Islamic cultural center in downtown Manhattan and protests against mosques around the country.[61] The view that Islam drives terrorism also seems to have found its way into some government understandings of the radicalization process.

Even leaving aside the important First Amendment and profiling concerns raised by the embrace of such an assumption by government officials, the religiosity-terrorism connection is simply not borne out by empirical research. The British MI5 Study explicitly debunked this view. It found that "[f]ar from being religious zealots, a large number of those involved in terrorism do not practise their faith regularly. Many lack religious literacy and could actually be regarded as religious novices."[62] Sageman's review of 500 cases, as well as multiple other empirical studies, have found that "a *lack* of religious literacy and education appears to be a common feature among those that are drawn to [terrorist] groups."[63] Indeed, there is evidence that "a well-established religious identity actually protects against violent radicalization."[64]

A recent study of 117 homegrown terrorists in the United States and United Kingdom ("FDD Study") examined the linkage between terrorism and a conservative understanding of Islam.[65] While there are questions as to whether the type of sampling technique used in the study is at all useful in predicting violence,[66] even among the sample population examined, the FDD Study was unable to establish that a significant proportion of actual terrorists exhibited the "religious" behaviors identified as indicative of radicalization.[67] For example, only 17.1 percent of the sample exhibited low tolerance for perceived theological deviance and only 15.4 percent of the sample attempted to impose their religious beliefs on others.[68] The relatively low correlation between religiosity and terrorism—in a study that seemed aimed at finding such a correlation—is a strong indication that conservative religious belief may play a lesser role in radicalization than one might assume.

Overall, the available research does not support the view that Islam drives terrorism or that observing the Muslim faith—even a particularly stringent or conservative variety of that faith—is a step on the path to violence.[69] In fact, that research suggests the opposite: Instead of promoting radicalization, a strong religious identity could well serve to inoculate people against turning to violence in the name of Islam.

C. Policy Implications of Empirical Research

Empirical research on radicalization conclusively shows that the path to terrorism is far from linear. While studies have identified various factors that may influence the process, including personal circumstances, perceptions of

injustice (both local and international), exposure to ideology that promotes violence as *"jihad,"* and social bonds, it simply does not support the notion of a clear path from personal or political discontent to violence. The process is so complex that there are no easily identifiable markers, short of signs of participation in known terrorist networks or plots, that will alert law enforcement personnel when someone is becoming a terrorist.

One aspect of the social science research that bears particular attention is the conclusion that contact with other violent extremists is generally necessary in order for people with radical beliefs to embrace violence. Sageman, for example, has argued that mobilization by existing networks is critical to becoming a terrorist. MI5 concluded that radicalization "is always driven by contact with others."[70] These findings suggest that targeted intelligence gathering and normal police work—exploring the connections of known terrorist networks and following up on tips of genuinely suspicious activity, for example—would allow law enforcement officers to identify individuals before they undertake violence.[71]

A recent study by the Institute of Homeland Security Solutions ("HSS Study") confirms this common sense conclusion. The HSS Study examined 86 terrorist plots against U.S. targets from 1999 to 2009 to determine the types of information that led to their discovery. More than 80 percent of the foiled plots were discovered "via observations from law enforcement or the general public."[72] By contrast, intelligence reporting was the source of initial clues in just 19 percent of the cases that have been publicly reported.[73] While the HSS Study did not discount the importance of intelligence gathering, it emphasized "the importance of more basic processes, such as ensuring that investigative leads are properly pursued, which unclassified reporting suggests have foiled an order of magnitude more cases."[74]

Of course, monitoring *all* potential venues where contact with violent extremists could potentially occur, which Sageman and others have identified as including Muslim religious spaces, student associations, and community centers,[75] might also achieve the goal of prevention. However, such broad intelligence collection is likely to be incredibly resource-intensive and, given the complexity of the radicalization process, seems unlikely to yield commensurate dividends. Such a strategy also has significant costs in terms of undermining the legitimacy of our counterterrorism efforts among the very communities whose help is most needed in combating terrorism. The HSS Study underscored the importance of this type of help, noting that the communities from which terrorists came helped thwart 40 percent of terrorist plots by providing tips to the authorities. It specifically recommended that law enforcement agencies avoid tactics that might alienate these communities, such as "indiscriminately targeting individuals and groups due to their race, ethnicity, religion or ideology."[76]

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Similarly—given the variety of personal, political, social, economic and ideological factors that play into the radicalization process—targeting Islam as the engine driving radicalization is simply not

justified on the basis of current research. It is obvious that exposure to ideologies that portray violence as *"jihad"* can be part of the radicalization process. Given the small number of domestic attacks, it is equally obvious that not everybody who is exposed to this type of ideology becomes a terrorist, so allocating intelligence and law enforcement resources on this basis is irrational. More insidious is the idea that religiosity is somehow indicative of radicalization, which in turn will lead to violence. This discredited notion implicitly supports government monitoring of religious spaces even where there is no other indication of a link to terrorism, and it contravenes our long-standing abhorrence of government intrusion into people's exercise of their First Amendment rights to freedom of speech, association, and religion.

These basic findings are well understood by key federal agencies. The FBI and some local law enforcement agencies, however, have adopted theories of radicalization that draw conclusions at odds with the social science research.

III. U.S. GOVERNMENT UNDERSTANDINGS OF RADICALIZATION

An analysis of official statements from federal and state agencies reveals important differences between the lead agencies on radicalization (DHS and the NCTC) on the one hand, and the FBI and local law enforcement agencies on the other.[77] First, DHS and the NCTC acknowledge that radicalization is a fluid process in which a variety of factors can play a role.These agencies have shied away from suggesting they can identify "markers" of radicalization. The analysis of domestic law enforcement agencies (e.g., the NYPD and the FBI), however, posits a model in which radicalization is a defined process with identifiable markers (primarily religious behavior) along the way. Second, although DHS and the NCTC acknowledge the use of Islam as a justification for terrorism, they have carefully emphasized that radicalization is not caused by a particular religion or ideology. In contrast, the FBI, the NYPD, and other local law enforcement agencies have put Islam front and center in their analyses.

A. DHS and NCTC: Recognition of the Complexity of Radicalization Process

Senior officials at DHS, the primary federal agency charged with studying and countering radicalization, have consistently emphasized that the process of radicalization is not linear: that there "are diverse 'pathways' to radicalization,"[78] rather than a "one-way-street."[79] They have identified "a variety of human and institutional catalysts, such as formal and informal religious institutions" and "[c]harismatic leaders," and risk factors, such as "[i]nsular communities with little exposure to moderating influences" and a "deterioration of familial, social and societal ties."[80] DHS Secretary Napolitano recently acknowledged that "there is much we do not know about how individuals come to adopt violent extremist beliefs."[81] In May 2010, a group of law enforcement and community leaders advising Secretary Napolitano similarly noted that the "current level of understanding regarding the sociology of 'radicalization' and 'extremism' is still immature," and rejected the notion that there are overt signs of radicalization.[82]

DHS officials have repeatedly cautioned that increasing religiosity does not in itself signal a turn to violence. For example, the head of Intelligence at DHS differentiated belief systems from criminal acts "by emphasizing the difference between related social patterns, some of which may eventually lead to terrorism."[83] In other words, he recognized that an obvious turn toward religion did not necessarily signify a propensity for terrorism. Recent statements by DHS leadership that the department is concerned with "violent extremism," rather than with the belief system itself,[84] underscore the agency's recognition that particular religious beliefs are not, in and of themselves, signs of incipient terrorism.[85]

Like DHS, the Office of the Director of National Intelligence (ODNI), which includes the NCTC, has also rejected the idea of a fixed trajectory of radicalization. The NCTC website asserts that "[r]adicalization is a dynamic and multi-layered process involving several factors that interact with one another to influence an individual. There is no single factor that explains radicalization and mobilization."[86] The NCTC specifically repudiates the idea that there are "visible signs of radicalization," noting that "[c]hanges in appearance during different stages of radicalization often are the same changes seen in individuals who are not being radicalized, making it difficult to identify visible markers."[87]

High-level NCTC officials have put forward this view in congressional testimony. In 2008, its director testified that there is "no single underlying catalyst for the initial stages of radicalization … [P]ersonal frustration at perceived social injustice and other grievances can prompt individuals to reassess their accepted worldview and be more open to alternative perspectives—some of which espouse violence."[88] Even being brought into a radical group "does not mean that an individual will be drawn fully into violent extremist activity," and acceptance of "the sacred authority of the violent extremist" did not explain why some individuals turned to violence.[89] Rather, a number of factors "may play a role in determining the final stage where an individual accepts the extremist worldview and ultimately engages in violent, high-risk behavior." [90] These include factors that may encourage or discourage violence, such as previous knowledge of Islam, learning or authority attributes, technical education, countervailing influences, peer pressure, and lack of exposure to extremist atrocities.[91]

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B. Law Enforcement Agencies' Reductionist Theories of Radicalization

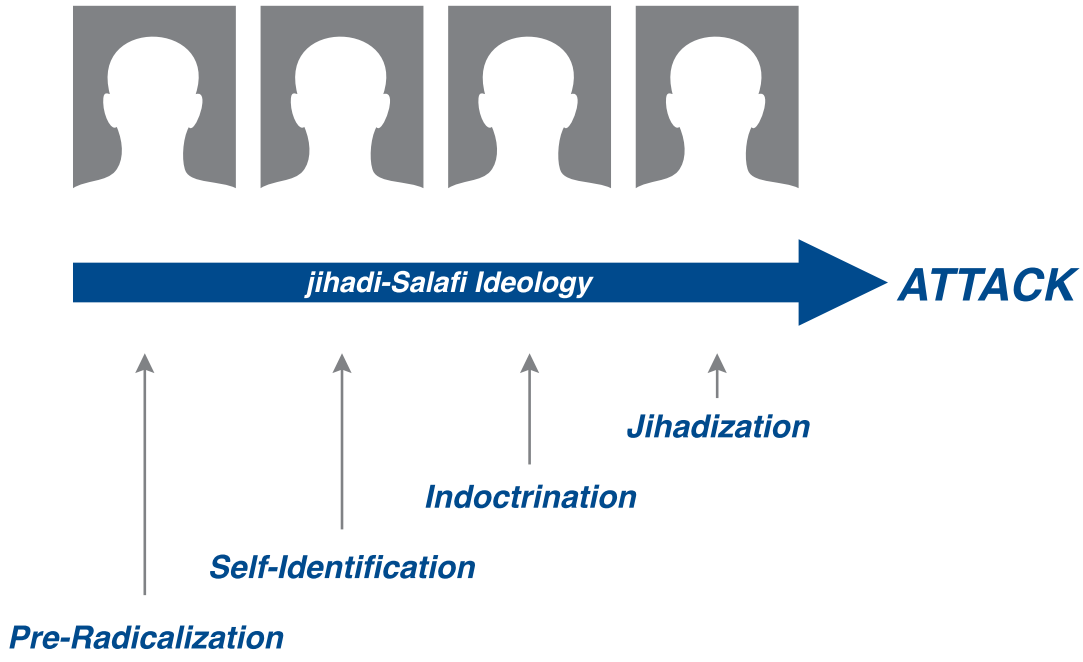
Contrary to government and social science research and the views put forward by DHS and the NCTC, the NYPD and the FBI have suggested that radicalization can be disrupted in its early stages by law enforcement agents trained to look for the right signs. Their contention that "radical Islamic views" drive violence supports this framework and implicitly justifies targeting of American Muslim religious behavior. The influence of this theory is evident in its adoption by a number of local law enforcement agencies[92] and in law enforcement agencies' operational approaches, which rely heavily on monitoring American Muslim communities. The Senate Homeland Security and Governmental Affairs Committee has also explicitly embraced this model, most recently in the report on the Fort Hood attack issued by the Chairman and Ranking Member of the Committee.[93]

Much of the law enforcement modeling of radicalization—even within the FBI, the primary federal law enforcement agency with jurisdiction over domestic terrorism—is based on the NYPD's report on *Radicalization in the West: The Homegrown Threat* ("NYPD Report").[94] This report has been roundly criticized by Muslim, Arab, and South Asian community groups and by civil liberties advocates, both for its methodology and for its conclusions.[95] In 2009, the NYPD quietly issued a revised version of the report, adding a "Statement of Clarification."[96] While this statement disavows some of the most troubling implications of the first report, the substance of the original report (which contains significant content entirely contradictory to the clarifications) remains in place, suggesting that the NYPD has not, in fact, moved away from its initial views about radicalization.

The NYPD Report uses limited data and employs faulty methodology. Not only does the report rely upon a handpicked sample to draw conclusions about a broader population, it does so based on just 10 case studies.[97] The NYPD relies on this inadequate sample set to conclude that there is a consistent, predictable pattern of four stages of radicalization, with each stage being "unique" and having "specific signatures."[98] The stages are 1) "pre-radical-

ization," the signatures of which are being young, Muslim, middle-class, male, and from an immigrant family;[99] 2) "self-identification," when an individual "begins to explore Salafi Islam," a step that is reflected in alienation, giving up specified behaviors (smoking cigarettes, drinking, gambling, and wearing urban street-wear), wearing traditional Islamic clothing, growing a beard, and becoming involved in social activism and community issues; 3) "indoctrination," which is signaled by withdrawal from a mosque and the politicization of new beliefs;[100] and 4) "jihadization," or operational planning for a terrorist attack, the signs of which include "Outward Bound-like activities," research on the Internet, conducting reconnaissance, and acquiring material.[101]

Unlike social science and government research, which posits tentative and fluid "stages" of radicalization, the NYPD Report presents its thinly supported findings as conclusive evidence that radicalization runs a predictable course. Even though the report concedes that not all those who begin the process of radicalization carry out terrorist acts,[102] its overall message is one of certainty about the path to violence. For example, the NYPD Report contends that "there is a remarkable consistency in the behaviors and trajectory of each of the plots [examined] across the stages" and that "this consistency provides a tool for predictability."[103] The report seeks to buttress this unjustified assertion of certainty with a variety of charts and graphs that imply scientific research and definitive conclusions.[104] For example, the chart reproduced below shows "jihadi-Salafi Ideology" leading to "Attack."[105] It suggests an inevitable progression from "pre-radicalization" (i.e., being a young, second or third-generation male Muslim) to a terrorist attack.



Although the NYPD Report concedes there is no profile for a potential terrorist,[106] it effectively develops such a profile by identifying "signatures" for each stage of radicalization. In addition to the dubious validity of developing signatures based on a handful of cases, the hallmarks of radicalization identified by the NYPD are of limited, if any, utility. Contrary to social science norms, the NYPD Report fails to consider whether the religious conduct and expressive activity that it characterizes as early signatures of radicalization occur with any more frequency among terrorists than among all American Muslims.[107] Compounding this flaw, the innocuous nature of many of the signatures identified by the NYPD—such as growing a beard or becoming involved in community activities—means that they are likely to be found in a large segment of the American Muslim population. If the NYPD (or other agencies that rely on the report) were to attach significance to these types of markers, they would be monitoring a very large set of people without much likelihood of finding terrorists. This, as the NYPD itself acknowledged in the 2009 clarification to its report,[108] would constitute an enormous waste of law enforcement resources.

Nonetheless, increased surveillance and monitoring of American Muslim communities is the NYPD report's prescription. The NYPD emphasizes the need for early intervention, noting that it had shifted its focus to the "point where we believe the potential terrorist or group of terrorists begin and progress through a process of radicalization."[109] This suggests that the NYPD believes that the appropriate time for law enforcement officers to intervene is at the beginning of the process—i.e., in the "pre-radicalization" phase—where the radicalization "signature" is essentially being a young Muslim man.

