

## Article

# The Rise of the Fusion-Intelligence Complex: A critique of political surveillance after 9/11

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### Abstract

This paper argues that 'fusion centers' are byproducts of the privatization of state surveillance and assaults on civil liberties, at least in the United States, the nation on which the research is based, with special focus on the recent case of the Maryland State Police spying scandal. In fusion centers, members of local, state, and federal police and intelligence units, as well as private-sector organizations, share information with each other by means of computerized technology and store it in databases. While the official purpose is to protect public safety, the practice of 'data-mining' and unclear lines of authority lead to fusion centers being unaccountable to the public and, hence, a threat to the democratic process. These conditions are encapsulated in the case of official espionage in the state of Maryland at least between 2004 and 2006. Drawing on official documents, the history of 'homeland security' since World War II and the characteristics of fusion centers, the Department of Homeland Security, and events in Maryland are surveyed. Working within the contexts of social history, surveillance theory, and political economy, this paper is grounded in the work of Beck, Churchill and Wall, Donner, Fuchs, Graham, Lyon, McCulloch and Pickering, and Monahan.

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### Introduction

The private sector – the Nation's principal provider of goods and services and owner of 85 percent of our infrastructure – is a key homeland security partner...  
(Office of Homeland Security 2002, *viii*)

I believe that Fusion Centers will be the centerpiece of state, local, federal intelligence-sharing for the future and that the Department of Homeland Security will be working and aiming its programs to underlie Fusion Centers... [T]he private sector... can...also provide vital support for the sustainability of Fusion Centers... (Janet Napolitano 2009)

A report by Privacy International (2007) ranked the United States of America and Great Britain as "endemic surveillance societies" along with China, Russia, Singapore, Taiwan, and Thailand. These findings are not surprising. But a significant, albeit unheralded, fact is that political surveillance is undergoing significant organizational changes in the context of neoliberal globalization. In the United States, for instance, this relationship is defined less by customary state forces and, increasingly, by interlocking public-private partnerships. Largely overlooked in these developments is the creation of entities known as "fusion centers." I argue that fusion centers, decentralized intelligence-gathering activities mainly run by state and local police departments with federal and corporate support, are byproducts of the privatization of state surveillance and means of assault on civil liberties. The general public and scholars know little about fusion centers as these phenomena are in a state of flux and are not

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transparent. However, greater awareness of the history of fusion centers and the challenge that they pose to democracy is long overdue. While it is by no means unique, the case of the Maryland State Police "Spying Scandal" gives disturbing indications of how fusion centers operate. This incident also serves as a template for understanding the theoretical significance of fusion centers.

The burgeoning interdisciplinary literature of surveillance studies acknowledges that surveillance is a broad category that entails both official and nonofficial monitoring of human behavior on a systematic basis. There is a general consensus among surveillance scholars that surveillance is exercised by multiple institutions often for different reasons and with different degrees of effectiveness (Haggerty and Ericson 2006a).<sup>1</sup> However, the recognition that no single agency has a monopoly on surveillance, or is entirely devoted to it, does not mean that the activity is any less problematical. Indeed, citizens may well view with greater alarm the existence of multiple surveillance institutions in the public and private sectors that often work at cross-purposes to one another in sometimes destabilizing ways.<sup>2</sup> Social consequences, or "risks," are incurred by the actions of institutions in modern society. At the same time that surveillance institutions like domestic security forces strive to contain these risks, new ones emerge, and on it goes in a continuous, if uneven, cycle.<sup>3</sup> In short, the practice of surveillance both influences and is influenced by the world that it is situated in. This article views the problem of risk in a historical perspective by focusing on a case of political surveillance in the United States.

Political surveillance refers to the monitoring of dissident groups and individuals usually by agents of the state. Viewed in global perspective, political surveillance is undergoing major technical and ideological change. Surveillance scholars deploy theories of risk to how states manage threats to "security" and preferred models of social progress. Recent studies analyze features of "intelligence-led policing" in western nations (Ericson and Haggerty 2002; Pickering 2004; Hale 2004; Maguire and John 2006; de Lint, O'Connor, and Cotter 2007; McGarrell, Freilich, and Chermack 2007). In the United States, distinct forms of state-guided surveillance originated in the nineteenth century but have always existed in a continuum of broader (and, in some cases, older) surveillance practices (Donner 1990; Leach 1993; Ellis 2001; Kornweibel, Jr. 1998; Murolo 2005; Ridenhour and Lubow 2002; Morales 2002; Warren 2004; Parenti 2003). American internal security services are adopting intelligence-led policing as formal policy (Carter 2004; Peterson 2005; Safe Cities Project 2006). In fact, the post-9/11 period is a convenient vantage point from which to view recent developments in practices of political surveillance in the United States.

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<sup>1</sup> The field is party to a mixture of analyses that emphasize institutions and those that take complex cultural factors into account. Peter Gill (1994: 79-82) argues from an organizational point of view that security agencies in Britain and other "liberal democracies" survey the public with the least transparency of all state bureaucracies. David Lyon sees surveillance as an autonomous institution in modern society, mainly based on electronic technologies. While "modern surveillance" is dominated by government agencies and corporations, its social influence is not "predictable in any straightforward sense" and is prone to "critique and to challenge" (Lyon 1994: 5, 9, 19). Surveillance is a mode of "social sorting" but it is also a metaphor for a broad array of activities – constructive or not, depending on the case – that are predicated upon monitoring human behavior (Lyon 2003: 149). However, one certainty is that biometrics, ID cards, CCTV facial scans, and the like are "flawed" and have "unintended consequences" that are "dangerous to democratic polity"; they reinforce social inequities (Lyon 2006b: 310). Arguing that researchers in the field are engaged in an "on-going quest for surveillance theory," Lyon (2006a: 12) believes that they need to strike a balance between theory and description for a true appreciation of the role of surveillance in our society. Stephen Graham (2006) argues that there is an imbalance in recent surveillance research between primarily theoretical studies and those that focus on U.S. military power.