The NYPD Report emphatically asserts—contrary to the weight of government and academic research and the statements of DHS and the NCTC—that religious belief is the most important indicator of radicalization:

> Jihadist or jihadi-Salafi ideology is the driver that motivates young men and women, born or living in the West, to carry out "autonomous jihad" via acts of terrorism against their host countries. It guides movements, identifies the issues, drives recruitment and is the basis for action.[110]

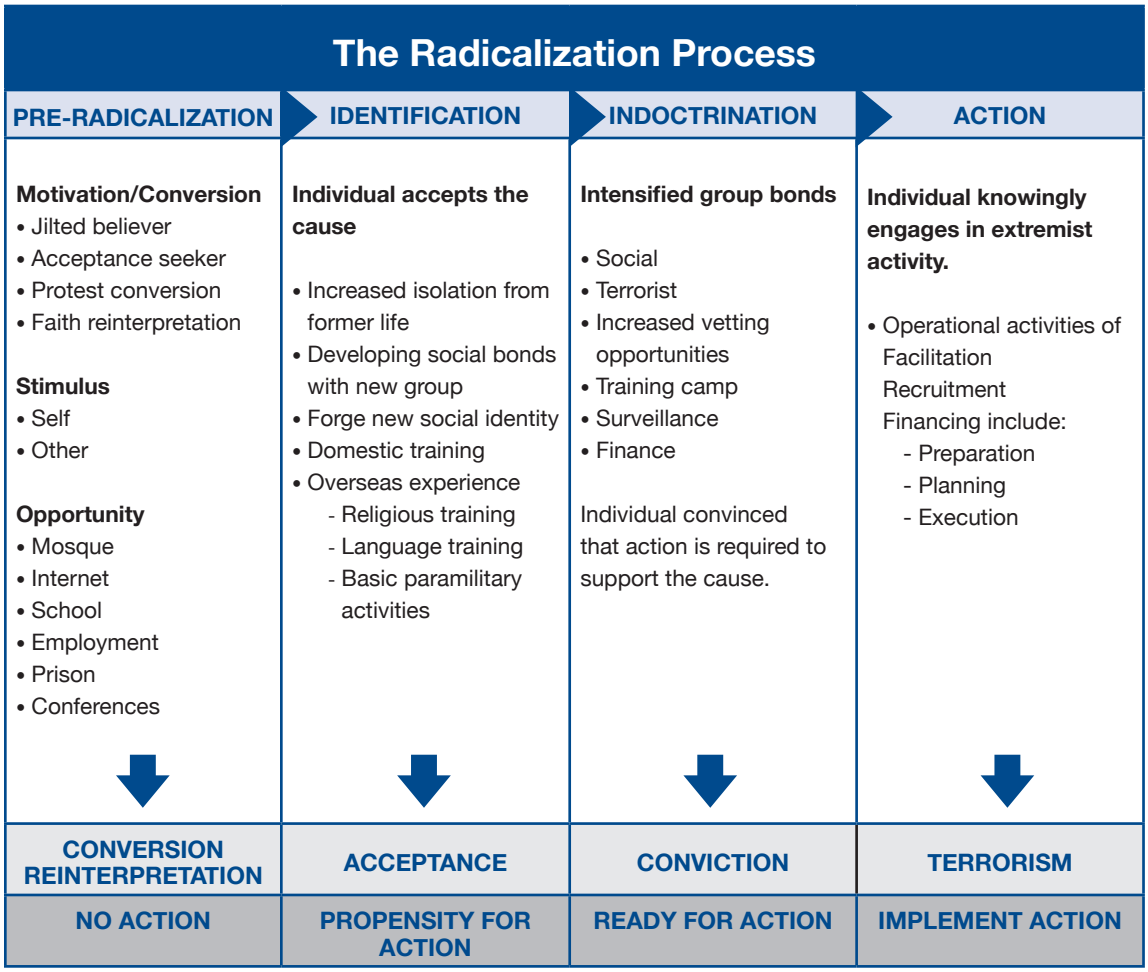
This assertion pre-empts objections based on First Amendment concerns and suggests that monitoring individuals' ideology would allow law enforcement officers to prevent terrorism.

Not only has the NYPD Report been adopted by several of the state and local law enforcement agencies that are touted as the front lines in our defense against homegrown terrorism,[111] it also appears to have greatly influenced the FBI's thinking on radicalization.[112] The FBI's model, while less detailed than that of the NYPD, also paints the radicalization process as one in which law enforcement officers can pinpoint religious and associational behavior that is indicative of a future propensity to engage in violence.

The FBI asserts that, "consistent with the First Amendment," it "defines radical individuals as persons who encourage, condone, justify, or support the commission of a violent act or other crimes against the U.S. govern-

ment, its citizens, or its allies for political, social, or economic ends."[113] Although the FBI concedes that not every individual will go through each step of the radicalization process,[114] it tries, like the NYPD, to identify early indicators for those who demonstrate a potential for violence.[115]

Similarly to the NYPD, the Bureau delineates four stages in the radicalization process, which are reflected in the chart reproduced below:[116]



The bulk of the FBI's explanation of this chart is concerned with the first pre-radicalization stage, which is marked by an individual's conversion either to Islam or to a more conservative version of Islam.[117] Instead of explicitly identifying signatures of this stage, the FBI focuses on venues where a person might have an opportunity to undertake such a conversion. In addition to mosques, the FBI lists a variety of locations where Muslims interact (e.g., conferences and places of employment) as potential gateways to radicalization. While the Bureau does not specify what it might look for in these interactions, its concern with "conversion" to particular versions of Islam

suggests that it would focus its attention on religiosity. This is made even clearer when one looks at the second phase, "identification," which is described as being marked by increasing commitment to religion as demonstrated by "liv[ing] every detail of the religion."[118] The other marker of the second phase is making connections with like-minded individuals—i.e., those who hold "extremist" views, and not (as one might expect) people who have terrorist or criminal connections.[119] In sum, the FBI's radicalization theory suggests that the Bureau is concerned about Muslims who become more conservative in their religious practice well before they take any steps towards violence and is focusing its attention on the places where such religious behavior may occur.[120]

A 2010 presentation by the FBI's Houston Office to Muslim community leaders illustrates how FBI agents make use of this model. The presentation was based almost entirely on the NYPD Report and included slides showing the radicalization trajectory conceived by the NYPD, as well as the NYPD's demographic, religious, and ethnic radicalization signatures.[121] In addition, it was reported that the FBI agents making the presentation asked the community to report on people who were "taking extreme positions" and "trying to enforce a limited understanding of religion."[122] An example of such behavior, according to the agents, was if someone asked women in the congregation to wear a *hijab* (head scarf) or veil.[123]

Late last year, faced with plots that did not fit into this radicalization model, FBI Director Mueller acknowledged that the threat from homegrown terrorism may have evolved to include "extremists from a diverse set of backgrounds, geographic locations, life experiences, and motivating factors."[124] While this may suggest that the FBI is retreating from some of its earlier conclusions about radicalization, there are no signs that the Bureau is pulling back from monitoring American Muslim communities and surveillance and infiltration of mosques, as discussed in the next section of this report.

IV. RESPONSE TO RADICALIZATION: IMPACT OF "RELIGIOUS CONVEYOR BELT" THEORY

Obviously, some terrorists are Muslims, but only a tiny sliver of a fraction of American Muslims engage in terrorism. How can law enforcement and intelligence agencies combat terrorism without tarring an entire community? We have faced such complex public safety challenges before in our history. Organized crime, for example, has often been rooted in specific ethnic or religious communities. Using the Racketeer Influenced Corrupt Organizations Act and other tools, law enforcement broke the back of crime families. But it did so without randomly probing and stigmatizing entire ethnic communities. In contrast, law enforcement agencies' current response to the complex question of radicalization among American Muslims is heavily reliant on scattershot intelligence gathering, even when this risks good relations with the very communities with which it seeks to partner in fighting terrorism.

When asked what it is doing to combat the threat of radicalization among American Muslims, the FBI generally has two responses: 1) it cites its own intelligence-gathering capabilities and its leveraging of the intelligence-gathering capabilities of its federal, state, and local law enforcement partners; and 2) it notes its efforts to foster good relations with Muslim, Arab, and South Asian communities and to encourage them to report on the "radicalization of individuals toward violent Islamic extremism."[125] Occasionally, the Bureau casts the latter set of activities as attempts to "dispel misconceptions" that may foster radicalization.[126]

Although the FBI does not explain how it deploys its intelligence-gathering capabilities, there is accumulating evidence that its monitoring and surveillance efforts target American Muslim communities and religious institutions. This response is congruent with the "religious conveyor belt" theory of radicalization. Less is known about local law enforcement agencies' intelligence activities, but there are indications that they follow a similar pattern. Often the information collected—e.g., about communities considered susceptible to radicalization and about the tenor and content of sermons and people's views about religion and politics—is relevant only to the early stages of radicalization as envisioned by law enforcement agencies rather than to operational planning for an attack.

A. Monitoring and Surveillance of American Muslim Communities by the FBI

1. Domain Information Collection

Since 9/11, the FBI has transformed itself into a domestic intelligence agency with broad new powers to gather information about people, communities, and institutions, even where there is absolutely no indication that they are linked to criminal activity or threats to national security. The Bureau's new powers are embodied in changes to the Attorney General Guidelines for the Conduct of Domestic FBI Operations ("AG Guidelines"), which have regulated the Bureau's conduct of investigations since the 1970s, when evidence of decades-long abuse of its authorities came to light.[127] Under the new guidelines, the FBI is no longer limited to investigating

suspicions of criminal or terrorist activity. It can now go out and gather "information needed for broader analytic and intelligence purposes."[128] FBI Director Mueller has described the activities under this rubric as the Bureau's attempt to learn about its domain, which means "understanding every inch of a given community—its geography, its populations, its economy and its vulnerabilities."[129]

Law enforcement agencies' current response to the complex question of radicalization among American Muslims is heavily reliant on scattershot intelligence gathering, even when this risks good relations with the very communities with which it seeks to partner in fighting terrorism.

While this sounds innocuous enough, the rubric of domain information collection may be used to target ethnic and religious communities—in particular, American Muslims. Indeed, the Domestic Intelligence and Operations Guide ("DIOG"), which implements the AG Guidelines and was publicly released in part in 2010, explicitly states that this authority can and should be used to collect information about "concentrated ethnic communities."[130] FBI Field Offices are authorized to "identify locations of concentrated ethnic communities in the Field Office's domain … [and] the locations of ethnic-oriented businesses."[131] To initiate data collection, the Field Office needs only to believe that the information would aid in the analysis of "potential threats and vulnerabilities" and assist in "domain awareness."[132] Although the DIOG prohibits "the collection of cultural and behavioral information about an ethnic community that bears no relationship to a valid investigative or analytical need," it allows FBI agents to consider "focused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community," as well as "behavioral and cultural information about ethnic or racial communities" that may be exploited by criminals or terrorists "who hide within those communities."[133]

The domain information collection authority interacts with the FBI's theory that one sign of radicalization is "becoming more committed to the newfound faith … demonstrated by living 'every detail of the religion'"[134] to support collecting cultural and behavioral information about American Muslims. Similarly, the FBI's conclusion that potential terrorists could make contact in "mosques," "prisons," places of "employment," "Internet chat rooms," and "conferences" is available as a justification for monitoring these venues in ethnic enclaves.[135]

Available information suggests that the Bureau has made use of its new and expanded powers to undertake non-threat-based intelligence collection efforts in American Muslim communities. The FBI itself has indicated that such information gathering was taking place in Dearborn, Michigan, an area known for its large Arab-American population.[136] Some years earlier, the *New York Times* reported that the FBI had shown its agents a map of the San Francisco area "pocked with data showing where Iranian immigrants were clustered" in order to allow agents to develop an assessment of the threat emanating from that community.[137] Most recently, when a Somali-American teenager from Minneapolis carried out a suicide mission for a terrorist group in Somalia, the FBI began monitoring Somali-American communities across the country.[138] As a former high-level NYPD

official has noted, this intelligence gathering was not confined to people "about whom they had a tip or links to the teenager."[139] Rather, the Bureau's

> newfound focus on identifying social patterns (for example, concerning the "radicalization" of young Muslims) has led officials to collect and analyze intelligence relative to whole communities or neighborhoods in search of meaningful trends (as opposed to intelligence regarding specific individuals about whom officials had already nurtured suspicions).[140]

2. *Infiltration of Mosques*

The FBI's emphasis on religious behavior as a hallmark of radicalization also supports a second key change to the AG Guidelines: the elimination of the restriction that the Bureau may collect information on the political or religious activities of Americans only when investigating a specific crime.[141]

Because the FBI has refused to release the portion of the DIOG that governs the infiltration of religious and political spaces, the criteria used by the agency to initiate such surveillance are unknown. FBI Director Mueller has defended the agency's use of informants within U.S. mosques, claiming that "generally," the Bureau investigates "if there is evidence or information as to individual or individuals undertaking illegal activities in religious institutions."[142] But Director Mueller's claim is inconsistent with mounting evidence that the FBI has recruited paid informants and community members to monitor speech and activity in mosques generally, rather than to follow up on specific concerns or individuals.

Perhaps the most compelling rebuttal of Director Mueller's claim comes from FBI informants themselves. The recent case of the Newburgh Four—African-American Muslim converts who were convicted of plotting to blow up synagogues in the Bronx and using surface-to-air missiles to shoot down military planes—is instructive.[143] Since much of the controversy surrounding the case related to entrapment,[144] the informant testified at length about his assignment from the FBI. He explained that he was sent to mosques to find out what the Muslim community was saying and doing rather than to uncover particular criminal or terrorist activity.[145] The informant was not sent to just one mosque, but rather covered three separate institutions in upstate New York. His assignment was to "listen [and] talk to … the attendees of the mosque" and report back to his FBI handler.[146] What types of information was he required to report? "If somebody was expressing radical views or extreme views."[147] The import of the informant's instructions was not lost on the American Muslim community. The largest American Muslim civil rights organization, the Council on American-Islamic Relations (CAIR), condemned the Bureau's use of "surveillance measures, particularly of mosques, predicated on the idea that Muslims present security concerns minus any suspicion of criminal activity."[148]

Another FBI informant, Craig Monteilh, has claimed in a civil case against the Bureau that he was sent to infiltrate several mosques and Islamic centers in Orange, Los Angeles, and San Bernardino counties.[149] While these claims have not been verified, his assertions regarding his tasking by the FBI are consistent with the testimony of the Newburgh

Four informant. At the very least, the local Orange County community believed that the FBI had sent Monteilh on a fishing expedition and its actions had made "Muslims … afraid to talk about politics or civil liberties issues within their mosques or even among their friends because of fear that it will draw attention from undercover agents."[150]

In addition to using paid informants to monitor mosques, the FBI has also asked—and sometimes pressured—American Muslim community members to report on the views and activities of their fellow worshippers. Documents obtained through Freedom of Information Act litigation in 2009 show that the FBI's Southern California office kept tabs on a variety of lawful First Amendment activities of American Muslims.[151] These included the subject and tenor of sermons given at mosques in Southern California,[152] the Muslim groups involved in the immigration reform movement,[153] and community events on family development.[154] Also in 2009, the Council of Islamic Organizations of Michigan, an umbrella group of 19 mosques and community groups, filed an official complaint with Attorney General Holder because American Muslims had reported being asked to monitor people at mosques and to report on their charitable donations.[155]

Why is the Bureau using these tactics? Its resources are limited and it undoubtedly does not wish to waste them on approaches that are unlikely to uncover terrorist plots. The answer may lie, in part, in the influence of the radicalization model that has gained currency among law enforcement agencies. This model's suggestion that radicalization is an inevitable process requiring early law enforcement action (i.e., before any commitment to violence takes place) and its identification of particular interpretations of Islam as the root cause of terrorism would support precisely the type of scattershot intelligence collection that is reportedly occurring.

B. Monitoring and Surveillance of American Muslim Communities by State and Local Law Enforcement Agencies

In addition to collecting information as part of Joint Terrorism Task Forces,[156] many state and local police forces have reconstituted intelligence-gathering units that had been dismantled in the 1970s following revelations of abusive surveillance tactics.[157] It appears that this capability is being deployed in attempts to find "homegrown terrorists" in American Muslim communities.

Examples abound. A particularly noteworthy one involves the head of Homeland Security in Kansas City, who, claiming that the city was vulnerable because it had significant pockets of Muslim refugees from East Africa and a concentration of Middle Eastern immigrants,[158] developed a Patrol Guide, which included a section on the *Recognition of Indicators/Interdiction of Potential Terrorist Threats.*[159] Upon completion of this training, a patrol officer purportedly would be able to identify a Muslim "extremist" during a car check, a pedestrian check, or a business or residence check. Despite near-unanimity about the difficulty of identifying signs of radicalization, it seems a Kansas City cop would be able to do so in the course of a writing a ticket.[160]

Information collected by state and local police is often fed into databases shared with federal law enforcement and intelligence agencies, such as those at fusion centers. These centers, 72 of which have been set up across the

Despite near-unanimity about the difficulty of identifying early signs of radicalization, some law enforcement agencies believe that a properly trained patrol officer would be able to do so in the course of writing a ticket.

country with $426 million in funding from DHS,[161] are state- and locally-created agencies that collect and analyze information about perceived threats to security and public order.[162] As intelligence gathering operations, the activities of these centers are generally shielded from public scrutiny.[163] However, the reports that have emerged from fusion centers demonstrate that at least some local law enforcement agencies are monitoring American Muslim communities within their jurisdictions based on political and religious activity, rather than on any indication of links to terrorism. The 2007 report of the Virginia Fusion Center, for example, described the Muslim American Society, a mainstream Muslim organization, as conducting subversive activities because it used "Boy and Girl Scout troops in 2006 as part of a massive get-out-the-vote campaign targeting Muslim voters in Virginia and elsewhere."[164] The North Central Texas Fusion Center's 2009 "Prevention Awareness Bulletin" asserted that lobbying on "Islamic-based issues" by Muslim groups made it "imperative" for "law enforcement officers to report" on these groups and other Islamic organizations.[165]

Local law enforcement agencies have devised techniques nearly identical to those of their federal counterparts. The Los Angeles Police Department (LAPD) launched an unsuccessful drive to map ethnic communities similar to the domain information collection conducted by the FBI."[166] Courtroom testimony shows that the NYPD, like the FBI, has placed informants in mosques to gather general intelligence. Evidence introduced in the 2006 trial of Shahawar Matin Siraj, who was convicted of planning to bomb the Herald Square subway station, revealed that the paid police informant was sent to the Bay Ridge Mosque in Brooklyn to collect information with no specific target. The informant repeatedly testified that he went to the mosque "to pray and report what's good and what's strange."[167] He passed along to the NYPD "conversations … about lots of people … I was not there to report conversations for *[sic]* a certain person."[168]

In sum, while information on the use of such tactics is necessarily incomplete, there is considerable evidence that state and local law enforcement agencies, like the FBI, are collecting non-threat-based information about American Muslim communities, including on their religious behavior and practices.

C. American Muslims' Perception of Being a "Suspect Group" and its Potential Impact on Cooperation with Law Enforcement Efforts

The net effect of the monitoring and surveillance that has come to light, as well as other government programs that are explicitly aimed at Muslims, is that American Muslims often believe they are treated as a suspect class.[169] Decades of research demonstrate that a community's perception of the legitimacy of police tactics greatly influences its willingness to partner with law enforcement agencies. Unsurprisingly, American Muslims' view of their treatment has led to a growing guardedness in their relationships with law enforcement agencies. Although

American Muslims have thus far been instrumental in assisting law enforcement agencies in thwarting terrorist plots, there is a risk that the tactics spawned by the "religious conveyor belt" theory of radicalization, such as broad surveillance and intrusion into religious spaces, could create barriers to this cooperation.

American Muslims' view that law enforcement agencies regard them as a suspect community has been widely noted by community leaders. At a hearing on racial profiling, the head of a national Muslim civil rights organization explained that monitoring had led American Muslims to perceive themselves as unjustly targeted by law enforcement agencies.[170] She emphasized that this type of attention was counter-productive because it increased "fear and suspicion within the Muslim community toward law enforcement" and made individuals "more reluctant to call the authorities when needed."[171] Similarly, a representative of another major American Muslim group testified that "[t]he perception of the community has become one where they believe they are viewed as suspect rather than partner in the War on Terror, and that their civil liberties are 'justifiably' sacrificed upon the decisions of federal agents."[172] Ingrid Mattson, the president of the Islamic Society of North America, and an influential American Muslim voice, has also noted the deterioration of relations between Arab American groups and law enforcement agencies.[173] High-profile cases of the type discussed above "have sown a corrosive fear among their people that F.B.I. informers are everywhere, listening."[174] In general, Mattson stated, "There is a sense that law enforcement is viewing our communities not as partners but as objects of suspicion."[175]

Independent studies have confirmed the existence of this perception among American Muslim communities. For example, a 2008 Vera Institute report on the effect of post-9/11 policing on 16 Arab American communities across the United States found that Arab Americans were troubled by increased government scrutiny.[176] Indeed, some Arab-American communities "were more afraid of law enforcement agencies—especially federal law enforcement agencies—than they were of acts of hate or violence, despite an increase in hate crimes."[177] Law enforcement officials have openly acknowledged this difficult dynamic,[178] with the FBI noting that American Muslim communities "almost unanimously feel that government agents treat them as suspects and view all Muslims as extremists."[179]

The dynamic identified by community leaders, the Vera Institute, and law enforcement officials raises an important concern. Decades of research on policing show that perceptions of legitimacy correlate with the willingness of communities to cooperate with law enforcement agencies.[180] A recent empirical study of American Muslims in the New York area ("New York Study") concludes that this phenomenon is also applicable in the context of anti-terrorism policing.[181] Using models from studies of ordinary crime, the New York Study tested whether American Muslims were more likely to cooperate with anti-terrorism efforts for instrumental reasons (i.e., because they feared punishment or expected individual and communal benefits from police efforts to control crime) or from normative motivations (i.e., because they believe authorities are legitimate and entitled to be obeyed).[182] The New York Study found "a robust correlation between perceptions of procedural justice and both perceived legitimacy and willingness to cooperate among Muslim American communities in the context of antiterrorism policing."[183] In other words, American Muslim communities were more likely to cooperate with anti-terror efforts if they perceived these efforts to be carried out in a legitimate manner.[184]

To date, despite concerns about the legitimacy of the government's counterterrorism efforts (and contrary to the unsubstantiated claims made by Rep. Peter King in justifying his controversial radicalization hearings),[185] American Muslims have an exemplary record of cooperating with law enforcement agencies on counterterrorism efforts. Indeed, according to multiple studies, they have provided information on about 40 percent of the terrorist plots that have been foiled.[186] Nonetheless, there is a serious risk that the perception that law enforcement's tactics unfairly target American Muslims could have an impact on the willingness of at least some members of these communities to proactively cooperate with law enforcement agencies—particularly the FBI—and to come forward with suspicions or concerns.

Already there are indications that American Muslims are becoming more guarded in their interactions with law enforcement officials. Prominent Muslim organizations are now warning their communities not to speak to the Bureau without an attorney present. Muslim Advocates has put out an "Urgent Community Alert," which notes that "the FBI is contacting Pakistani, South-Asian and other Muslim Americans to solicit information and advice about addressing violent extremism" and "strongly urges individuals not to speak with law enforcement officials without the presence or advice of an attorney."[187] Similarly, in May 2010, in response to "an increasing number of reports of FBI agents, along with other law enforcement officers, visiting and interviewing American Muslims," CAIR embarked on a campaign to remind its constituents of their rights in interactions with law enforcement officials.[188] Perhaps the starkest example is the warning issued by the American Muslim task force on Civil Rights and Elections, a national coalition of American Muslim organizations, that it would cease cooperating with the FBI unless the agency stopped infiltrating mosques and using "agents provocateurs to trap unsuspecting Muslim youth."[189]

If even a small proportion of American Muslims become wary of law enforcement officials because of intelligence collection practices that focus on religious beliefs and behavior, there could be negative consequences for the broad and unfettered cooperation on counterterrorism efforts that the FBI and other law enforcement agencies seek. Given that risk, the government should exercise care to avoid policies that undercut its broader counterterrorism goals.[190]

D. Perception that American Muslims are Treated as Suspect Class Could Fuel Radicalization

American Muslims' sensitivity to being treated as a suspect class may also have the unintended consequence, over the long term, of stimulating radicalization. Those charged with enforcing anti-terrorism laws have recognized this risk. One high-ranking LAPD officer told the Senate that the department's "*ultimate* goal is to engender the continued loyalty and good citizenship of American-Muslims—not merely to disrupt terrorist activities."[191] Thus, while law enforcement agents must "hunt down and neutralize small numbers of 'clusters' on the criminal side of the radicalization trajectory," they should do so with precision and care.[192] As the officer put it, "What good is it to disrupt a group planning a mall bombing if the enforcement method is so unreasonable that it is widely criticized and encourages many more to enter the radicalization process?"[193]

Scholars who study radicalization and terrorism have expressed similar concerns. Sageman, for example, has testified that the American Muslim community is "very sensitive to the action of local law enforcement agencies," and if it perceives them "to act against its members, it will assume that the state is also against it."[194] At the same hearing, another expert warned against creating a "grievance base" in the United States. In the United Kingdom, the experience of Muslims as a community historically subject to discrimination and then "singled out and defined in terms of the threat it potentially poses to security" has provided a "tangible basis on which to graft violent Islamist ideology."[195] Although such a grievance base has not traditionally been present among American Muslims, the expert warned,

> Should Muslims in this country begin to feel more markedly singled out and/or defined in terms of terrorism and threats to national security, the easier it may be for some among them to understand the worldview and vision of Islamic extremism as something that addresses their life circumstances.[196]

Those charged with designing our domestic counterterrorism policies should carefully evaluate whether current tactics could create such a "grievance base" in the United States.

E. Failure of Government Outreach to American Muslim Communities

At the same time as federal and local law enforcement agencies have expanded their monitoring of American Muslim communities, they have emphasized the need to build relationships with these communities.[197] Such efforts have been criticized as uncoordinated and ineffective.[198] It is rarely recognized, however, that even the best-coordinated outreach efforts are unlikely to succeed when paired with an approach to radicalization that emphasizes intelligence-gathering about religious behaviors and practices.

The FBI asserts that its outreach programs counter radicalization in two ways: 1) by allowing community concerns to be aired and brought to the attention of policy-makers; and 2) by building trust between the FBI and the communities so they will assist in identifying violent extremists.[199] However, the generally mistrustful relationship that seems to have developed between the FBI and American Muslim communities in recent years suggests that these programs have not been entirely successful.[200]

A significant obstacle to the success of the FBI's outreach programs is that they are not seen as influencing the national-level surveillance policies that are a principal concern for American Muslim communities.[201] Although there are some national-level meetings, the vast bulk of outreach efforts are made at the field office level. FBI field representatives can take national policy concerns back to headquarters, but the prospects of such input leading to reform are remote.[202] Indeed, rather than give serious attention to the grievances of American Muslim communities, the FBI leadership has staunchly defended its powers and practices, giving rise to the perception that its outreach efforts are purely cosmetic—i.e., they provide an opportunity for the FBI to say that it has consulted with affected communities, but they do not result in serious engagement at the policy level.

When the FBI attempts to use its outreach activities to obtain information about incipient radicalization, it exacerbates this dynamic. The putative markers of radicalization about which law enforcement agencies seek information are frequently tied to religious beliefs and behavior. Asking American Muslims to report on these beliefs and behavior as signs of potential terrorism not only places them in an awkward position vis-à-vis their fellow believers, but it also reinforces the view that their faith and their communities are under siege.[203] Some American Muslim organizations have specifically rejected engagement with law enforcement representatives on precisely these grounds, contending that as long as American Muslim communities "are indiscriminately targeted in counterterrorism investigations and considered to be suspicious, they cannot legitimately partner with law enforcement."[204]

Thus, rather than a two-way dialogue in which American Muslims are able to present their concerns about government policies to a receptive audience while FBI agents have the opportunity to learn about persons whose behaviors are genuinely suspicious, the FBI's efforts at community outreach risk being perceived as insincere or as a one-way means for the government to gather information about community members' religious practices. Such a state of affairs holds little promise for combating radicalization. Indeed, one expert has suggested that the FBI in particular should get out of the outreach business, leaving that undertaking to local authorities, such as mayors' offices.[205] To the extent that such outreach is in fact a fundamental part of the government's counter-radicalization and counterterrorism strategy, it clearly requires further thought.

V. CONCLUSION AND RECOMMENDATIONS

Radicalization is a complex phenomenon, both to understand and to address. As an initial matter, it is nearly impossible to pinpoint signs of radicalization in progress. Despite a wealth of research documenting this fact, the government's strategy, with its heavy emphasis on monitoring American Muslim communities, is being formed against the backdrop of a troublingly simplistic model of radicalization. These tactics have undermined efforts to build relationships with American Muslim communities, thus jeopardizing the broader counterterrorism agenda.

The government should establish a mechanism for evaluating the effectiveness of the plethora of anti-radicalization measures that have been implemented and whether they may be working at cross-purposes.

Law enforcement and community leaders, as well as security experts, have proposed community policing by local law enforcement personnel as the solution to this deteriorating relationship.[206] Community policing measures recommended include regular communication between local law enforcement officers and American Muslim communities, the creation of community liaison positions, increased cultural sensitivity training for law enforcement personnel (including front line personnel such as patrol officers), greater recruitment of American Muslims into law enforcement positions, and mechanisms for overcoming language barriers.[207]

While community policing has great potential to improve the fractured relationship between American Muslims and law enforcement agencies, it is unlikely to be effective without a repudiation of the biases reflected in the "religious conveyor belt" model and a move away from untargeted intelligence gathering as the primary response to the perceived threat of radicalization. As DHS's advisors on countering violent extremism have recognized, "community policing can be impeded if other enforcement tactics involving a community are perceived as conflicting with community partnership efforts."[208]

To take account of the negative ramifications of current tactics, and to allow community policing to work, it is critical that our government's response be recalibrated in several ways.

First, the federal government should clearly enunciate, through official public statements, that the "religious conveyor belt" model of radicalization does not bear the government's imprimatur, whether implicit or explicit. DHS, the lead agency on radicalization, would be an appropriate agency to take this initial step.[209]

Second, the government should establish a mechanism for evaluating the effectiveness of the plethora of anti-radicalization measures that have been implemented and whether they may be working at cross-purposes. Such a mechanism should, for example, assess whether our broader counterterrorism agenda is served by a surveillance-heavy response to radicalization. The ODNI would be a logical choice to perform this evaluation. Its statutory

mandate to coordinate the efforts of the Intelligence Community gives it authority to conduct such a review.[210] Indeed, the broad strategic role envisioned for the ODNI means that it *should* be considering whether current anti-radicalization tactics are furthering our overall counterterrorism agenda. The office's recently announced role of "coordinating an interagency planning effort to address domestic radicalization" would provide an appropriate platform for this type of analysis.[211] The ODNI also has the expertise to make such an evaluation, because of both its intelligence know-how and its specific expertise on radicalization.[212]

Third, the government should undertake an accounting of the civil liberties impact of a surveillance-heavy counter-radicalization policy, particularly on American Muslims' First Amendment freedoms. A long line of First Amendment cases recognizes that "government information gathering through surveillance, subpoenas, questioning, and other techniques can chill freedom of speech, consumption of ideas, association, and other rights."[213] While the FBI's Inspector General recently released a report documenting infiltration of religious and political groups, including anti-war and environmentalist activists, no such reckoning has been initiated on behalf of American Muslims. Such an accounting should cover not only instances where the FBI may have overstepped the fairly weak restrictions on its infiltration of American Muslim spaces, but also the effect of such actions on First Amendment rights.[214]

An ideal candidate to conduct this evaluation would be the Privacy and Civil Liberties Oversight Board. Based on the 9/11 Commission's recommendation, Congress first created the Board within the White House.[215] It was restructured in 2007 as an independent entity with subpoena powers.[216] The mandate of the Board is to ensure that privacy and civil liberties concerns are appropriately considered in the implementation of all laws, regulations, and executive branch policies related to counterterrorism. However, despite the insistent urging of civil rights groups and the chair and vice-chair of the 9/11 Commission,[217] President Obama has thus far named only two members to the Board, which is insufficient to allow it to function. The Board should be constituted as a matter of priority and should include representation from American Muslim communities. It should consider the full range of issues relating to the appropriate role for government in countering radicalization, including the impact of untargeted intelligence collection and of sending informants into religious and political spaces.

Fourth, in order to allow an appropriate assessment of their effectiveness and impact on First Amendment protected activity, law enforcement policies in this area should be more transparent. Thus far, the Department of Justice (DOJ) has disclosed critical documents, such as the DIOG, only in the face of litigation pressure, and even then not in their entirety.[218] The key portions of the DIOG detailing the guidance provided to FBI agents for initiating surveillance of religious and political institutions remain secret. That should be remedied forthwith. Similarly, the DOJ should make public information sought by civil rights groups regarding how the FBI collects and uses demographic information about ethnic communities.[219] And state and local law enforcement agencies should make their own intelligence gathering policies public, as there is currently very little official information available about them.