<sup>2</sup> Few political economists have analyzed surveillance at length. An exception is Christian Fuchs (2009a, 2009b, 2010). He applies Marxist political economy, Critical Theory, and Cultural Studies to "transnational information capitalism." He argues that, like other post-Fordist industries, the Internet is governed by a capitalist division of labor. Fuchs has the potential of building a community of interest in surveillance among Neo-Marxists.

<sup>3</sup> Sociologist Ulrich Beck (1992, 2000, 2009) has made the initial contributions to risk theory. He focuses on broader effects of neoliberal globalization, such the degradation of environmental and working conditions. For a Foucauldian critique of risk theory, see Aradua & van Munsten (2007).

## A Brief History of Homeland Security

In 2009, the *Los Angeles Times* reported that the American Muslim Taskforce on Civil Rights and Elections alleged that the Federal Bureau of Investigation (FBI) has been spying on mosques in California and that an informer who was posing as a convert to Islam advocated the use of violence in conversations with worshippers. Whatever substance there may be in these allegations, they are not unheard of when one considers the FBI's awkward relations with the Muslim community. More importantly, though, many of the surveillance tactics allegedly used in Orange County are a disturbing reminder of an earlier chapter of FBI history.

Before World War II, the FBI generally engaged in political repression on an *ad hoc* basis. All of that changed during the Cold War (Powers 1987; Theoharis 1988; Keller 1989). Beginning in 1956, the FBI's then-secret Counter Intelligence Program (COINTELPRO) infiltrated and destabilized home-grown dissident groups mainly of the leftwing variety on a systematic basis with the aim of rendering them either pliant or ineffective. COINTELPRO reached a height of activity during the late 1960s and early 1970s when FBI Director J. Edgar Hoover authorized aggressive investigations of the Black Power and New Left movements. In the mid-1970s, after the formal demise of the program and in the midst of adverse publicity and congressional investigations, the FBI staged intermittent attacks on members of the American Indian Movement in South Dakota (Churchill and Wall 1990a; Churchill and Wall 1990b).

Over the past three decades, the FBI has been involved in COINTELPRO-like operations of a decidedly less covert nature. At the same time, the input of regional and local law enforcement agencies has come to assume a more public role, in no small part thanks to liberal funding and professional development through several Justice Department programs. This has eased the transition to political surveillance today, a situation in which a network of Justice Department programs is in general alignment with both other federal agencies and with state and local law enforcement agencies.

Since the early 1980s, the mainstays of national political surveillance have been Joint Terrorism Task Forces. Officially, a Joint Terrorism Task Force (JTTF) is a unit comprised of agents from the FBI and other federal domestic intelligence agencies who work with representatives of state and local police to prevent acts of terrorism, which they do by conducting surveillance, electronic eavesdropping, obtaining warrants to arrest suspects, and the like.<sup>4</sup> JTTFs range across the country and are of different sizes and capabilities. On July 2, 2004, Ken Love, the first head of the Washington D.C.-based National Joint Terrorism Task Force (NJTTF), stated that the number of active JTTFs in the United States had mushroomed since 9/11 and were operating in 100 cities across the land.

JTTFs are not only concerned with violent terrorists, though. Colorado, known for decades-old red squad and JTTF activities, is a good example (Cohen 2006). In 2002, an FBI "counterterrorism" report released through a Freedom of Information request by the ACLU related that a "training camp" near Colorado Springs had workshops on such things as non-violent protest methods, street theatre, and banner-making in preparation for protests at an up-coming convention of the North American Wholesale Lumber Association. During the summer of 2008, the Denver JTTF conducted surveillance on protesters during the Democratic Party's National Convention (Kouddous 2008). In addition to employing more traditional covert methods, JTTF agents document this information in computer databases.

The FBI no longer has a monopoly on domestic covert intelligence; the Bureau shares that distinction with thirteen other federal agencies, all of whom are technically answerable to the Office of the Director of

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<sup>4</sup> Abuse of the word "terrorism" has resulted in it losing its meaning. Even so, the author uses this word advisedly for shorthand purposes. Besides being a very supple concept, there is nothing new about what Graham calls "[t]errorist' branding" (2004a 21-22).

National Intelligence. Furthermore, the interdependence between national and regional police in tandem with private intelligence organizations has become stronger than ever.<sup>5</sup> This is related to trends in neoliberal globalization, the unregulated and unmatched flow of wealth from public to private hands that has played a defining role in the transformation of society over the past generation (Harvey 2007; Klein 2007). Neoliberalism has weakened the division between military and police institutions as well as between domestic and foreign intelligence-gathering (Andreas and Price 2001). This is particularly evident with the incorporation of counterinsurgency doctrine by police agencies and their increased reliance on military equipment and training. Thus, neoliberal reforms have had a great impact on political surveillance. While it still occupies a "guardian" role under government responsibility much in line with traditional practice, political surveillance has also become a major source of private profit (McCulloch and Pickering 2009; Monahan and Palmer 2009).

Changes in domestic political surveillance offer insight to the privatization process. As with anything else that has fallen under its sway, privatization is bringing with it a host of problems that exaggerate the destabilizing and invasive nature of political surveillance. The Department of Homeland Security (DHS) is a case in point. At the center of the "homeland security paradigm," the DHS has authority over 22 federal agencies with the stated goal of protecting "the American homeland" from terrorism and natural disasters (Homeland Security Council 2007: 3-4; *Homeland Security Act of 2002*: 2143). Conventional wisdom has it that a division of powers between and within federal, regional, and local levels of government – what public administration studies refer to as "federalism" – makes the DHS work effectively. But collaboration between the public and private sectors is also central to how the agency works, an observation that is absent from civic discourse despite recognition of it in legislation, policy documents, and academic literature (Clovis 2006; Clovis 2008). This relationship is also at the core of corruption within the Department since its establishment in 2002 (GAO 2007a; GAO 2007b; GAO 2009).

### Post-modern Red Squads

In 2007, the Pentagon announced the closure of its five-year old TALON database in which it had compiled some 2,800 reports on U.S. citizens. The FBI supposedly stored this information in its Guardian Threat Tracking System (Drogin 2008). This episode was indicative of what the Privacy International report calls "[e]xtensive data-sharing programs across [the] federal government and with [the] private sector." Referred to as "fusion centers" by members of the intelligence community and law enforcement agencies, databases like TALON and Guardian are fast becoming key instrument of political surveillance in the United States. Fusion centers are also a ramification of privatization. But detailed analyses of fusion centers remain on the margins of professional literature and mass media, as Torin Monahan and Neal A. Palmer (2009b) point out.<sup>6</sup> So what are fusion centers?

In fusion centers, members of local, state, and federal police and intelligence units share information with each other by means of computerized technology. The stated purpose of a fusion center is to prevent acts of crime and terrorism, and to facilitate emergency responses to natural disasters – in short, to guarantee public safety (Eack 2008). Fusion centers are, in effect, adjuncts of intelligence-led policing. They gather information for different purposes from various sources in the public and private sectors and store it in

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<sup>5</sup> In the United States, there has always been an intimate link between state surveillance bureaucracies and private contractors. In the 19<sup>th</sup> century, for instance, the Pinkerton Detective Agency was one of the first national intelligence organizations and urban red squads relied on private sources of information and funding (Donner 1990, 7-64). On private sector intelligence in the United Kingdom, see Gill (1992, 23-24, 186-188).

<sup>6</sup> "[T]he liberal 'sharing' of private information across public and private sectors [by means of] fusion centers is conspicuously absent from most official DHS publications and statements, but is readily acknowledged by DHS representatives at conferences and other venues" (Monahan and Palmer 2009, 632).

computer databases. Federal intelligence programs like JTTFs and the NJTTF operate computer databases. In an interview authorized by the FBI in 2004, Ken Love commented that the NJTTF fusion center:

bring[s] together people from every U.S. agency that collects and processes terrorist intelligence...and hook[s] them into their own and into our FBI intelligence databases... to share, to query, to coordinate, to answer questions, and to give direction and support to the 84 Joint Terrorism Task Forces...around the country... "Fusion" means that terrorist intelligence is instantly shared vertically from HQ to our JTTFs and horizontally to all NJTTF agencies.

The DHS reports on its website that, as of July, 2009, there were 72 fusion centers in operation in different jurisdictions across the United States. In the words of Michael German, the National Security Policy Counsel of the American Civil Liberties Union (ACLU), this arrangement is a way of "basically deputizing every state and local law enforcement officer to be an intelligence collector for the intelligence community" (Kouddous, 2008). Official reports about homeland security policy that are in the public domain are relatively informative but knowledge about fusion centers is fragmentary (Trevorton 2008).

The air of secrecy about fusion centers notwithstanding, their political history is clearer. In 2004, the 9/11 Commission recommended the establishment of the National Counterterrorism Center (NCTC) as an enduring clearing house for terrorism intelligence; Congress passed a law that provided for it, among other things (National Commission on Terrorist Attacks Upon the United States 2004: 403-404). The context of the NCTC is the wider fusion-intelligence system that emerged after 9/11. In the middle of this decade, state and local fusion centers arose with encouragement from focus groups in the DHS and the Justice Department (Homeland Security Advisory Council 2005; Global Justice Information Sharing Initiative 2006).

In order to justify the need for fusion centers, members of Congress, the Bush administration, domestic intelligence agencies, and other interested parties promoted theories that emphasize the importance of sharing information, even in "an unclassified form" in the words of the Office of the Director of National Intelligence (ODNI), "between public and private sector partners" (Congressional Research Service 2009; ODNI 2005: 14; ODNI 2006: 75). At the same time that legislators and bureaucrats voiced dissatisfaction with Washington's lack of cooperation with states and municipalities in homeland security matters, regional authorities ask the federal government to take the lead in homeland security, including fusion center programs (Senate Committee on Governmental Affairs 2003; NGA 2006: 6-8). A researcher with the RAND Corporation's Homeland Security Program wrote about fusion centers that:

[a]gencies at all levels of government and even in the private sector have roles in domestic intelligence activities. Information systems and coordinating entities such as federal task forces, JTTFs, and fusion centers link many organizations together in web-like ways. Different agencies collect intelligence information in different ways, for different purposes (Trevorton 2008).

Perhaps the issue is more complex than a cursory review may imply. In any event, fusion centers bridge the past of red squads and the present of public-private partnerships in intelligence-gathering. Fusion centers gained some public exposure in early 2009 with the release of reports by intelligence units in Texas, Missouri, and Virginia presumably for the benefit of other in-network investigators. These reports, though, had the effect of highlighting the threat that fusion centers pose to democracy by virtue of their practices.