Finally, the federal government should reconsider its outreach activities to ensure they are effective. Community outreach necessarily involves intensive and sustained communication between law enforcement officers and those they protect. Decades of research show that this type of outreach is best conducted by law enforcement personnel who are part of, and accountable to, the community. It is unclear that the FBI's outreach activities contribute significantly to the goal of building trust with American Muslim communities; indeed, there are indications that they may even be counterproductive insofar as they are used to gather information about community members' religious behaviors and beliefs. For the time being, the resources devoted to this effort may be better utilized in 1) developing a meaningful national dialogue with representatives of American Muslim communities to address their grievances at the appropriate level, and 2) supporting local efforts at engagement.[220]

The ultimate goal of these proposed measures is to improve our response to radicalization by bringing greater rationality and transparency to the effort. By explicitly articulating what we do and do not know about radicalization, and by evaluating government policies in light of this knowledge, we can ensure that ineffective, counterproductive, or rights-violating policies are discontinued. This type of scrutiny will promote both the efficacy of our government's counter-radicalization measures and their adherence to our fundamental values.

ENDNOTES

[1] Of course, people carry out violent acts justified in the name of ideologies other than Islam. The threat of violence by white supremacists has been a concern for decades, and a recent report by the Department of Homeland Security highlighted concerns about right-wing extremism. *See* Dept. of Homeland Sec., Assessment, Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment (April 2009), *available at* http://www.fas.org/irp/eprint/rightwing.pdf. Since most of the recent concern about domestic attacks has focused on American Muslims, however, this report addresses the theories and initiatives that have been developed to address this particular phenomenon. It should be emphasized at the outset that the term "radicalization" is itself susceptible to many understandings. It is used in this report according to its common usage by law enforcement agencies and government officials to denote both an ideological component (i.e., the process by which an individual comes to embrace "radical" views, including the view that violence is justified in furtherance of religious, political, or social goals) and a criminal component (i.e., actions in furtherance of a terrorist plot, including recruitment, operational planning, and execution).

[2] Jerome P. Bjelopera & Mark A. Randol, Cong. Research Serv., R41416, American Jihadist Terrorism: Combating a Complex Threat 3 (2010) [hereinafter "CRS Report"], *available at* http://www.fas.org/sgp/crs/terror/R41416.pdf.

[3] Exec. Office of the President, National Security Strategy 19 (2010), *available at* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

[4] Press Release, Peter King, Homeland Sec. Comm., What's Radicalizing Muslim Americans? (Dec. 19, 2010) [hereinafter "King Press Release"], *available at* http://homeland.house.gov/press-release/newsday-king-whats-radicalizing-muslim-americans.

[5] Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 121 Stat. 266, § 2402(b) (2007) (codified at 6 U.S.C. § 347) (designating DHS as lead agency in combating radicalization). The Radicalization and Extremist Messaging Group of the National Counterterrorism Center (NCTC) (which is part of the office of the Director of National Intelligence (DNI)), leads the Intelligence Community's efforts on radicalization issues. *About Us*, Nat'l Counterterrorism Ctr., http://www.nctc.gov/about_us/about_nctc.html (last visited Feb. 9, 2011).

[6] CRS Report, *supra* note 2, at 61-62 ("Although many agencies at all levels of government are engaged in counterterrorism activities, there is currently no unified strategy, plan, or framework specifically focused on violent extremism as it manifests itself in homegrown jihadist terrorism"); Lorenzo Vidino, *The Homegrown Terrorist Threat to the U.S. Homeland,* A.R.I. 171/2009 (2009), *available at* http://www.realinstitutoelcano.org/wps/portal/rielcano_eng/Content?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari171-2009 (last visited Feb. 9, 2011). *See also The Threat of Islamic Radicalization to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 10 (2007) (written testimony of Michael Chertoff, Sec'y, Dep't of Homeland Sec.) [hereinafter "Chertoff March 2007 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=52a5c10a-3f1d-4bad-b07a-c2581fa731b8

[7] Although traditional law enforcement agencies like the FBI and state police forces are increasingly involved in intelligence gathering, this report refers to them as "law enforcement agencies." The term, as used in this report, excludes agencies like the NCTC (which has no direct law enforcement function) and DHS (only some parts of which are engaged in law enforcement).

[8] Of course, the Muslim community in the United States is not a monolith. Rather, American Muslims have many ethnicities, speak different languages, and occupy varying socio-economic positions. They are also spread out over several (mainly) metropolitan areas in the United States. To reflect this diversity, this report refers to them not as a single "community," but rather as "communities."

[9] Carol Dyer et al., *Countering Violent Extremism*, FBI L. Enforcement Bull., Dec. 2007, at 3, 6 [hereinafter "FBI Bulletin"], *available at* http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2007-pdfs/dec07leb.pdf. *See also infra* notes 35, 92.

[10] S. Comm. on Homeland Sec. and Gov'tal Affairs, 110th Cong., Report on Violent Islamist Extremism, the Internet, and the Homegrown Terrorist Threat 4 (2008) [hereinafter "Senate Homegrown Terrorism Report"], *available at* http://hsgac.senate.gov/public/_files/IslamistReport.pdf.

[11] *See* CRS Report, *supra* note 2, at 36-50 (describing various responses to radicalization and violent extremism that involve intelligence collection).

[12] Michael B. Mukasey, Att'y Gen., Guidelines for Domestic FBI Operations 29 (2008), [hereinafter "AG Guidelines"], *available at* http://www.justice.gov/ag/readingroom/guidelines.pdf (urging the Bureau to use its analytic authority to "identify and understand trends, causes, and potential indicia of criminal activity and other threats to the United States that would not be apparent from the investigation of discrete matters alone"). A heavily redacted version of the Domestic Intelligence and Operations Guide was released in 2009 in response to a Freedom of Information Act lawsuit brought by the Electronic Frontier Foundation. Fed. Bureau of Investigation, Dep't of Justice, Domestic Investigations and Operations Guide (2009) (version released in 2009 in response to the Electronic Frontier Foundation), *available at* http://www.eff.org/fn/directory/8364/354. A less censored version was made available in January 2010 in response to a similar lawsuit brought by Muslim Advocates. Fed. Bureau of Investigation, Dep't of Justice, Domestic Investigations and Operations Guide (2010) [hereinafter "DIOG"], *available at* http://www.muslimadvocates.org/latest/profiling_update/community_ alert_seek_legal_adv.html (version released in 2010 to Muslim Advocates). While some of the tactics used by the FBI (e.g., collecting information about ethnic or religious communities) were being used even before the introduction of the AG Guidelines and the DIOG, these documents formalize and institutionalize the Bureau's authority to undertake them. *See also infra* text accompanying notes 128-135.

[13] *See infra* text accompanying notes 136-140.

[14] *See infra* text accompanying notes 143-155. Such surveillance has also been facilitated by changes to the AG Guidelines, which no longer require any predicate—i.e., suspected link to criminal activity—to initiate surveillance or penetration of mosques by confidential informants. AG Guidelines, *supra* note 12, at 17-20 ("Assessments . . . require an authorized purpose but not any particular factual predication"). *See also* Emily Berman, Brennan Ctr. for Justice, Domestic Intelligence: New Powers, New Risks 35 (2011) [hereinafter "AG Guidelines Report"], *available at* http://brennan.3cdn.net/b80aa-0bab0b425857d_ jdm6b8776.pdf.

[15] *See infra* text accompanying notes 169-175. In addition to the types of surveillance and policing issues considered in this report, programs such as the federal special registration program for young men from Muslim countries implemented after 9/11, the Transportation Security Administration directives that target travelers from Muslim countries, and Department of Treasury regulations that are regarded as unfairly burdening Muslim charities contribute to the community's sense of unfair targeting. *See* Press Release, the Sikh Coalition, Muslim, Arab, Sikh & South Asian American Community Leaders Welcome DHS Secretary Napolitano's Commitments (Jan. 29, 2010) [hereinafter "MASA Jan. 2010 Press Release"], *available at* http://www.sikhcoalition.org/advisories/NapolitanoDHSMeeting.htm.

[16] CRS Report, *supra* note 2, at 54.

[17] *Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Gov'tal Affairs*, 111th Cong. 2 (2010) (statement for the record by Janet A. Napolitano, Secretary, U.S. Dep't of Homeland Sec.) [hereinafter "Napolitano Sept. 2010 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=8cd9834b-6c0a-4d14-821d-42bfa35e0092.

[18] Bruce Newsome, *Wake Up to American Jihadism*, CBSnews.com, Jan. 29, 2010, http://www.cbsnews.com/stories/2010/02/29/opinion/main6153034.shtml (last visited Feb. 10, 2011) (concluding that "most Jihadism is local – perhaps inspired, but rarely supported by foreign Jihadists").

[19] Stephanie Condon, *Poll: 15 Years After Oklahoma City, Domestic Terrorism Still Viewed as Serious Threat*, CBSnews.com, Apr. 21, 2010, http://www.cbsnews.com/8301-503544_162-20002784-503544.html (last visited Feb. 10, 2011).

[20] *U.S. Intelligence Community Annual Threat Assessment: Hearing Before the S. Select Comm. on Intelligence*, 111th Cong. 11 (2010) (statement for the record by Dennis C. Blair, Dir of Nat'l Intelligence) ("It is clear . . . that a sophisticated, organized threat from radicalized individuals and groups in the United States comparable to traditional homegrown threats in other countries has not emerged. Indeed, the elements most conducive to the development of an entrenched terrorist presence—leadership, a secure operating environment, trained operatives, and a well-developed support base—have been lacking to date in the United States or, where they have been nascent, have been interrupted by law enforcement authorities"), *available at* http://intelligence.senate.gov/100202/blair.pdf (last visited Feb. 10, 2011).

[21] *Id*. The lack of a domestic network has led the Intelligence Community to conclude that a linkage to overseas terrorist groups was "probably necessary to transform this threat" into a serious one. *Id*. This assessment is consistent with the Intelligence Community's previous views on the subject. *See*, *e.g.*, *U.S. Intelligence Community Annual Threat Assessment: Hearing Before the S. Select Comm. on Intelligence*, 111th Cong. 7-8 (2009) (statement for the record by Dennis Blair, Dir. of Nat'l Intelligence), *available at* http://www.dni.gov/testimonies/20090212_testimony.pdf; *U.S. Intelligence Community Annual Threat Assessment: Hearing Before the S. Select Comm. on Intelligence*, 110th Cong. 8-9 (2008) (statement for the record by J. Michael McConnell, Dir. of Nat'l Intelligence), *available at* http://intelligence.senate.gov/080205/mcconnell.pdf; *Eight Years After 9/11: Hearing Before the S. Comm. on Homeland Sec. & Gov'tal Affairs*, 111th Cong. 4 (2009) (statement for the record by Michael Leiter, Dir., Nat'l Counterterrorism Ctr.) ("Homegrown Muslim extremists who have little if any connection to known terrorist organizations have not launched a successful attack in the United States. The handful of homegrown extremists who have sought to strike within the Homeland since 9/11 have lacked the necessary tradecraft and capability to conduct or facilitate sophisticated attacks."), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=3f0080e8-1535-4ac3-af74-207857b578e0.

[22] Napolitano Sept. 2010 Testimony, *supra* note 17, at 1.

[23] *Id*. at 1-2; *Nine Years after 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Gov'tal Affairs*, 111th Cong. 1 (2010) (statement for the record by Michael Leiter, Dir., Nat'l Counterterrorism Ctr.), *available at* http://hsgac.senate.gov/public/index.cfm? FuseAction=Files.View&FileStore_id=5487201f-f4c9-4b9f-8ae8-b08b407d829b; Napolitano Sept. 2010 Testimony, *supra* note 17, at 8.

[24] *Understanding the Homeland Security Threat Landscape – Considerations for the 112th Congress: Hearing Before the H. Comm. on Homeland Sec.*, 112th Cong. 1 (2011) (statement for the record by Michael Leiter, Dir., Nat'l Counterterrorism Ctr.) [hereinafter "Leiter Feb. 2011 Testimony"], *available at* http://www.nctc.gov/press_room/speeches/2011-02-09-SFR-NCTC-Director-Leiter-FINAL.pdf; *Understanding the Homeland Security Threat Landscape – Considerations for the 112th Congress: Hearing Before the H. Comm. on Homeland Sec.*, 112th Cong. 1 (2011) (statement for the record by Janet A. Napolitano, Secretary, U.S. Dep't of Homeland Sec.), *available at* www.dhs.gov/ynews/testimony/testimony_1297263844607.shtm. Secretary Napolitano warned that DHS is "operating under the assumption, based on the latest intelligence and recent arrests, that individuals prepared to carry out terrorist attacks and acts of violence might be in the United States, and they could carry out acts of violence with little or no warning." It was not clear from her statement, however, whether the risk of a terrorist attack is from Americans who have joined Al Qaeda or affiliated organizations or from Americans who have no operational links to a terrorist organization. *See also Worldwide Threat Assessment: Hearing Before the H. Perm. Select Comm. On Intelligence*, 112th Cong. 4 (statement for the record by James R. Clapper, Dir. Nat'l Intelligence) available at http://www.dni.gov/testimonies/20110210_testimony_clapper.pdf. One newspaper reported that the director of the NCTC testified that the Center's number one priority is identifying Americans intent on doing harm to their own country. Anna Mulrine, *No. 1 Priority for US Security: Domestic Terrorism, Threat Report Says*, Christian Science Monitor, Feb. 10, 2011, *available at* http://www.csmonitor.com/USA/2011/0210/No.-1-priority-for-US-security-domestic-terrorism-threat-report-says. As with Secretary Napolitano's warning about an imminent threat to the United States, however, it is not clear whether Director Leiter's statement referred to the danger posed by Americans who have joined Al Qaeda or affiliated organizations overseas (a threat highlighted in the Worldwide Threat Assessment that was the subject of the hearing) or to Americans who are plotting attacks independent of any operational links to a terrorist organization. At the time that this report went to publication, the records of the hearing were not available so that this statement and its context could not be verified.

[25] Brian Michael Jenkins, RAND Corp., Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States since September 11, 2001 1 (2010) [hereinafter "Rand Study"], *available at* http://www.rand.org/pubs/occasional_papers/2010/RAND_OP292.pdf. The study defines homegrown terrorists as including individuals living in the United States who 1) plotted to carry out terrorist attacks at home; 2) provided "material support" to foreign terrorist organizations; or 3) left the U.S. to join jihadist organizations abroad. Only cases that have resulted in indictments, either in the United States or abroad, are included in the study.

[26] *Id*. at 8.

[27] *Id*. at 1, 3.

[28] *Id*. at 1. The study also emphasized that the type of threat revealed by these plots was limited in terms of potential harm and that several of the cases reported could not even be regarded as fully formulated terrorist plots. For example, there were no cases involving weapons of mass destruction. Although explosives are defined as weapons of mass destruction in the relevant U.S. statutes, the normal usage of the term is to describe nuclear, chemical, biological, and radiological weapons. The Rand Study indicated that 11 out of the 46 cases examined involved explosives. *Id*. at 1-2. Only two cases involved fatalities. *Id*. More than half the cases involved only one person, including both of the cases that resulted in fatalities. *Id*. at 3.

[29] David Schanzer et al., Duke Univ. & Univ. of N.C., Chapel Hill, Anti-Terror Lessons of Muslim-Americans (2010) [hereinafter "Duke/UNC Study"], *available at* http://www.sanford.duke.edu/ news/Schanzer_Kurzman_Moosa_Anti-Terror_Lessons.pdf. The Duke/UNC Study identified 139 Muslim-Americans who were linked to terrorist violence between September 11, 2001, and December 31, 2009, an average of about 17 people per year. *Id*. at 1. The average number of cases reported in the Duke/UNC Study

is greater than those of the Rand Study because the Duke/UNC Study counted individuals, while the Rand Study counted cases, which often included several individuals. The Duke/UNC Study also encompassed a somewhat broader range of cases than the Rand Study because it included cases where no indictment had been issued. *Id*. at 10. The Duke/UNC Study recognized the higher number of incidents and arrests in 2009, but explained that a great deal of this increase was attributable to the particular circumstances of groups of young Somali-Americans who left Minneapolis to join a terrorist organization that was fighting in Somalia. *Id*. at 16. The sharp spike in cases involving young Somali-Americans from Minnesota leaving to fight for Al Shabaab has been generally attributed to the occupation of Somalia by Ethiopian troops supported by the United States. Robert A. Pape & James K. Feldman, Cutting the Fuse: The Explosion of Global Suicide Terrorism and How to Stop It 77 (2010) [hereinafter "Cutting the Fuse"]. *See also Violent Islamist Extremism: Al-Shabaab Recruitment in America: Hearing Before the S. Comm. on Homeland Sec. and Gov't al Affairs*, 111th Cong. 2-4 (2009) (written testimony of Andrew Liepman, Deputy Dir. of Intelligence, Nat'l Counterterrorism Ctr.), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id= a1c96e7a-70bd-415e-b8f9-5dfedb3c52cd.