In February, 2009, the North Central Texas Fusion System released a document that warned of the growing domestic influence of "Middle Eastern Terrorist groups" by way of front organizations that pose



as civil liberties groups (NCTFS 2009: 1). Besides observing that "[t]olerance is growing in more formal areas" like Islamic banking, the circular showed concern with the activities of anti-war and anti-racist "far Left groups" (NCTFS 2009: 4-5). As sources, the report lists rightwing organizations like the Anti-Defamation League and the Christian Broadcasting Network. The next day, the Missouri Information Analysis Center (MIAC) issued a study on "the Militia Movement," stating that members "most commonly associate with 3<sup>rd</sup> party political groups" like those represented by Ron Paul, Chuck Baldwin, and Bob Barr in the 2008 presidential election (MIAC 2009).<sup>7</sup> A month later, the Virginia Fusion Center issued a lengthy internal report that concentrated on a wide assortment of Islamist, Black Muslim, anti-abortion, anarchist, environmentalist, animal-rights, militia, white supremacist, and computer hacker groups that have a presence in the state of Virginia. The report's authors treat all of them as "terrorist and extremist groups" with no attempt to draw a distinction between violent criminals and nonviolent activists (VDSP 2009: 4). Nor is the assessment sympathetic to free speech issues; it observes that higher education institutions in eastern Virginia are potential breeding grounds for subversives (VDSP 2009: 9).

Besides distributing superficial and misleading information, fusion centers have two major failings that are subversive of the democratic process. One has to do with method. A major innovation associated with computer databases in the Global War on Terror is the practice of "data-mining," meaning the drawing of inferences from raw pieces of information (Guzik 2009). This task becomes more subjective as investigators amass more data. The problem with this method is that it is educated guess work; there is nothing "scientific" about it. On a purely pragmatic level, the storing of masses of data, especially if it is not directly related to the criminal behavior under investigation, is wasteful in terms of time and cost (ACLU 2007: 15-19; ACLU 2008: 3-4).

This raises questions of accountability. Most fusion centers do not have clear lines of authority. Many "state" and "local" fusion centers are located on federal property and rely on federal funding and personnel from its military and intelligence branches. State and local jurisdiction is further compromised by corporate influence, which breaks down the wall between public service and private interest – not that it has ever been strong but partisans of the fusion-intelligence regime have even dispensed with customary rhetoric (Monahan 2009: 20). This opens the way for secrecy and what German calls "mission creep" (ACLU 2007: 11-15, 20-21; ACLU 2008: 7-8). Such conditions invite the confusion of terrorism with valid democratic expression.

Criminologists Jude McCulloch and Sharon Pickering (2009) refer to this situation as "pre-crime," a strategy of preempting terrorism that is coming to pervade intelligence-gathering and law enforcement. This approach anticipates terrorist crime but with disastrous effects for civil liberties and the rule of law partially because it does not address root causes. Pre-crime is the latest permutation of social control, which has been the primary function of police institutions (Fernandez 2008). The fusion centers in Texas, Missouri, and Virginia, like those found in the in the Pentagon, have already put the pre-crime approach into practice. It is precisely on this basis that fusion centers have the most theoretical relevance; they are emblematic of the public-private reality of political surveillance in the post-9/11 era. The problems caused by intelligence-led policing and pre-crime are exemplified by events in recent years in the state of Maryland.

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<sup>7</sup> A few weeks later, DHS chief Janet Napolitano spoke at the National Fusion Center Conference in Kansas City, Missouri (Napolitano). Unclassified reports prepared by the DHS Office of Intelligence and Analysis, such as two released in 2009, elaborate upon themes found in the MIAC report. Each report contains an advisory note on "Law Enforcement Sensitive" information (DHS 2009a: 1; DHS 2009b: 1). The one on "leftwing extremists" (the other is on "rightwing extremists") indicates that while "U.S. person information" is not provided, readers can obtain detailed information upon request in order "to understand, assess or act on [sic]" (DHS 2009a: 1). The highest levels of the homeland security apparatus may be staying abreast of research by regional fusion centers.

## The Maryland State Police

What little prominence that the Maryland State Police (MSP) has traces to the "racial profiling" of African-American motorists on I-95 in the late 1990s and the traffic stop of one of the suspected 9/11 hijackers two days before the catastrophe (Manning 2006: 108; CNN 2002). Less well known is the scandal about MSP spying on non-violent activists. While some dispute claims made by mainstream newspapers and the government of Maryland that these activities took place only between March, 2005, and May, 2006, this period has gained the most attention. It is true that an "independent review" written in the summer of 2008 by former Maryland Attorney General Stephen Sachs at the request of Maryland's governor, Democrat Martin O'Malley, is not comprehensive. For instance, the report does not study local police departments (Sachs 2008: 1, 13). While criticizing the MSP's "lack of judgement" in violating the First Amendment and the Maryland Declaration of Rights, the Sachs report also makes curious assertions, such as "[l]arge gatherings of people...involving the expression of passionately-held political and moral beliefs...pose a risk to public safety" and "MSP's interest in other protest groups was not the focus of our review" (Sachs 2008: 7, 44, 61).<sup>8</sup> I nevertheless use the events in the report as my frame of reference for they give insight on fusion-intelligence.

The covert operations in question took place under Maryland's previous governor, Republican Robert Erlich, when O'Malley was Mayor of Baltimore (Rein 2008a; Rein and White 2009).<sup>9</sup> The Sachs report argues that the MSP's covert operations began with a probe of Maryland anti-death penalty activists by the Field Operations Branch (FOB). In February, 2005, a FOB commander requested a "threat-assessment" of expected protests before the executions of two death-row prisoners. After searching the internet and Justice Department databases, the MSP's Homeland Security and Intelligence Division (HSID) advised that there was a potential for disruption by Protesters without giving specifics (Sachs 2008: 24-28; Rein and White 2009).