[30] Charles Kurzman, Triangle Center on Terrorism and Homeland Security, Muslim-American Terrorism Since 9/11: An Accounting 1 (2011), *available at* http://sanford.duke.edu/centers/tcths/about/documents/Kurzman_Muslim-American_Terrorism_Since_911_An_Accounting.pdf. The report noted that "with Muslims comprising 1 percent of the American population, it is clear that Muslims are engaging in terrorism at a greater rate than non-Muslims – though at a low level compared with overall violence in the United States." *Id.* at 3. Given the small number of cases of domestic terrorism and significant uncertainty about the size of the American Muslim population (there is no census data and estimates of the number of American Muslims vary from 1 to 8 million), it is unclear whether this statistic is at all meaningful.

[31] Pew Research Center, Muslim-Americans: Middle-Class and Mostly Mainstream 5 (2007), *available at* http://pewresearch.org/assets/pdf/muslim-americans.pdf.

[32] Rand Study, *supra* note 25, at 12. *See also* Romesh Ratnesar, *The Myth of Homegrown Islamic Terrorism in the U.S.*, Time, Jan. 24, 2011, http://www.time.com/time/world/article/ 0,8599,2044047,00.html ("American Muslims remain more moderate, diverse and integrated than the Muslim populations in any other Western society. Despite the efforts of al-Qaeda propagandists like al-Awlaki, the evidence of even modest sympathy for the enemy existing inside the U.S. is minuscule.").

[33] Rand Study, *supra* note 25, at 5. *See also The Fort Hood Attack: A Preliminary Assessment: Hearing Before the S. Comm. on Homeland Sec. and Gov't al Affairs*, 111th Cong. 5 (2009) (statement for the record of Brian Jenkins, RAND Corp.), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=e72164b8-af3b-4164-88b4-0ce9fcf9e8ac.

[34] Mitchell D. Silber & Arvin Bhatt, NYPD Intelligence Div., Radicalization in the West: The Homegrown Threat 5 (2007) [hereinafter "NYPD Report 2007 Version"], *available at* http://www.nypdshield.org/public/SiteFiles/documents/NYPD_Report-Radicalization_in_the_West.pdf. The NYPD Report 2007 Version asserts that "[w]hile the threat from overseas remains," terrorist attacks and thwarted plots in Europe, Australia and Canada suggest that the threat has morphed into one in which "local residents/citizens [seek] to attack their country of residence, utilizing al-Qaeda as their inspiration and ideological reference point." It further contends that "jihadi-Salafi ideology is the driver that motivates young men and women, born or living in the West, to carry out 'autonomous jihad' via acts of terrorism

against their host countries." This ideology is described as "proliferating in Western democracies at a logarithmic rate" and "permeating New York City, especially its Muslim communities." *Id*. at 5-8, 66.

[35] *Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing Before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 110th Cong. 2 (2007) (testimony of John Neu, Chief of Police, Torrance Police Dep't) ("The most significant trend that has been identified over the past several years is the rise of the 'homegrown' threat. . . . The possibility of a 'homegrown' terrorist attack against Los Angeles, New York, Chicago or any other American city is real and is worsening with time as the radicalization process unfolds.") [hereinafter "Neu Testimony"], *available at* http://hsc-democrats.house. gov/SiteDocuments/20070405120653-23987.pdf; *The Role of Local Enforcement in Countering Violent Islamic Extremism: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs,* 110th Cong. 1 (2007) (statement for the record by Maj. Thomas Dailey, Kansas City, Mo. Police Dep't, Homeland Security Division) [hereinafter "Dailey Testimony"], *available at* http://hsgac.senate.gov/public/ index.cfm?FuseAction=Files.View&FileStore_id=81c0387a-e20c-4b02-8257-6885b0e1c3f5; Intelligence Bureau, N.J. Office of Homeland Sec. & Preparednesss, Homegrown Plots: New York 2009 and Fort Dix 1 (2009), *available at* http://info.publicintelligence.net/Homegrown%20Plots-New%20York%20 2009%20and%20Fort%20Dix.pdf. *See also generally* Lorenzo Vidino, *Toward a Radical Solution*, Foreign Policy (Jan. 5, 2010), http://www.foreignpolicy.com/articles/2010/01/05/ toward_a_radical_solution (noting that terrorist plots in New York, Texas, and Illinois were thwarted in September 2009, and that such incidents have "spurred interest in the United States in counter-radicalization programs").

[36] Press Release, S. Comm. on Homeland Sec. and Gov'tal Affairs, Senate Homeland Security Committee Hearing Examines Islamic Radicalism Inside United States (Mar. 14, 2007) (quoting opening statement of committee Chairman Joseph Lieberman that "[c]ountering 'homegrown' radicalization must be one of the Department of Homeland Security's top priorities"), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Press.MajorityNews&ContentRecord_id=d0543abb-0376-4a5c-9a4e-09649e2ed8ef.

[37] *See* King Press Release, *supra* note 4.

[38] *Eight Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 111th Cong. 1-3 (2009) (statement for the record by Robert S. Mueller, III, Dir., Fed. Bureau of Investigation) [hereinafter "Mueller Sept. 2009 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=05ae8640-f9b2-40c4-b15a-a8017cd25af5.

[39] *Nine Years after 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Gov'tal Affairs,* 111th Cong. 1, 4 (2010) (statement for the record by Robert S. Mueller, III, Dir., Fed. Bureau of Investigation) [hereinafter "Mueller Sept. 2010 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=9cda2966-30ed-48e2-b3a9-7d40f0b617e5.

[40] One prominent expert affiliated with the NYPD has suggested that the threat from "al Qaeda Central has receded in importance" and that "the central threat facing the U.S. today is from 'leaderless' jihadis." Marc Sageman, Leaderless Jihad: Terror Networks in the Twenty-First Century 31 (2008) [hereinafter "Leaderless Jihad"]. His conclusions in this regard have been the subject of significant criticism. *See* Bruce Hoffman, *The Myth of Grassroots Terrorism*, Foreign Aff., May/June 2008, *available at* http://www.foreignaffairs.com.

[41] A September 2010 report issued by the Bipartisan Policy Center (which was authored by two long-time critics of the "leaderless jihad" thesis) asserts that "Al-Qaeda and its allies arguably have been able to establish at least an embryonic terrorist recruitment, radicalization, and operational infrastructure in the United States with effects both at home and abroad." Peter Bergen & Bruce Hoffman, Bipartisan Policy Ctr., Assessing the Terrorist Threat: A Report of the Bipartisan Policy Center's National Security Preparedness Group 4 (2010) [hereinafter "BPC Report"], *available at* http://www.bipartisanpolicy.org/sites/default/files/NSPG%20Final%20Threat%20Assessment.pdf. The recent spate of domestic terrorist incidents is cited generally in support of this assertion, although the report contains no analysis of which incidents reflect such recruitment, radicalization, or operational support. *See also* Bruce Hoffman, *American Jihad*, Nat'l Interest, May/June 2010, at 17, 21 (asserting that while the U.S. government has been focused on the threat from al Qaeda abroad, it is "creating the largest, most devastating blind spot" at home and that the "ten jihadi terrorist plots or related events" that came to light during 2009 demonstrate that Al Qaeda has "accomplished the unthinkable—establishing at least an embryonic terrorist recruitment, radicalization and operational infrastructure in the United States...."), *available at* http://nationalinterest.org/article/american-jihad-3441?page=2. The ACLU has criticized the methodology used in the BPC Report as unscientific and the report's tone as unnecessarily alarmist. *See* American Civil Liberties Union, Analysis of the Bipartisan Policy Center Report, "Assessing the Terrorist Threat," *available at* http://www.aclu.org/files/assets/ACLU_Interested_Persons_Memo_Regarding_BPC_Threat_Assessment_Report.pdf.

[42] *See* Dana Priest & William M. Arkin, *A Hidden World Growing Beyond Control*, Wash. Post, July 19, 2010, http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/print ("Some 1,271 government organizations and 1,931 private companies work on programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States").

[43] A somewhat simplified view of the competition for resources posits that if the threat from Al Qaeda and affiliated organizations emanating from abroad is de-emphasized, the billions of dollars currently allocated to counterterrorism efforts to combat these groups could be reduced or redirected. The FBI and local police would be more likely to gain resources to prevent attacks planned by "small bands of zealots in the garages and basements just off Main Street or the alleys behind Islamic madrasas." Elaine Sciolino & Eric Schmitt, *A Not Very Private Feud Over Terrorism*, N.Y. Times, June 8, 2008, at WK1, *available at* http://www. nytimes.com/2008/06/08/weekinreview/08sciolino.html. Of course, the view that the threat has "diversified" to include both new outside terrorist organizations taking aim at the U.S. *and* an increase in homegrown terrorism would support an overall increase in resources to all parts of the counterterrorism apparatus.

[44] Chip Berlet, *Leaderless Counterterrorism Strategy: The "War on Terror," Civil Liberties, and Flawed Scholarship,* Public Eye Mag., Fall 2008, http://www.publiceye.org/magazine/v23n3/leaderless_counterterrorism_strategy.html.

[45] While the analysis itself is not available, a major British newspaper, the *Guardian*, reported extensively on its contents. *See* Alan Travis, *MI5 Report Challenges Views on Terrorism in Britain,* Guardian, Aug. 20, 2008, http://www.guardian.co.uk/uk/2008/aug/20/uksecurity.terrorism1 [hereinafter "*MI5 Guardian Report 1*"]; Alan Travis, *The Making of an Extremist*, Guardian, Aug. 20, 2008, http://www.guardian.co.uk/uk/2008/aug/20/uksecurity.terrorism [hereinafter "*MI5 Guardian Report 2*"].

[46] *MI5 Guardian Report 1*, *supra* note 45.

[47] *MI5 Guardian Report 2*, *supra* note 45. Several factors were identified as making an individual receptive to extremist ideology, such as "the experience of migrating to Britain and facing marginalisation and racism; the failure of those with degrees to achieve anything but low-grade jobs; a serious criminal past; travel abroad for up to six months at a time and contact with extremist networks overseas; and religious naivety." *Id*.

[48] Andrew Gilligan, *Hizb ut Tahrir Is Not a Gateway to Terrorism, Claims Whitehall Report*, Telegraph, July 25, 2010, http://www.telegraph.co.uk/journalists/andrew-gilligan/7908262/Hizb-ut-Tahrir-is-not-a-gateway-to-terrorism-claims-Whitehall-report.html (quoting U.K. Communities Department).

[49] Leaderless Jihad, *supra* note 40, at 23.

[50] The four stages identified by Sageman are 1) moral outrage about the suffering of fellow Muslims; 2) the fit between this outrage and an individual's worldview; 3) the resonance of the jihadist interpretation with an individual's personal everyday experiences; and 4) mobilization by already existing networks. *Id*. at 71-88.

[51] *Id*. at 72 (emphasis added). Although Sageman's empirical and analytical framework for assessing the contours of the threat of radicalization has been the subject of criticism, *see supra* note 40, the aspects of his study relied upon in this report are not subject to contention unless explicitly so noted. A recent study of suicide terrorism has posited that people become "transnational suicide terrorists"—i.e., carry out attacks in the country where they live because of anger about the occupation of another country to which they have ties—through a rare process of "group radicalization." Cutting the Fuse, *supra* note 29, at 61. Although this process is described as "sequential," the authors also emphasize that it is "an open-ended process with many off-ramps and two-way avenues." *Id*. at 61, 82. Since the authors only examine three case studies to evaluate the correctness of their thesis, it is not included in the main discussion of radicalization studies.

[52] *Violent Extremism: How Are People Moved from Constitutionally-Protected Thought to Acts of Terrorism?: Hearing Before Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of H. Comm. on Homeland Sec.*, 111th Cong. 3 (2009) (testimony of Kim Cragin, RAND Corp.) [hereinafter "Cragin Testimony"], *available at* http://hsc-democrats.house.gov/SiteDocuments/20091215100448-24149.pdf.

[53] *Id*.

[54] Rand Study, *supra* note 25, at 7; *see also* Cragin Testimony, *supra* note 52, at 4. Other examinations of violent extremism and terrorism have reached similar conclusions about the fluidity of the process. *See*, *e.g.*, A. Pargeter, *North African Immigrants in Europe and Political Violence*, 29 Studies on Conflict & Terrorism 731, 737 (2006); Tomas Precht, Danish Ministry of Justice, Homegrown Terrorism and Islamist Radicalisation in Europe: From Conversion to Terrorism 32 (2007), *available at* http://docs.google.com/viewer?a=v&q=cache:UpEwWiL8-HsJ:www.justitsministeriet.dk/fileadmin/downloads/Forskning_og_dokumentation/Home_grown_terrorism_and_Islamist_radicalisation_in_Europe_-_an_assessment_of_influencing_factors__2_.pdf+%22Homegrown+Terrorism+and+Islamist+ Radicalisation+in+Europe%22&hl=en&gl=us&pid=bl&srcid=ADGEEShwU0Y_g5P8v1aC90weYkNX-Pa1CSzbB-KZWC8oi_d45opCTzxxR87_T_vvm3AIyBh0yfhykkaR0LwbFSgJbbJgnTKSHeCssQjAgcbI7UPxkm5N2DjtSSl9LtgUhLbJahRVk_sE&sig=AHIEtbS_24W7Lk4UbEjBNvDHvPvaFIy2Ow; Andrew Silke, *Holy Warriors: Exploring the Psychological Processes of Jihadi Radicalization*, 5 Eur. J. of Criminology 99, 105 (2008); *Violent Extremism: How Are People Moved from Constitutionally-Protected Thought to Acts of Terrorism?: Hearing Before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 3 (2009) (testimony of Stevan Weine, M.D., Univ. of Ill. at Chi.), *available at* http://hsc-democrats.house.gov/SiteDocuments/20091215100547-80148.pdf.

[55] Clark McCauley & Sophia Moskalenko, *Mechanisms of Political Radicalization: Pathways Toward Terrorism*, 20 Terrorism & Political Violence 415, 418 (2008) [hereinafter "*Pathways Toward Terrorism*"]; Richard English, Terrorism: How to Respond 52 (2009).

[56] *Pathways Toward Terrorism*, *supra* note 55, at 429. McCauley and Moskalenko also left open the possibility that there were additional mechanisms that had yet to be identified. *Id*.

[57] Clark McCauley & Sophia Moskalenko, *Individual and Group Mechanisms of Radicalization*, *in* Topical Strategic Multi-Layer Assessment (SMA), Multi-Agency and Air Force Research Laboratory, Multi-Disciplinary White Papers in Support of Counter-Terrorism and Counter-WMD 82, 88 (Laurie Fenstermacher ed., 2010), *available at* http://ebookbrowse.com/u-counter-terrorism-white-paper-final-january-2010-pdf-d30969538. Studies of extreme-right political activism in the Netherlands and Palestinian suicide terrorism, as well as general examinations of terrorism, have reached similar conclusions. *See*, *e.g.*, Annette Linden & Bert Klandermans, *Stigmatization and Repression of Extreme-Right Activism in the Netherlands*, 11 Mobilization: Int'l Q. 213, 228 (2006); Shaul Kimhi & Shemuel Even, *The Palestinian Human Bombers*, *in* Tangled Roots: Social and Psychological Factors in the Genesis of Terrorism 308-323 (Jeff Victoroff ed., 2006).

[58] John Horgan, Psychology of Terrorism 105-06 (2005).