The HSID took steps to gain more information. The official narrative maintains that an undercover agent infiltrated an anti-death penalty group that was meeting at a community center near Washington, DC. She also infiltrated anti-war meetings. As revealed in documents submitted in answer to a Maryland Public Information Act lawsuit filed by the ACLU, undercover troopers spent over 288 hours filing reports (Sachs 2008: 1-3).<sup>10</sup> Other documents reveal that in those fourteen months, the HSID monitored several anti-death penalty groups, several peace groups, a gay-transgender advocacy group, an immigrant rights group, the American Friends Services Committee, the Chesapeake Climate Action Network, the DC Statehood Green Party, and the regional chapter of People for Ethical Treatment of Animals, among many other organizations (ACLU-MD 2009; Rein 2008b; Rein and White 2009). Protests against biological warfare experiments, Lockheed Martin, and utility rate increases also concerned the MSP. Surveillance reports included updates on meeting locations, petitions, the logistics of posting fliers, activists' political beliefs, and the like – but nothing on threats to public safety (Sachs 2008: 29-43). The HSID shared this data with the Baltimore City Police Intelligence Unit, the Annapolis City Police Department, the Baltimore County Police Intelligence Unit, the Ann Arundel County Police Department, the Maryland Department of General Service Police, the National Security Agency (NSA), and "a military intelligence officer" (Sachs 2008: Exhibit 2 [4, 9, 14, 17]; Madigan 2008).

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<sup>8</sup> Sachs (2008: 4) does "not doubt the commitment to service, and the desire to protect the public safety, of the men and women of the [MSP as t]hey are professionals." He is also "mindful of the importance of deception as a legitimate, often essential, law enforcement tool."

<sup>9</sup> As reported on the websites of Government Security, the Harvard Kennedy School, and GovStat, O'Malley put surveillance cameras on city streets and adopted a managerial computer database modeled on the New York Police Department's CompStat system when he was Mayor of Baltimore.

<sup>10</sup> The Sachs report (2008: 15, 57) protects the identities of the troopers involved in the surveillance, "in keeping with traditional law enforcement concerns."

In the summer of 2008, Maryland Attorney General Douglas F. Gansler surrendered redacted versions of the spy file to the ACLU after losing the Public Information Act lawsuit (Madigan 2008; Rein 2008c). Shock and outrage immediately erupted. Governor O'Malley and Colonel Terrence B. Sheridan, his MSP Superintendent, made public statements of apology. Erlich and former MSP head Thomas E. Hutchins were defensive. But no state official, past or present, police or civilian, denied that the spying occurred. A few weeks later, the Sachs investigation began (Madigan; Bor and Sentementes 2008; Smitherman 2008). Other details about the scope and duration of the espionage may yet emerge.

This is a compelling story but what does it have to do with fusion centers? In the past, the members of red squads had to place hard copies of their reports in filing cabinets. But police and intelligence units are increasingly using computer databases. Whenever a HSID undercover agent files a report, it goes into a database called Case Explorer. HSID officials told the Sachs investigation that they were in the act of looking for an affordable computer database system in 2004 when they got an offer from the High Intensity Drug Trafficking Areas Program (HIDTA), which is administered by the Office of National Drug Control Policy (ONDCP) in collaboration with other federal and state agencies: In exchange for free access to the HIDTA's Case Explorer software program, the MSP must share data that it finds with a HIDTA fusion center in the Washington, DC-Baltimore area. The MSP accepted these terms (Sachs 2008: 47-48).

The HIDTA Program operates a fusion center network. According to the websites of the ONDCP and the Washington/Baltimore HIDTA, the HIDTA Program, established in 1990, coordinates federal, state, and local intelligence-collection about illegal narcotics dealings. The Washington/Baltimore HIDTA, begun in 1994, has jurisdiction over the District of Columbia, central Maryland, and parts of eastern Virginia. Sachs claims that a "Watch Center" maintains a database of "criminal intelligence information" (Sachs 2008: 54-56). The Watch Center's staff is "drawn from the region's law enforcement agencies and National Guard units," according to an undated announcement on the Washington/Baltimore HIDTA's website.

The practical value of the data that the undercover troopers had collected about the protestors was suspect. The MSP admitted as much when it informed 52 Marylanders and one U.S. citizen who never lived in the state by mail in the fall of 2008 that they had accidentally been under suspicion of being terrorists.<sup>11</sup> HSID officials told Sachs that this happened because Case Explorer lacked categories that related to the kind of intelligence gathered about the protests. The officials explained that they therefore created a new drop-down menu category in Case Explorer entitled "Terrorism."<sup>12</sup> Why they chose this specific language is intriguing since undercover reports indicated that the subjects were not violent, in word or in deed. Moreover, recent legislation contains clear guidelines of what constitutes terrorism. The Homeland Security Act defines terrorism as violent action that breaches national, state, or territorial criminal laws with the aim of forcing changes in government policy by sowing fear among the population at large (*Homeland Security Act of 2002*: 2141). Considering the source of this definition alone, it is very difficult for one to see how the actions of the Maryland activists threatened public safety.

The MSP submitted Case Explorer reports on the doings of these fifty-three protestors to the Washington/Baltimore HIDTA Watch Center. A case in point is Max Obuszewski, a member of the Baltimore chapter of the Pledge of Resistance. He entered the HIDTA database even though his surveillance logs never referred to drug-related matters and stated that he lacked a criminal record (Sachs 2008: Exhibit 2 [9]).<sup>13</sup> One Case Explorer entry indicates, without explanation, that Obuszewski 's

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<sup>11</sup> A member of the New York state branch of Code Pink, a national women's antiwar group, was among the 53 people notified by the MSP (Rein 2008b).

<sup>12</sup> Sub-categories include "Anarchists," "Animal Rights," "Anti-Govern[ment]," "Anti-War Protestors," "Environmental Extremists," "Pro-Life," and "White Supremacy/Hate Groups" (Sachs 2008: 48-53, 91-92).

<sup>13</sup> See also Appendix I.



"Primary Crime" is "Terrorism – Anti-Govern[ment]," his "Secondary Crime" is "Terrorism – Antiwar Protestors," and the Baltimore Pledge of Resistance is his "security threat group" (Sachs 2008: 49-50, Exhibit 2 [24]).<sup>14</sup> It is an open question if this data went to other HIDTA databases or to other fusion center networks.