[59] Report of the Dept. of Defense Independent Review, Protecting the Force: Lessons from Fort Hood, App. D (Jan. 2010), *available at* http://www.defense.gov/pubs/pdfs/DOD-ProtectingTheForce-Web_Security_HR_13jan10.pdf.

[60] Silke, *supra* note 54, at 110.

[61] Anne Barnard, *Outraged and Outrageous,* N.Y. Times, Oct. 8, 2010, at MB1, *available at* http://www.nytimes.com/2010/10/10/nyregion/10geller.html.

[62] *MI5 Guardian Report 1*, *supra* note 45.

[63] Tufyal Choudhury, Dept. for Communities and Local Gov't, The Role of Muslim Identity Politics in Radicalization (A Study in Progress) 6 (2007) (emphasis added), *available at* http://www.communities.gov.uk/documents/communities/pdf/452628.pdf. Sageman found that terrorists are not particularly religiously literate and do not come primarily from religious families. Only about one-fourth of his sample was deeply religious when they were young; two-thirds were secular; and the remainder converted to Islam. Nor were his subjects well versed in Islam. Rather, the "majority of terrorists come to their religious beliefs through self-instruction. Their religious understanding is limited; they know about as much as any secular person, which is to say, very little." Leaderless Jihad, *supra* note 40, at 51. On the related issue of the influence of religious education provided by madrassas (Islamic religious schools that concentrate on teaching the Quran), Sageman concluded that it was not a substantial factor: Only 13 percent of his sample was schooled at madrassas. *Id*. at 52. *See also* Choudhury, *supra*, at 21; Quintan Wiktorowicz, Radical Islam Rising: Muslim Extremism in the West 100-01 (2005). Specifically with respect to American homegrown terrorists, the Rand Study concludes that, although we have "no metric for measuring faith . . . the attraction of the jihadists' extremist ideology . . . appears to have had more to do with participating in action than with religious instruction." Rand Study, *supra* note 25, at 3.

[64] Choudhury, *supra* note 63, at 21.

[65] Daveed Gartenstein-Ross & Laura Grossman, Found. for Def. of Democracies, Homegrown Terrorists in the U.S. and U.K.: An Empirical Examination of the Radicalization Process 11-13 (2009) [hereinafter "FDD Study"].

[66] In order to have predictive value (even assuming such a thing were possible in this context), the study would have had to compare the behaviors found in terrorists to the prevalence of these behaviors in a broader sample set. *See* Bernard H. Russell, Social Research Methods: Qualitative and Quantitative Approaches 143-71 (2000) (noting the importance of random sampling in research attempting to estimate the ideas or preferences of a larger group).

[67] FDD Study, *supra* note 65, at 53. The six behaviors examined by the FDD Study were 1) adopting a legalistic interpretation of Islam; 2) trusting only select religious authorities; 3) perceiving a schism between Islam and the West; 4) exhibiting low tolerance for perceived theological deviance; 5) attempting to impose beliefs on others; and 6) undergoing political radicalization. *Id*. at 12-14.

[68] *Id.* at 53. The FDD Study also noted that 73.5 percent of the terrorists studied were found to have been "politically radicalized"—i.e., to have turned to violence when they learned about injustices inflicted upon Muslims. Given that terrorism is—on its face—a "political" crime, it is no surprise that the study found such a high incidence of political radicalization.

[69] Eli Berman, Radical, Religious, and Violent 9-13, 212 (2009) (relying upon Israeli study of Muslim suicide bombers, among other evidence, to demonstrate that "religious terrorists, even suicide bombers [are] not particularly motivated by heavenly rewards"). Scholars who study terrorism generally also de-emphasize the role of ideology in moving individuals and groups to terrorism. *Pathways Toward Terrorism*, *supra* note 55, at 89.

[70] *MI5 Guardian Report 2*, *supra* note 45.

[71] The MI5 report also found that radicalization did not happen overnight, but rather took "months or years," suggesting that law enforcement would have ample time to prevent violence and undercutting the need for extraordinary measures. *Id*.

[72] Kevin Strom et al., Inst. for Homeland Sec. Solutions, Building on Clues: Examining Successes and Failures in Detecting U.S. Terrorist Plots, 1999-2009 1 (2010) [hereinafter "HSS Study"], *available at* https://www.ihssnc.org/portals/0/Building_on_Clues_Strom.pdf.

[73] *Id*. at 12.

[74] *Id*. at 16.

[75] Leaderless Jihad, *supra* note 40, at 84-86; Rand Study, *supra* note 25, at 7.

[76] HSS Study, *supra* note 72, at 19.

[77] The analysis in this section owes a great deal to the work of Professor Aziz Huq, formerly the Director of the Liberty and National Security Project at the Brennan Center for Justice. His views on models of radicalization can be found in Aziz Z. Huq, *Modeling Terrorist Radicalization*, 2 Duke F. for L. & Soc. Change 39 (2010), *available at* http://www.law.duke.edu/shell/cite.pl?2+Duke+F.+L.+&+Soc.+Ch.+ 39+pdf.

[78] DHS has been studying radicalization since at least 2006, when the Department's Science & Technology Directorate identified "Violent Radicalization, Motivation and Intent" as one of the focus areas of its research. *Science and Technology Directorate Office of Research Human Factors Division Focus Areas*, Dep't of Homeland Sec., http://www.dhs.gov/xabout/structure/gc_1242659496554.shtm (last visited Feb. 10, 2011). It has also been reported that in 2007 DHS created a draft "Strategy for Preventing and Countering Domestic Radicalization" and worked with the NCTC to craft an inter-agency roadmap called "Towards a Domestic Counterradicalization Strategy." *Working with Communities to Disrupt Terror Plots: Hearing Before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 4 (2010) (testimony of Mohammed Elibiary, Freedom and Justice Foundation) [hereinafter "Elibiary Testimony"], *available at* http://hsc-democrats.house.gov/ SiteDocuments/20100317103442-74422.pdf. However, it appears that neither of these documents was ever officially adopted. CRS Report, *supra* note 2, at 60.

[79] *The Threat of Islamic Radicalization to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 5 (2007) (written testimony of Charles E. Allen, Ass't Sec'y for Intelligence Analysis, Chief Intelligence Officer) [hereinafter "Allen Testimony"], *available at* http:// hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1d62c53c-8dd9-49a2-b1bc-b09bd366547a.

[80] *Id*. at 6-7. In the hearing, Allen specifically identified prisons and university settings as radicalizing nodes. Unfortunately, Allen neither assessed the relative significance of these different factors, nor explained how they cohered in any framework.

[81] Napolitano Sept. 2010 Testimony, *supra* note 17, at 8.

[82] Homeland Sec. Advisory Council, Countering Violent Extremism (CVE) Working Group 5-6 (2010) [hereinafter "HSAC Violent Extremism WG Report"], *available at* http://www.dhs.gov/xlibrary/assets/hsac_cve_working_group_recommendations.pdf.

[83] Allen Testimony, *supra* note 79, at 4.

[84] *Eight Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 111th Cong. 11-12 (2009) (statement for the record of Janet A. Napolitano, Sec'y, Dep't of Homeland Sec.) [hereinafter "Napolitano Sept. 2009 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=7b26abda-d72a-425b-8dc8-7e614f3e016f; Margo Schlanger, Officer for Civil Rights and Civil Liberties, Dep't of Homeland Sec., Response to Question by Faiza Patel at the Understanding Radicalization and De-Radicalization Strategies Conference (June 19, 2010) (Schlanger defined "violent extremism" as criminally violent behavior driven by ideology) (notes on file with the Brennan Center). The shift to using the term "violent extremism" may also reflect the influence of policymakers in the United Kingdom with whom DHS regularly consults. U.K. policymakers generally use the term "violent extremists" to denote the subset of radicals who embrace violence as a means of achieving their goals. *See* Sec'y of State for Home Dep't, Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism: Annual Report 6 (2009), *available at* http://www.official-documents.gov.uk/document/cm75/7547/7547.pdf. In contrast, previous statements by DHS leadership were less clear about whether the agency was concerned with belief systems or violent actions resulting from them. *See*, *e.g.*, Chertoff March 2007 Testimony, *supra* note 6, at 1 (DHS "defines radicalization as the process of adopting an extremist belief system, including the willingness to use, support, or facilitate violence, as a method to effect societal change."); *Radicalization, Info. Sharing, and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 110th Cong. 54

(2007) (testimony of David Gersten, Dir. of Civil Rights and Civil Liberties Programs, Dep't of Homeland Sec.), *available at* http://hsc-democrats.house.gov/SiteDocuments/20070405120558-21210.pdf.

[85] Napolitano Sept. 2009 Testimony, *supra* note 84, at 2 ("DHS does not and will not police beliefs"). She also signaled DHS's commitment to moving away from stereotypes of those who undertake violent acts in the name of ideology ("Terrorists inspired by international terrorist organizations can come from any age group, ethnicity, area, religious background, or claimed ideological affiliation. It is important to emphasize that no religious belief is a threat to our security. . . . But violent extremism is a very real threat, and DHS will combat any terrorist or terrorist group that threatens the American people with violence, no matter what belief lies behind that violence."). *Id*.

[86] Nat'l Counterterrorism Ctr., Radicalization and Mobilization Dynamics Framework, http://www.nctc. gov/site/technical/radicalization.html (last visited Feb. 10, 2011).

[87] *Id*.

[88] *Roots of Violent Islamist Extremism and Efforts to Counter It: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 2 (2008) (statement for the record by Michael E. Leiter, Dir., NCTC), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=a86cdc77-4ade-480e-8d03-f2790dcc0052.

[89] *Id*. at 3.

[90] *Id*.

[91] *Id*. at 3-4.

[92] Dailey Testimony, *supra* note 35, at 3, 7, 22; *The Role of Local Enforcement in Countering Violent Islamic Extremism: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs,* 110th Cong. 2 (2007) (statement for the record by Maj. Michael R. Ronczkowski, Miami-Dade Police Dept., Homeland Sec. Bureau) [hereinafter "Ronczkowski Tesimony"]; Virginia Fusion Ctr., Dep't of State Police, Commonwealth of Va., 2009 Virginia Terrorism Threat Assessment 129 (2009) [hereinafter "Virginia Fusion Center Report"], *available at* http://www.rawstory.com/images/other/vafusioncenterterrorassessment.pdf; Pennsylvania State Police, Municipal Police Officers' Education and Training Commission, Radical Islam: A Law Enforcement Primer 25 (Bill Kaiser ed., undated) (on file with the Brennan Center).

[93] Joseph I. Lieberman & Susan M. Collins, S. Comm. on Homeland Sec. and Gov'tal Affairs, A Ticking Time Bomb: Counterterrorism Lessons From the U.S. Government's Failure to Prevent the Fort Hood Attack 17 (2011) [hereinafter "Senate Fort Hood Report"], *available at* http://hsgac.senate.gov/public/_files/Fort_Hood/FortHoodReport.pdf. Because the Senate report was issued just as this report was going to press, a comprehensive analysis is not possible here. *See also* Senate Homegrown Terrorism Report, *supra* note 10, at 4.

[94] *See supra* note 34.

[95] *See*, *e.g.*, Memorandum from the Brennan Center for Justice on Concerns with Mitchell D. Silber & Arvin Bhatt, N.Y. Police Dep't, *Radicalization in the West: The Homegrown Threat* (Aug. 30, 2007), *available at* http://www.mcnny.org/media/BCJ%20Memo%20NYPD%20report%2008-07.pdf; Letter from the

Muslim American Civil Liberties Coalition to Hon. Raymond Kelly, Police Comm'r of the NYPD (Sept. 8, 2009), *available at* http://maclc1.wordpress.com/2009/09/08/maclc-90809-letter-response-to-nypd-statement-of-clarification; Ellen Fisher, Brennan Center for Justice, Remarks at the Muslim American Civil Liberties Coalition Press Conference (Nov. 20, 2008), *available at* http://brennan.3cdn.net/2cb5f6301bddfbaaa4_9km6bejc0.pdf; Letter from the Muslim American Civil Liberties Union to Hon. Raymond Kelly, Police Comm'r of the NYPD (Oct. 23, 2008), *available at* http://maclc1.wordpress.com/2008/07/08/october-23-response-to-commissioner; Letter from Hon. Raymond Kelly, Police Comm'r of the NYPD, to Faiza Ali, Council on American-Islamic Relations (Oct. 6, 2008), *available at* http://maclc1. files.wordpress.com/2008/10/letterfromkelly.pdf; Letter from Muslim Advocates et al. to Hon. Michael Mukasey, Att'y Gen. of the United States (Aug. 12, 2008), *available at* http://www.muslimadvocates.org/ documents/Letter%20to%20AG%20re%20FBI%20guidelines%20--%20final.pdf; Letter to Hon. Raymond Kelly, Police Comm'r of the NYPD (Nov. 23, 2007), *available at* http://www.brennancenter.org/page/-/Justice/MACLC%20Community%20Statement.pdf.

[96] Mitchell D. Silber & Arvin Bhatt, NYPD Intelligence Div., Radicalization in the West: The Homegrown Threat 11-14 (2009) (revised version) [hereinafter "NYPD Report 2009 Version"], *available at* http://www.nyc.gov/html/nypd/downloads/pdf/public_information/NYPD_Report-Radicalization_in_the_West.pdf. Although both versions of the report are currently available on the NYPD's website, this report will cite to the 2009 version, unless explicitly noted otherwise. No public announcement of the revisions was made, and the new version was issued with exactly the same title as the 2007 report and with no indication that it was different from the 2007 version. *See* Faiza Patel, Editorial, *Welcome NYPD Terror Revisions Should be Widely Distributed*, N.Y.L.J., Sept. 23, 2009; *see also* Letter from the Muslim American Civil Liberties Coalition to Raymond Kelly, Comm'r, NYPD (Sept. 8, 2009), *available at* http://www.brennancenter.org/page/-/Justice/20090908. MACLC%27s.Response.to.Clarification.pdf.

[97] NYPD Report 2009 Version, *supra* note 96, at 5. In contrast, MI5's research examined over 100 cases and Sageman analyzed over 500 to conclude that there is no typical trajectory of radicalization. *See supra* notes 45, 49 and accompanying text.

[98] NYPD Report 2009 Version, *supra* note 96, at 6.

[99] *Id*. at 24.

[100] *Id*. at 38-39.

[101] *Id*. at 45-47.

[102] *Id.* at 18.

[103] *Id*. at 7.

[104] One author has described the NYPD approach as "laying a claim to a mantle of neutral expertise" so as to "set and legitimate an agenda for policy-makers in state and federal political branches." Huq, *supra* note 77, at 45.

[105] This chart is reproduced from the NYPD Report 2009 Version. *Supra* note 96, at 21. The report also includes charts detailing how the NYPD fits its 10 case studies into each of the four stages and presents a "Radicalization Timeline" purporting to show the amount of time each of the individuals involved in the case studies remained in each stage. *Id*. at 83.

[106] *Id*. at 8 ("There is no useful profile" of people likely to become radicalized because "individuals who take this course begin as 'unremarkable' from various walks of life.").

[107] Sageman has explained that the problem with this type of analysis, which looks at individual case histories and generalizes from them, is that it assumes that "terrorists are fundamentally different from the rest of us." It therefore does not examine whether the traits found in a sample population (in this case, terrorists) are also present in the rest of the relevant population. Leaderless Jihad, *supra* note 40, at 17.

[108] NYPD Report 2009 Version, *supra* note 96, at 12.

[109] *Id*. at 5.

[110] *Id*. at 6. The 2009 Clarification attempted to step back from this view by arguing that it had focused on Al Qaeda-inspired terrorism and that this fact explained the references to "twisted ideology" in the report. *Id*. at 11. However, the critique of the NYPD report is not that it includes ideology as a potential factor in leading a person to terrorism, but rather that it describes it as the driving factor.

[111] Ronczkowski Testimony, *supra* note 92, at 2; Dailey Testimony, *supra* note 35, at 3, 22; Virginia Fusion Center Report, *supra* note 92, at 129.

[112] CRS Report, *supra* note 2, at 12 & n. 42.

[113] *Violent Islamist Extremism: Gov't Efforts to Defeat It: Hearing Before the S. Comm. on Homeland Sec. and Governmental Aff.*, 110th Cong. 2-3 (2007) (written statement of John Miller, Ass't Dir., Office of Pub. Affairs, Fed. Bureau of Investigation) [hereinafter "Miller Statement"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=69c58703-0a83-4ee2-a065-13e40e49b15a. Details on the FBI's views on radicalization are found in an article on "Countering Violent Islamic Extremism" published by three analysts from the FBI's Counterterrorism Division (including that Division's Deputy Assistant Director) in the FBI Law Enforcement Bulletin. FBI Bulletin, *supra* note 9, at 3, 6. It should be noted that the Bulletin states that "[c]ontributers' opinions and statements should not be considered an endorsement by the FBI for any policy, program, or service." *Id*. at cover page. Nonetheless, the positions held by the authors and their assertion of the FBI's position in an official FBI publication suggest that they speak for the FBI.

[114] FBI Bulletin, *supra* note 9, at 3.

[115] *Id*.

[116] This chart is reproduced from the FBI Bulletin. *Id*. at 6.

[117] *Id*. at 5.

[118] *Id*.

[119] *Id*. Like the NYPD, the FBI does not identify many markers for the latter two phases, which are the ones where there is a likelihood of criminal activity.

[120] The Senate Fort Hood Report takes a different view of the FBI's monitoring activities. It asserts that the Bureau focuses on "behavioral indicators of radicalization" when it should be providing training to its agents

on "ideological indicators or warning signs of violent Islamist extremism to serve as an operational reference guide." Senate Fort Hood Report, *supra* note 93, at 76-77. As the above discussion demonstrates, however, the FBI is very much focused on religious indicators.

[121] Brad Deardorff, Supervisory Special Agent, Fed. Bureau of Investigation, Presentation to Muslim Community Leaders in Houston, Texas: Radicalization and the Importance of "Soft Power" (May 18, 2010) (on file with the Brennan Center).

[122] *FBI Meet Houston Community Leaders Advising to Lookout for Radicalization*, Muslim Observer, May 18, 2010, http://muslimmedianetwork.com/mmn/?p=6225.

[123] *Id*. The Brennan Center for Justice has filed a Freedom of Information Act request for copies of presentations on radicalization made by the FBI to Muslim, Arab, and South Asian communities, but has not yet received any responsive documents.

[124] Mueller Sept. 2010 Testimony, *supra* note 39, at 4.

[125] *Confronting the Terrorist Threat to the Homeland: Six Years After 9/11: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 5 (2007) (statement for the record of Robert S. Mueller, III, Dir., Fed. Bureau of Investigation) [hereinafter "Mueller Sept. 2007 Testimony"], *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=9015ce0f-cf1f-4aaa-91dc-27b1ef206818. *See also Radicalization, Info. Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing Before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.,* 110th Cong. 4 (2007) (statement for the record of Janice Fedarcyk, Special Agent in Charge, Counterterrorism Div., Fed. Bureau of Investigation) [hereinafter "Fedarcyk Testimony"], *available at* http://hsc-democrats.house.gov/SiteDocuments/ 20070405120547-89386.pdf.

[126] Fedarcyk Testimony, *supra* note 125, at 4; Miller Statement, *supra* note 113, at 4-5.

[127] For an exhaustive discussion of the changes to the AG Guidelines, see AG Guidelines Report, *supra* note 14. In addition to the AG Guidelines, the FBI's powers have also been greatly expanded by the Patriot Act, under which it may readily use National Security Letters to obtain (among other things) a range of information about e-mail and internet use. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Patriot) Act, Pub. L. No. 107-56, 115 Stat. 272 (2001). *See also* Laura K. Donohue, The Costs of Counterterrorism: Power, Politics, and Liberty 236-42 (2008).

[128] AG Guidelines, *supra* note 12, at 16.

[129] Robert S. Mueller, III, Dir., Fed. Bureau of Investigation, Address to Int'l Ass'n of Chiefs of Police: Using Intelligence to Protect Our Communities (Nov. 10, 2008), *available at* http://www.fbi.gov/news/ speeches/using-intelligence-to-protect-our-communities.

[130] DIOG, *supra* note 12, at 32.

[131] *Id*.

[132] *Id*.

[133] *Id*. at 33-34.

[134] *See* FBI Bulletin, *supra* note 9, at 6; *see also supra* text accompanying notes 117-118.

[135] *See* FBI Bulletin, *supra* note 9, at 5-6. The FBI's collection of "domain" information has raised serious concerns among Muslim community groups and civil liberties advocates. In July 2010, the American Civil Liberties Union filed Freedom of Information Act requests in 29 states and the District of Columbia seeking details about how the FBI gathers information about ethnic and racial communities and the use to which such data is put. Press Release, American Civil Liberties Union, ACLU Seeks Records About FBI Collection of Racial and Ethnic Data in 29 States and D.C. (July 27, 2010), http://www.aclu. org/national-security/aclu-seeks-records-about-fbi-collection-racial-and-ethnic-data-29-states-and-dc (last visited Feb. 11, 2011). The concern articulated by the ACLU is that the FBI is mapping communities to create profiles based on race and ethnicity and will then use these profiles to target communities for law enforcement scrutiny.

[136] *Attorney General Guidelines for FBI Criminal Investigations, National Security Investigations, and the Collection of Foreign Intelligence: Hearing Before the S. Select Comm. on Intelligence*, 110th Cong. 30 (2008) (statement for the record of Valerie Caproni, Gen. Counsel, FBI), *available at* http://intelligence. senate.gov/pdfs/110846.pdf.

[137] Scott Shane & Lowell Bergman, *F.B.I. Struggling to Reinvent Itself to Fight Terror*, N.Y. Times, Oct. 10, 2006, at A6, *available at* http://www.nytimes.com/2006/10/10/us/10fbi.html.

[138] Charlie Savage, *Loosening of F.B.I. Rules Stirs Privacy Concerns*, N.Y. Times, Oct. 29, 2009, at A1, *available at* http://www.nytimes.com/2009/10/29/us/29manual.html.

[139] Samuel J. Rascoff, *Domesticating Intelligence*, 83 S. Cal. L. Rev. 575, 585 (2010).

[140] *Id*.

[141] These changes have been described as authorizing the FBI "to go into mosques and churches without identifying themselves and collect information on Americans worshipping there." Kate Martin, *Domestic Intelligence and Civil Liberties*, 24 SAIS Rev. 7, 15 (2004), *available at* http://www.cnss.org/KM%20SAIS%20Article1.pdf. In addition to the specific attributes of the AG Guidelines discussed in this report, the Guidelines also introduce a new tool for the FBI, called "assessments," that agents may use to employ intrusive investigatory tactics where there is no factual predicate for launching an investigation. *See* AG Guidelines Report, *supra* note 14, at 38; *see also* CRS Report, *supra* note 2, at 39.

[142] *Oversight of the Federal Bureau of Investigation: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 20 (2009) (question and answer session with Robert S. Mueller, III, Dir., Fed. Bureau of Investigation), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_senate_ hearings&docid=f:52800.pdf; *see also FBI Chief Defends Use of Informants in Mosques*, Associated Press, June 8, 2009, http://www.msnbc.msn.com/id/31177049.

[143] *See* Jury Verdict, United States v. Cromitie, No. 09-558 (S.D.N.Y. Oct. 18, 2010); Complaint, United States v. Cromitie, No. 09-558 (S.D.N.Y. May 19, 2009) (factual background). *See generally* Kareem Fahim, *4 Convicted of Attempting to Blow Up 2 Synagogues*, N.Y. Times, Oct. 18, 2010, at A21, http://www.nytimes.com/2010/10/19/nyregion/19plot.html.

[144] *See* Ahmed Rehab, *Islam Not to Blame for Bronx Terror Plot*, Huffington Post, May 25, 2009, http://www.huffingtonpost.com/ahmed-rehab/islam-not-to-blame-for-br_b_207090.html; Thomas Cincotta, *From Movements to Mosques, Informants Endanger Democracy*, Public Eye Mag., Summer 2009, http://www.publiceye.org/magazine/v24n2/movements-to-mosques.html; William Glaberson, *Newburgh Terrorism Case May Establish a Line for Entrapment*, N.Y. Times, June 16, 2010, at A25, *available at* http://www.nytimes.com/2010/06/16/nyregion/16terror.html.

[145] Transcript of Record at 668, United States v. Cromitie, No. 09-558 (S.D.N.Y. Oct. 18, 2010) [hereinafter "Cromitie Transcript"].

[146] *Id*. at 669.

[147] *Id*. at 674; 2452.

[148] Press Release, Council on American-Islamic Relations & Ctr. for Constitutional Rights, 'Newburgh Four' Raises Concern of FBI Tactics in Terror Cases (Oct. 21, 2010) [hereinafter "FBI Tactics"], *available at* http://www.cair-ny.org/content/?content_id=407.

[149] Second Amended Complaint at 24-25, Monteilh v. FBI, No. 8:2010-cv-00102 (C.D. Cal. Sept. 2, 2010). For a description of Monteilh's claims, *see* Scott Glover, *Suit By Alleged Informant Says FBI Endangered His Life*, L.A. Times, Jan. 23, 2010, http://articles.latimes.com/2010/jan/23/local/la-me-informant23-2010jan23; Teresa Watanabe & Scott Glover, *Man says he was informant for FBI in Orange County*, L.A.Times, Feb. 26, 2009, at B1, *available at* http://articles.latimes.com/2009/feb/26/local/me-informant26; *see also FBI Director Questioned About Muslim Relations, Southern California*, InFocus News, March 31, 2009, http://www.infocusnews.net/content/view/33149/135; Cincotta, *supra* note 144.

[150] Editorial, *FBI Creates Climate of Fear*, Orange Cnty. Reg., Mar. 22, 2009, http://www.ocregister.com/articles/fbi-18893-ocprint-fear-.html.

[151] Press Release, American Civil Liberties Union, Federal Judge Orders FBI to Provide Full Muslim Surveillance Records (Apr. 20, 2009), *available at* http://www.aclu-sc.org/releases/view/102949.

[152] Records Mgmt. Div., Fed. Bureau of Investigation, FOI/PA No. 1071083-001, Response to Freedom of Information Act Request by American Civil Liberties Union for Surveillance Records ACLU-25 [hereinafter "ACLU Records"] (on file with the Brennan Center).

[153] *Id*. at ACLU-10.

[154] *Id*. at ACLU-30.

[155] Letter from the Council of Islamic Organizations of Michigan to Hon. Eric Holder, Attorney General (April 15, 2009) (on file with the Brennan Center); *see also FBI Chief Defends Use of Informants in Mosques*, *supra* note 142. Also, as noted earlier, in May 2010, FBI agents told Muslim community leaders in Texas that the Bureau was gathering information on the Muslim community and asked them to report Muslims whose practice of Islam was conservative so that they could be monitored. *See supra* notes 121-123 and accompanying text. In addition, it has been reported that the FBI has used the threat of immigration consequences (or the lure of a favorable resolution of immigration issues) to recruit American Muslims to provide information about what their friends and co-religionists are saying. In 2006, for example, the *Wall Street Journal* reported on the case of a Muslim immigrant, Yassine Ouassif, whose green card was revoked

when he returned to the United States from Canada. He was told by the FBI that he could get his green card back only if he became an informant and regularly reported to the FBI on what his Muslim friends in San Francisco were saying and doing. Peter Waldman, *A Muslim's Choice: Turn U.S. Informant or Risk Losing Visa*, Wall St. J., July 11, 2006, at A1; *Spy or Risk Green Card: How the Bush Administration "Recruits" Muslim Informants*, Democracy Now, July 13, 2006, http://www.democracynow.org/2006/7/13/spy_or_risk_green_card_how. Another well-known case involves the Iranian-born imam of a Miami Islamic Center, whose pending application for political asylum was reportedly used as a lever by FBI agents to coerce him into spying on the members of his congregation. Trevor Aaronson, *FBI Tries to Deport Muslim Man for Refusing to Be an Informant*, Miami New Times, Oct. 8, 2009, http://www.miaminewtimes.com/2009-10-08/news/unholy-war-fbi-tries-to-deport-north-miami-beach-imam-foad-farahi-for-refusing-to-be-an-informant. Most recently, the FBI dropped its attempts to deport an Afghan immigrant who claimed he was being targeted because of his refusal to become an informant. Amy Taxin & Gillian Flaccus, *Feds Want Case Dropped Against Afghan*, Salon, Sept. 30, 2010, http://www.salon.com/news/feature/2010/09/30/us_afghan_arrested.

[156] The tasking of Shahed Hussain in the Newburgh Four case, for example, was done under the auspices of the White Plains Joint Terrorism Task Force. Cromitie Transcript, *supra* note 145, at 656.

[157] Edward R. Maguire & William R. King, *Trends in the Policing Industry*, 593 Annals Am. Acad. Pol. & Soc. Sci. 15, 21 (2004), *available at* http://www.jstor.org/pss/4127665.

[158] Dailey Testimony, *supra* note 35, at 1-2.

[159] *Id*. at 9.

[160] Another example of such thinking is evident in the September 2006 testimony of the NYPD's Deputy Commissioner for Counterterrorism, Richard Falkenrath, who asserted that New York had "seen a proliferation of extremist Muslim ideology, Muslim militancy and Salafism, which we think is a precursor to terrorism" that was likely to be discovered by the NYPD's "law enforcement-driven, local, highly tactical intelligence programs." *Homeland Security: The Next Five Years: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 109th Cong. 2 (2006) (testimony of Richard A. Falkenrath, Deputy Comm'r for Counterterrorism, NYPD), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b242c82-3428-41f1-8b9a-0183defa44fb. Similar statements have been made by John Neu, the Chief of Police of the Torrance Police Department, the head of the Homeland Security Bureau of the Miami-Dade Police Department, and the head of Homeland Security of the Kansas City Police Department. *See* Neu Testimony, *supra* note 35, at 2; Ronczkowski Testimony, *supra* note 92, at 2; Dailey Testimony, *supra* note 35, at 1.

[161] Ken Dilanian, *'Fusion Centers' Gather Terrorism Intelligence – and Much More*, L.A. Times, Nov. 15, 2010, at A8, *available at* http://articles.latimes.com/2010/nov/15/nation/la-na-fusion-centers-20101115.

[162] 6 U.S.C. § 124h (2007). For details about fusion centers, *see generally* John Rollins , Cong. Research Serv., Fusion Centers: Issues and Options for Congress (2008), *available at* http://www.fas.org/sgp/crs/intel/RL34070.pdf. On the potential dangers of fusion centers, *see Future of Fusion Centers: Potential Promises and Dangers: Hearing Before the Subcomm. on Intelligence, Info. Sharing, and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 2 (2009) (statement for the record of Bennie G. Thompson, Chairman, H. Comm. on Homeland Sec.), *available at* http://www.hsdl.org/?view&doc=110895. It also seems likely that intelligence gathering by state and local police will be further encouraged by the Nationwide Suspicious Activity Report initiative ("SAR"), which DHS began rolling out in late 2010. This initiative establishes a framework for standardizing local law enforcement's gathering, analyzing, and sharing of

information about suspicious activity that is potentially terrorism-related. Nationwide SAR Initiative, Information Sharing Environment, Fact Sheet: Nationwide Suspicious Activities Reporting Initiative, http://www.ise.gov/docs/NSI_FactSheet.pdf. Although information sharing is a laudable goal, there are serious questions about whether SAR will result in undue invasions of privacy and racial profiling. See *More About Suspicious Activity Reporting*, American Civil Liberties Union, June 29, 2010, http://www.aclu.org/spy-files/more-about-suspicious-activity-reporting. Because SAR programs identify innocuous non-criminal activity—such as using binoculars, taking pictures, drawing diagrams, and taking notes—as precursors to terrorism, civil liberties and privacy groups are worried that these programs "increase the probability that innocent people will be stopped by police and have their personal information collected for inclusion in law enforcement and intelligence databases." *Id*. And, there are concerns that SAR programs "open the door to racial profiling and other improper police practices by giving police unwarranted discretion to stop people who are not reasonably suspected of wrongdoing." *Id*.

[163] The Virginia legislature, for instance, passed a bill exempting the Virginia Fusion Center from the Virginia Freedom of Information Act and Government Data Collections and Disseminations Practices Act. Va. Code Ann. § 52-48 (2010).