The MSP is not the only law enforcement agency that spied on Obuszewski. In an e-mail message to the author on March 19, 2009, Obuszewski wrote that he and other peace activists picketed in front of NSA headquarters at Fort Meade on every Independence Day since 1996; documentation bears out this claim. It emerged during a trespassing trial of some of these activists in 2004 that agents from the Baltimore City Intelligence Unit – Fort Meade lies outside of its official jurisdiction – and the Maryland JTTF had been monitoring the protests (Ericson 2004).<sup>15</sup> The Obuszewski affair is evidence of the coexistence of high-tech and more "traditional" intelligence-gathering methods evocative of the COINTELPRO era.<sup>16</sup>

There are other inconsistencies in Case Explorer, as shown in reports released by the Maryland chapter of the ACLU on its website. An entry on the DC Anti-War Network (DAWN), apparently "created" on January 13, 2005, and "modified" on April 7, 2005, designates the group's primary crime as "Terrorism – Anti-War Protestors" and, without explanation, its secondary terrorist crime as "White Supremacy/Hate Groups" and "Anti-Govern" (DAWN had been conducting protests at military recruiting stations in Maryland). Another report on DAWN, made sometime between January 6, 2006, and November 12, 2008, lists the primary crime as "Terrorism – Environmental Extremists" and the secondary crime appears to involve several terrorist offenses: "Sovereign Citizens/Tax Protestors," "Pro-Life," "Anti-War Protestors," and "Animal Rights." An April 1, 2005/November 19, 2007, entry on Amnesty International designates "Intelligence Bulletin" as the group's primary crime and "Civil Rights" as its secondary crime.<sup>17</sup> A Case Explorer entry on the Maryland Green Party that spans May 1, 2006, to April 16, 2008, lists the group's primary crime as "Terrorism – White Supremacy/Hate Groups." An entry for September 11, 2006, identifies the organization as a "Civil rights group." Not counting redactions, this specialized terminology makes the publicly-released HSID Case Explorer papers hard to understand.

The root concern of those who know that the MSP targeted them is that they may land on an official watch list, with consequent harm to their career, financial, or personal prospects long after the current spying scandal fades into oblivion. This is a possibility because the Washington/Baltimore HIDTA is not the only fusion Center in Maryland. Another is the Maryland Coordination and Analysis Center (MCAC), established in 2003 by the Maryland Anti-Terrorism Advisory Council. An entry on the MCAC website dated March 30, 2006, describes the MCAC as a branch of a national "umbrella organization" composed of federal, state, and local agencies plus "representatives from the private sector" under the lead of the Justice Department. The MCAC shares intelligence with the JTTF, HIDTA, NCTC, and other "national entities." An undated statement on the MCAC website indicates that representatives of twenty-five federal, state, and local law enforcement, emergency response, and military agencies work at the MCAC, including the MSP, local police departments that share information through the HIDTA Watch Center, and the University of Maryland.

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<sup>14</sup> See also Appendix II.

<sup>15</sup> An undated statement on the website of the MSP's Computer Crimes Unit claims that three state troopers work with the Maryland JTTF. NSA security officials had prior knowledge of the July 4, 1996, protest at NSA headquarters (Bamford 2001: 493-494).

<sup>16</sup> On the activities of the Baltimore Police Department's Inspectional Services Division under Commissioner Donald Pomerleau between 1966 and 1982, see Donner (1990: 298-305).

<sup>17</sup> In April, 2005, Amnesty International was one of the sponsors of pickets outside of Caterpillar Inc. dealerships in protest against Israeli military operations in the Occupied Territories.

A PowerPoint presentation that U.S. Attorney Harvey Eisenberg, director of the MCAC, gave to a group of civil liberties activists on March 11, 2010, indicates that his fusion center hosts "contractors" (*Overview* 2007: 11). A 2008 *Washington Post* report suggests that one of them is the Entersect Corporation, a California-based data broker (O'Harrow 2008). During the March 11 meeting, Eisenberg also claimed that the MCAC "has assisted" the Northrup Grumman Corporation.<sup>18</sup> Fusion-intelligence systems in Maryland are convoluted and far-reaching.

## The Role of the DHS

Policy-makers in the homeland security establishment are intimately familiar with fusion centers like the MCAC. One can see this by way of planning, legislation, funding, and, in the case of Maryland, Case Explorer files. What is interesting is that the DHS, through these sources, is relatively transparent. Admittedly, the picture is hazy as yet but there are enough disquieting signs to warrant concern.

Planning and executing an "Information-Sharing Environment" in which fusion center professionals can communicate with each other is a priority of the DHS Office of Intelligence and Analysis (OIA) (OIG 2008b: 1-6; DHS 2008). To that end, departmental employees assist in fusion centers in twenty-four states plus the District of Columbia alongside employees of several federal intelligence agencies and evidently – there are few details – private companies (DHS 2008a). The Department's Homeland Security Data Network supposedly operates in twenty-seven fusion centers, which links them to the "classified" NCTC database, which is under the jurisdiction of the ODNI (DHS 2008; ACLU 2008: 2-3).<sup>19</sup>

Post-9/11 national legislation lays down the general outlines of the homeland security architecture; a critical part of this is funding. DHS funding for state homeland security programs goes through the Grant Programs Directorate of the Federal Emergency Management Agency (FEMA) and over \$19 billion in "preparedness grants," ostensibly devoted to dealing with acts of terrorism and natural disasters, have traveled this route since 2002 (FEMA 2008; OIG 2008: 2). The OIA claims that the Department disbursed over \$254 million to state and municipal governments in Fiscal Years 2004-2007 to develop fusion centers (DHS 2009b). In March, 2009, Secretary of Homeland Security Janet Napolitano stated that DHS support for fusion centers had amounted to \$327 million "in direct funding" (Napolitano 2009).

An OIG report drafted in October, 2008, dealt with preparedness grant money that the MSP got from Fiscal Years 2003 to 2005. Of \$161 million received directly from FEMA with "limitations and requirements," the Maryland Emergency Management Agency issued \$5 million to the MSP as a "subrecipient" (OIG 2008: 1-2). The report continues:

The FY 2003 funding was used to pay for specialized computer and office equipment, personal protective equipment, and nonsurveillance security overtime. The [MSP] used FY 2004 funds to purchase training and office and radio equipment. In FY 2005, grant funding was used to pay for equipment and contractor services (OIG 2008: 5).

But for "specialized computer and office equipment" and "nonsurveillance overtime," the report makes no mention of the spying affair. Except this warning: "The "Maryland State Police did not use DHS State Homeland Security Grant funds to conduct surveillance between FYs 2005 and 2006" (OIG 2008: 4).

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<sup>18</sup> Eisenberg helped to establish the Washington/Baltimore HIDTA (United States Attorneys 2009). One of the attendees at the March 11 meeting related to the author in a series of emails that although Eisenberg did not allow recording devices, the PowerPoint that he delivered was available online (Julie Sandhaus to author, March 11, 27, 28, April 15, 20, 2010).

<sup>19</sup> Reportedly, the Homeland Security Data Network is grossly under-used (Monahan 2009b: 21). On ODNI recommendations to local police departments, see ACLU (2008: 2-3).

However, the DHS communicated with the MSP intelligence unit on at least one occasion about anti-war protestors in Maryland. According to *The Washington Post*, the HSID received two emails from the DHS office in Atlanta, Georgia, in 2005 that discussed DAWN's plans to picket a military recruiting center in Silver Spring (Rein 2009). The newspaper based this assertion on claims made in a HSID Case Explorer report that the state Attorney General's office released to the ACLU. The pertinent section of the report has this entry for June 21, 2005:

The US Department of Homeland Security, Atlanta, recently forwarded two emails from [redaction] an affiliate of the DC DAWN Network and the [redaction]... Activists from DAWN, [redaction] and other groups working under the banner of [redaction] are going to stage several small (12-15) weekly demonstrations at the Silver Spring Armed Forces Recruitment Center (AFRC). If there is enough support these will become weekly vigils. Recent information suggests that the May 27<sup>th</sup> demonstration included representatives from several unstructured Montgomery Co. groups as well as individuals from DC/VA groups. It appears the robust turnout in May has encouraged [redaction] to work for an even larger event. [redaction]<sup>20</sup>

This set off a round of public inquiries. In response to a letter from Senator Ben Cardin (Democrat, Maryland), chair of the Senate Judiciary Subcommittee on Terrorism and Homeland Security, DHS spokespersons explained that a member of the Federal Protective Service in Atlanta probably found the emails posted on the internet and sent them to the MSP as the protest concerned federal property. However, Pat Elders, a Maryland activist who helped to arrange the protests, claims that organizers did not post messages about the protests on the internet (UPI 2009; Rein 2009).<sup>21</sup> On February 10, 2009, Democratic senators Barbara A. Mikulski and Russ Feingold sent letters indicating concern with political surveillance in Maryland to Secretary Napolitano, U.S. Attorney General Eric Holder, and FBI Director Robert Mueller. The interest arises from the fact that the Case Explorer entry about DAWN is the first known indication that the DHS knew that the MSP was spying on U.S. citizens.

What can observers make of this, particularly as it is illegal? It is true that fusion centers are not subject to the Privacy Act of 1974, which was passed by Congress to regulate information-sharing by federal agencies. But 28 Code of Federal Regulations (CFR) Part 23, issued in 1981, regulates information-sharing about criminal suspects at any level of jurisdiction, including multi-jurisdictional systems like the HIDTA. Any law enforcement agency that gets financial aid from the Justice Department must abide by this regulation (PRA 2010, 54). But many local, state, and multi-jurisdictional classify data mining as "criminal intelligence" without establishing reasonable suspicion; this is actively encouraged by the ODNI. This makes enforcement of 28 CFR Part 23, in the words of civil liberties lawyer Thomas Cincotta, "virtually meaningless" (PRA 2010: 54-55). A specific example of the lax application of 28 CFR Part 23 is when HSID officers recorded protestors as "terrorists" in Case Explorer.

## Conclusion

A prominent goal of domestic security services over the past generation has been to completely remove the distinction between policing and information-collection. Over the past decade, this tendency has become unmistakable as a result of the frenzied privatization of state security under the guise of "homeland security." In the bargain, a new agency of political surveillance has arisen, the fusion center. This phenomenon is a medium of both privatization and assaults on ever-shrinking civil liberties in an ever more militarized, ever more insecure society.

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<sup>20</sup> See Appendix III.

<sup>21</sup> The Federal Protective Service, a DHS affiliate, guards federal government properties.

Federal judge and legal theorist Richard Posner has argued that the formation of the DHS signified a move in the direction of a domestic intelligence agency not taxed with law-enforcement duties like the FBI. The "nationwide 'eyes and ears' network," that Judge Posner advocates grows around us from roots planted long before September 11, 2001 (Posner 2005: 81-82). This is clear enough, if one notes surveillance initiatives undertaken by the Obama administration during its first year in office, such as the creation of a "cyber czar," a Global Engagement Directorate for coordinating domestic and international security, and a Pentagon Cyber Command to conduct "cyberspace operations" (Nakashima 2009; Office of the Press Secretary 2009; Gates 2009). While these are not unprecedented actions, it would be absurd for one to ignore the impact of fusion centers on intelligence-gathering. Indeed, all of Washington's "new" security initiatives are reliant on fusion-center technology to one degree or another.