[164] Virginia Fusion Center Report, *supra* note 92, at 41 n.p. *Cf*. Kent Willis, American Civil Liberties Union of Va., Analysis of the Virginia Fusion Center's 2009 Virginia Terrorism Threat Assessment Report (2009), *available at* www.acluva.org/publications/VAFusionCenterSummary2009.pdf. Virginia's then-Governor, Tim Kaine, called for an investigation into the report after it was leaked. Bill Sizemore, *Governor Orders Investigation of Report on Terrorism Threats*, Virginian-Pilot, Apr. 29, 2009, http://hamptonroads.com/2009/04/kaine-orders-investigation-report-terrorism-threats. The report also wrongly insinuates that the leaders of the Council on American-Islamic Relations, the largest Muslim civil rights group in the U.S., had been convicted of providing material support to terrorists. Virginia Fusion Center Report, *supra* at 41.

[165] N. Cent. Tex. Fusion Sys., Prevention Awareness Bulletin 4-5 (2009), http://www.privacylives.com/wp-content/uploads/2009/03/texasfusion_021909.pdf.

[166] Richard Winton & Teresa Watanabe, *LAPD's Muslim Mapping Plan Killed*, L.A. Times, Nov. 15, 2007, at A1, *available at* http://articles.latimes.com/2007/nov/15/local/me-muslim15. The plan was scrapped after weeks of protests by Muslim and civil rights groups, who equated the mapping to religious profiling. *Id*.

[167] Transcript of Record at 1104, United States v. Siraj, 468 F. Supp. 2d 408 (E.D.N.Y. May 2, 2006). *See also id*. at 1099; 1108; 1117.

[168] *Id*. at 1116. The information he conveyed to his handler included how many worshippers were present and who led the prayers; the subjects covered in prayers; disagreements about religious views between two imams; lectures on human rights by mosque members; a visit by reporters from the radio station WBAI to the mosque; and where mosque attendees went on vacation. *Id*. at 1116, 1096, 1100, 1090, 1104, 1091, 1099. According to the *New York Times*, the imam of the mosque stated that the informant had surfaced at the mosque a year before the case broke, had tried to interest him in a real estate deal, and had expressed strikingly anti-American sentiments. The imam believed that it was only after the informant found him uninterested that he turned his focus to the defendant and another potential conspirator. Andrea Elliot, *To Lead the Faithful in a Faith Under Fire; An Imam in America,* N.Y. Times, Mar. 6, 2006, at A1, *available at* http://www.nytimes.com/2006/03/06/nyregion/06imam.html.

[169] *See Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 62 (2010) (written testimony of Farhana Khera, President and Exec. Dir., Muslim Advocates) [hereinafter "Khera June 2010 Testimony"] (pointing to law enforcement tactics including "FBI interviews conducted in the community without suspicion of wrongdoing; extensive and invasive questioning and searches at the border; the surveillance of community organizations and the use of informants and undercover agents; and data gathering and mapping of the community based on cultural and ethnic behavior").

[170] *Id.* at 3.

[171] *Id.*

[172] *Radicalization, Information Sharing and Community Outreach: Protecting the Homeland from Homegrown Terror: Hearing before the Subcomm. on Intelligence, Info. Sharing and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 110th Cong. 6 (2007) (statement for the record of Sireen Sawaf, Gov't Relations Dir., S. Cal. Muslim Pub. Affairs Council) [hereinafter "Sawaf Testimony"], *available at* http://hsc-democrats.house.gov/SiteDocuments/20070405120720-29895.pdf.

[173] Paul Vitello and Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear,* N.Y. Times, Dec. 17, 2009, at A1, *available at* http://www.nytimes.com/2009/12/18/us/18muslims.html.

[174] *Id.*

[175] *Id.*

[176] Nicole J. Henderson et al., U.S. Dep't of Justice, Policing in Arab-American Communities After September 11 ii (2008) [hereinafter "Henderson, U.S. Dep't of Justice"], *available at* http://www.ncjrs.gov/pdffiles1/nij/221706.pdf. For the full study, see Nicole J. Henderson et al., Vera Inst. of Justice, Law Enforcement and Arab-American Community Relations After September 11, 2001: Engagement in a Time of Uncertainty (2006) [hereinafter "Henderson, Vera Institute of Justice"], *available at* http://www.vera.org/content/law-enforcement-and-arab-american-community-relations-after-september-11-2001-engagement-tim.

[177] Henderson, U.S. Dep't of Justice, *supra* note 176, at ii. The communities surveyed made it clear that they were "more concern[ed] about federal policies and practices than individual acts of bias or harassment." Henderson, Vera Institute of Justice, *supra* note 176, at 13.

[178] *See Violent Islamist Extremism: Al-Shabaab Recruitment in America: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 111th Cong. 4 (2009) (statement for the record of Philip Mudd, Assoc. Exec. Ass't Dir., Nat'l Sec. Branch, Fed. Bureau of Investigation) (noting that the Somali community was concerned about dealing with the Bureau "because they're worried about whether we're going to collar a kid or whether there's other federal issues, like immigration fraud, that might come up"); *Violent Islamist Extremism: Al-Shabaab Recruitment in America: Hearing Before the S. Comm. on Homeland Sec. and Governmental Aff.*, 111th Cong. 13 (2009) (written testimony of Ken Menkhaus, Professor, Political Science, Davidson College) ("It is very easy for some in the Somali American community to interpret current U.S. law enforcement attention to the question of shabaab recruitment as yet another instance of witch-hunting and persecution, reflecting a combination of anti-immigrant, anti-Muslim, anti-African sentiments."), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_ id=485458c8-5c7c-46cf-a6d9-918c96985706; Henderson, Vera Institute of Justice, *supra* note 176, at 21, Exhibit 7.

[179] FBI Bulletin, *supra* note 9, at 8.

[180] Tom R. Tyler, Stephen Schulhofer & Aziz Z. Huq, *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 Law & Society Review 365, 373-379 (2010) [hereinafter "*New York Study*"].

[181] *Id.* at 366. The types of community-police cooperation that the study examined ranged from reporting crimes and assisting the police in investigations to participating in community policing initiatives.

[182] *Id.* at 366-7. The study did not measure actual cooperation but only reported willingness to contact the police under certain hypothetical circumstances. *Id.* at 375. However, as the study points out, past research suggests that reported intentions are positively correlated to later behavior. *Id.* at 375.

[183] *Id.* at 368.

[184] It is notable that the *New York Study* found that "perceptions about what police were actually doing appear to be less important than perceptions about the way they did it." However, as the study points out, "judgments about specific police tactics may affect estimations of procedural justice," so that the two issues may be conflated in people's perceptions. *Id.* at 381.

[185] Raymond Hernandez, *Muslim 'Radicalization' Is Focus of Planned Inquiry*, N.Y. Times, Dec. 17, 2009, at A34, *available at* http://www.nytimes.com/2010/12/17/nyregion/17king.html?_r=1.

[186] Kurzman, *supra* note 30, at 5; HSS Study, *supra* note 72, at 19; *cf.* Alejandro J. Beutel, Muslim Pub. Aff. Council, Building Bridges to Strengthen America 46 (2009), *available at* http://www.mpac.org/assets/docs/publications/building-bridges/MPAC-Building-Bridges--Complete_Unabridged_Paper.pdf.

[187] *Urgent Community Alert: Seek Legal Advice Before Talking to the FBI,* Muslim Advocates, *available at* http://www.muslimadvocates.org/FBI_IVU_COMMUNITY%20ALERT.pdf.

[188] *Reports of FBI Visits Prompt Reminder of Legal Rights*, Council on American-Islamic Relations Action Ctr., May 21, 2010, http://www.cair-ny.org/content/?content_id=279&PHPSESSID=a3pojgfokvmdfnlbl6odqdtng2; *see also Know Your Rights: If Federal Law Enforcement Contacts You*, *in* Am. Muslim Civic Pocket Guide (Council on American-Islamic Relations ed., 2010), *available at* http://www.cair.com/CivilRights/KnowYourRights.aspx#9. While Muslims, like all Americans, are entitled to assert their Constitutional right to an attorney in interactions with law enforcement agencies, officials from these agencies tend to believe that the inclusion of a lawyer in the mix affects the free flow of information. For example, according to FBI documents released in response to a FOIA request, the agency was concerned that CAIR's recommendation that members of the Muslim community not talk to the Bureau without an attorney present was an obstacle to establishing dialogue with the community. *See* ACLU Records, *supra* note 152, at ACLU-119.

[189] FBI Tactics, *supra* note 148.

[190] *New York Study*, *supra* note 180, at 389.

[191] *The Role of Local Law Enforcement in Countering Violent Islamist Extremism: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 5 (2007) (written testimony of Michael P. Downing,

Commanding Officer, Counterterrorism/Criminal Intelligence Bureau, L.A. Police Dep't) (emphasis in original), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=ac58750d-0a53-4deb-a19a-31344ba2f733.

[192] *Id.*

[193] *Id.*

[194] *Radicalization of Global Islamist Terrorists: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 4-5 (2007) (written testimony of Marc Sageman, M.D., Ph.D), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=435c0672-4ccc-4918-9cf8-8ec8ecf6b566.

[195] *The Roots of Violent Islamist Extremism and Efforts to Counter It: Hearing Before the S. Comm. on Homeland Sec. and Gov'tal Affairs*, 110th Cong. 11 (2008) (statement for the record of Peter Mandaville, Assoc. Professor of Gov't & Politics, George Mason Univ.), *available at* http://hsgac.senate.gov/public/ index.cfm?FuseAction=Files.View&FileStore_id=1bb9f8e3-94d5-40df-a934-c5b022952d0d.

[196] *Id.*

[197] Mueller Sept. 2009 Testimony, *supra* note 38, at 6 ("[T]he FBI understands that protecting America requires the cooperation and understanding of the public. The FBI has an extensive outreach program to Muslim, South Asian, and Sikh communities to address concerns and develop trust about the FBI and federal efforts to protect the Homeland.").

[198] *See* Senate Homegrown Terrorism Report, *supra* note 10, at 15 ("[E]fforts are limited, isolated, and not part of a strategic, government-wide policy"); Sawaf Testimony, *supra* note 172, at 5.

[199] Mueller Sept. 2007 Testimony, *supra* note 125, at 5 ("Members of these communities are well-placed to detect suspicious activities").

[200] Nor are the efforts of the DHS Office of Civil Rights and Civil Liberties (CRCL) particularly useful in this context. Until now, the record of CRCL as a means for resolving community concerns has been decidedly mixed. *See* MASA Jan. 2010 Press Release, *supra* note 15 (calling for changes to DHS policies that hamper efforts to improve community relations). With the appointment of the new head of the office, the situation may be improving. In April 2010, the Transportation Security Authority (which is part of DHS) rescinded its policy of targeting travelers from 14 primarily Muslim countries for mandatory enhanced screening, a policy that had been extensively criticized by Muslim groups. And, CRCL has begun a review of its procedures for resolving individual complaints, which have been criticized as being opaque and ineffective.

[201] For example, at a November 2009 meeting between the FBI and Muslim community representatives from New York, the primary focus of community concern was the Bureau's surveillance practices. Minutes from Community Meeting with Joe Demarest, Ass't Dir., N.Y. Div., Fed. Bureau of Investigation, in N.Y., N.Y. (Oct. 23, 2009) (notes on file with Brennan Center).

[202] Where outreach programs are conducted by community liaison personnel, rather than line agents, they are regarded with even greater skepticism because American Muslim communities are well aware that "there are clear operational policy firewalls [between line officers and community relations personnel] at major law enforcement agencies and the community relations conduits engaging with communities across the country." Elibiary Testimony, *supra* note 78, at 2.

[203] *Id*. at 1-2 (noting that this type of outreach has contributed to "securitizing" of relationship between American Muslims and government, because only avenue for dialogue it has made available is opportunity to inform on community members of concern).

[204] Deborah Ramirez et al., Developing Partnerships Between Law Enforcement and American Muslim, Arab, and Sikh Communities: A Promising Practices Guide 61 (2004) (describing views of several community organizations in California).

[205] CRS Report, *supra* note 2, at 54 (citing Marc Sageman).

[206] HSAC Violent Extremism WG Report, *supra* note 82, at 5; Elibiary Testimony, *supra* note 78, at 3; Beutel, *supra* note 186, at 34. This prescription is based on well-established research on crime reduction that relies on making crime a shared community-police responsibility. *See* Rosemary Lark et al., Homeland Sec. Inst., Community Policing Within Muslim Communities: An Overview and Annotated Bibliography of Open-Source Literature iii (2006) [hereinafter "Homeland Security Institute Study"], *available at* http://www.homelandsecurity.org/hsireports/Task_06-99_Community_ Policing_Within_Muslim_ Communities.pdf.

[207] *See* Homeland Security Institute Study, *id.* at iii-vi; Henderson, Vera Institute of Justice, *supra* note 176, at 12.

[208] HSAC Violent Extremism WG Report, *supra* note 82, at 6.

[209] The need for a public stance is highlighted by the recent recommendation of the Chairman and Ranking Member of the Senate Homeland Security and Governmental Affairs Committee that the FBI should provide training to its agents on "ideological indicators or warning signs of violent Islamist extremism to serve as an operational reference guide." Senate Fort Hood Report, *supra* note 93, at 76-77. This suggestion is based on an unfounded understanding of radicalization and would lead the FBI even further in the direction of counter-productive intrusion into American Muslims' religious behavior and practices.

[210] *See* Anne Joseph O'Connell, *The Architecture of Smart Intelligence: Structuring and Overseeing Agencies in the Post-9/11 World,* 94 Cal. L. Rev. 1655, 1667-68 (2006) (discussing creation of ODNI).

[211] Leiter Feb. 2011 Testimony, *supra* note 24, at 7.

[212] Rascoff, *supra* note 139, at 636-37.

[213] Daniel J. Solove, *The First Amendment as Criminal Procedure*, 82 N.Y.U. L. Rev. 112, 151 (2007). As Justice Powell wrote in the seminal *Keith* case, "National security cases . . . often reflect a convergence of First and Fourth Amendment values not present in cases of 'ordinary' crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech." United States v. U.S. Dist. Court, 407 U.S. 297, 313 (1972).

[214] There are also questions as to whether there is a role for government in promoting the rejection of particular interpretations of Islam. *See* CRS Report, *supra* note 2, at 63. The inefficacy of efforts by the United Kingdom to promote versions of Islam that the U.K. government considers most palatable serves as an important lesson in carefully weighing the costs and benefits of such a strategy. *See* Arun Kundnani, Inst. of Race Relations,

Spooked! How Not to Prevent Violent Extremism 6, 35 (2009), *available at* http://www.irr.org.uk/pdf2/spooked.pdf. Such efforts may also raise questions under the Establishment Clause of the Constitution.

[215] Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

[216] Implementing Recommendations of the 9/11 Commission Act, Pub. L. No. 110-53, 121 Stat. 266 (2007).

[217] Letter from Civil Rights Groups to President Obama (March 1, 2010), *available at* http://www.aclu.org/files/assets/pclob_coalition_letter_number.pdf; *see also* Christopher Flavelle, *Disappearance of Privacy Board from White House Web Site Raises Questions*, ProPublica, July 14, 2009, http://www.propublica.org/article/disappearance-of-privacy-board-from-whitehouse-website-raises-questions-714; Eli Lake, *Liberties Oversight Panel Gets Short Shrift*, Wash. Times, Feb. 2, 2010, at A1, *available at* http://www.washingtontimes.com/news/2010/feb/02/liberties-oversight-panel-gets-short-shr-15642008.

[218] *See supra* note 12.

[219] DIOG, *supra* note 12, at 32 (noting authority of FBI Field Offices to "identify locations of concentrated ethnic communities . . . [and] the locations of ethnic-oriented businesses").

[220] Based on the 2010 recommendations of the Countering Violent Extremism Working Group of the Homeland Security Advisory Council, DHS Secretary Napolitano announced that the Department was going to implement one of its recommendations by "developing a curriculum for state and local law enforcement focused on community-oriented policing, to enable frontline personnel to identify activities that are indicators of criminal activity and violence." Napolitano Sept. 2010 Testimony, *supra* note 17, at 8. It is not clear, however, whether these activities will constitute true community policing—in the sense of achieving agreement between local law enforcement agencies and American Muslim communities on the problems facing them and a shared commitment to resolving those problems—or whether they are simply intelligence collection in another guise.

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