The fundamental dangers of the fusion center are not original but facilitate an age-old feature of governing institutions; that is, political surveillance. This is, in the words of David Lyon, "an old story in high-tech guise" (Lyon 2006b, 311). The dangers are severe but are they inevitable? A change for the better is within the grasp of the general public. Perhaps a productive start would be to decode the meaning of catch-phrases associated with "homeland security." Citizens must make themselves aware of the issues. Consider Max Obuszewski's reaction to Governor O'Malley pledge last summer that the MSP will not engage in unwarranted spying again: "It's presumably what we want to hear... The proof, though, will be in the pudding" (Bor and Sentementes 2008). To how many other fusion centers in the United States and beyond does this comment apply? We do not yet know. But it is our responsibility to find out.

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**Appendix I:**  
*Supplement to Intelligence Report Initiated by Analyst Sparwasser  
 June 23, 2005 (excerpt from Sachs Report)*

JUL-15-2008 12:20 FROM:LEGAL COUNSEL 4106534270 TO:410 366 7838 P.9/44  
 Sep-07-06 14:09 From:MSP/HS1D 4102900762 T-226 P 009/043 F-137

be to educate activists and community members about the death penalty, Vernon Evans' case and the cases of other men on Maryland's death row.

At the end of the meeting, Obuszewski told the group that he had received a negative response in his request to Baltimore County State's Attorney Sandra O'Connor for a meeting to discuss the death penalty. He said that he was following the basics of passive resistance and had contacted his oppressor and since she declined a meeting, he could move forward with planning a sit-in and demonstration at her office. Obuszewski said that he would put this on the "back burner" since there was so much work to be done for the forum. He said he would like to hold any action at her office closer in time to a scheduled execution. He supplied members with copies of O'Connor's response to his meeting request. [REDACTED] contacted Baltimore County Police Intelligence Division [REDACTED] on June 22, 2005 to inform [REDACTED] of the above intelligence.

Obuszewski mentioned only two other planned protests/actions in the next two months. He made no mention of any protests at the National Security Agency over the Fourth of July weekend. Documents seen in the office also gave no indication of any protests planned for NSA by Pledge of Resistance. This information was passed on to NSA officials on June 22, 2005 and the situation will continue to be monitored.

The two protests Obuszewski mentioned was the annual "Starving For Justice" rally at the Supreme Court in Washington, D.C. which is held June 27<sup>th</sup> through July 2<sup>nd</sup>. He said these dates were significant because it is when the Supreme Court called a halt to executions and when they allowed them to continue. He said he would be attending and fasting for some of the time.

Obuszewski also gave out flyers for a planned protest for August 6<sup>th</sup> and 9<sup>th</sup> to commemorate the bombings at Hiroshima and Nagasaki during World War II. There is an organizational meeting for this protest on June 27<sup>th</sup> at 1800 hours at the Friend's Hall on York Road. No further information could be obtained about these events but the situation will be monitored.

A female attending the meeting announced that Amnesty International was holding a workshop and training for anti-Death Penalty coordinators and activists at the University of Maryland, College Park July 22<sup>nd</sup> - 24<sup>th</sup>.

A man attending the meeting wanted the Committee to think about merging with another vocal Baltimore activist group which protests police brutality and problems in Baltimore's Central Booking and Intake Facility. Fitzgerald and Obuszewski said they didn't think this should happen at this time.

No other information was discussed at the meeting.

Investigative Time for [REDACTED]; 06/10/05 through 06/23/05 - 8 hours



**Appendix III:**  
DC Anti-War Network (excerpt from ACLU-MD Files)

**Narrative :**

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Created By: [REDACTED] 5/19/2005 11:15:33 AM

Modified By: [REDACTED] 7/27/2005 11:06:15 AM

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DC Anti-War Network (DAWN) is sponsoring an anti-recruitment protest at the Armed Forces Recruiting Station (AFRS) in Silver Spring, Maryland on Friday, May 27, 2005, from 1700 to 1900 hrs. It can be anticipated that protesters will hand out flyers (see below), wave signs and attempt to decorate the AFRS with posters. DAWN is a umbrella organization supporting a number of anti-war efforts.

05/23/05 Another anti-war group [REDACTED] will come in support of DAWN.

05/25/05 A conservative pro military group, the [REDACTED] is calling for its' membership to counter protest the DAWN Silver Spring demonstration. They are most likely coming to counter [REDACTED] participation.

06/21/2005

The US Department of Homeland Security, Atlanta, recently forwarded two emails from [REDACTED] an affiliate of the DC DAWN Network and the [REDACTED]. Activists from DAWN, [REDACTED] and other groups working under the banner of [REDACTED] are going to stage several small (12-15) weekly demonstrations at the Silver Spring Armed Forces Recruitment Center (AFRC). If there is enough support these will become weekly vigils.

Organizers intend to stage a community meeting, on or about July 7, 2005, in the Silver Spring area in order to inform and enlist support from the local community for the next large AFRC protest, tentatively set for late July or early August.

Recent information suggests that the May 27th demonstration included representatives from several unstructured Montgomery Co. groups as well as individuals from DC/VA groups. It appears the robust turnout in May has encouraged [REDACTED] to work for an even larger event.

[REDACTED]

07/21/2005

On July 21, 2005, [REDACTED] a working group of DAWN (DC Anti War Network) posted an announcement calling on their members and others to protest against the military recruiters on July 29 starting at 5PM outside the military recruiting station located at 8202 Georgia Avenue in downtown Silver Spring, Maryland.

This group sponsored an anti-recruitment organizing meeting in Silver Spring on July 20, 2005. They are anticipating that Montgomery County parents who attended that meeting and who don't want recruiters having access to their children at school will join in the protest.

07/26/2005

Code Pink a national anti-war womans movement is asking their members and others to join with DC DAWN at the July 29th demonstration. [REDACTED]