

Compromised Trust: DHS Fusion Centers' Policing of the Occupy Wall Street Movement

by **Krista Craven, Torin Monahan and Priscilla Regan**

Guilford College; University of North Carolina at Chapel Hill; George Mason University

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Abstract

State surveillance programs often operate in direct tension with ideals of democratic governance and accountability. The fraught history of surveillance programs in the United States, for instance, illustrates that government agencies mobilize discourses of exceptional circumstances to engage in domestic and foreign spying operations without public awareness or oversight. While many scholars, civil society groups, and media pundits have drawn attention to the propensity of state surveillance programs to violate civil liberties, less attention has been given to the complex trust dynamics of state surveillance. On one hand, in justifying state surveillance, government representatives claim that the public should trust police and intelligence communities not to violate their rights; on the other hand, the very act of engaging in secretive surveillance operations erodes public trust in government, especially when revelations about such programs come to light without any advance notice or consent. In order to better understand such trust dynamics, this paper will analyze some of the competing trust relationships of Department of Homeland Security (DHS) 'fusion centers,' with a focus on the role of these organizations in policing the Occupy Wall Street movement of 2011 and 2012.

Keywords: *Fusion Centers, Surveillance, Trust, Occupy Wall Street, Civil Liberties*

Introduction

1.1 State surveillance programs often operate in direct tension with ideals of democratic governance and accountability. The fraught history of surveillance programs in the United States, for instance, illustrates that government agencies often mobilize discourses of exceptional circumstances to engage in domestic and foreign spying operations without public awareness or oversight. As with the infamous COINTELPRO program of the 1950s through the 1970s, which targeted civil rights leaders and peace activists (Churchill and Vander Wall 2002), the NSA wiretapping scandal of the George W. Bush administration (Gilliom and Monahan 2013), or the NSA telecommunications spying programs of the Barack Obama presidency (Greenwald 2014), insiders initially justify invasive domestic surveillance operations as necessary measures to combat what are often vague, unspecified threats. While many scholars, civil society groups, and media pundits have drawn attention to the propensity of state surveillance programs to violate civil liberties, less attention has been given to the complex trust dynamics of state surveillance. On one hand, in justifying state surveillance, government representatives claim that the public should trust police and intelligence communities not to violate their rights; on the other hand, the very act of engaging in secretive surveillance operations erodes public trust in government, especially when revelations about such programs come to light without any advance notice or consent. In order to better understand such trust dynamics, this paper will analyze some of the competing trust relationships of Department of Homeland Security (DHS) 'fusion centers,' with a focus on the role of these organizations in policing the Occupy Wall Street movement of 2011 and 2012.

1.2 The primary objective of DHS fusion centers is to create spaces in which multiple government and private agencies at local, state, tribal, and federal levels share resources and information with one another to counter terrorist activity. While some were in existence as early as 1996, they took off after the 9/11 Commission Report in 2004 as an organizational mechanism intended to 'connect the dots' to prevent future terrorist attacks (Monahan 2011). As of 2015 there were 78 DHS fusion centers throughout the country, housing a range of analysts from DHS, the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA), and other government and private sector entities. Shortly after their inception, many fusion centers expanded their mission

to encompass "all-crime" and "all-hazards," and they typically assist with all kinds of law enforcement investigations, not just those pertaining to terrorist threats (McQuade 2013; Regan and Monahan 2013).

- 1.3 The law enforcement community recognizes that trust must be established and maintained between fusion centers and local law enforcement personnel, public safety agencies, the private sector, and the American public in order to maximize the sharing of information and intelligence. To this end, the U.S. Department of Justice has created an initiative called 'Building Communities of Trust' (BCOT), in which building trust between fusion centers and members of local law enforcement and the larger community is emphasized as being "crucially important to safeguarding our society from real threats posed by violent extremists" (Wasserman 2010: 7). Some of the fusion center initiatives for building trust include supporting "terrorism liaison officers" in police departments, operating tips hotlines and programs, engaging in outreach to the private sector for reporting threats to critical infrastructure, offering counterterrorism training sessions, and generally communicating that they are a "one-stop shop" for data for all police investigations (Monahan and Regan 2012).
- 1.4 To understand the ways in which fusion center personnel conceptualize the importance of trust and try to build trust with key stakeholders, we examine data from 56 semi-structured interviews with representatives from fusion centers, industry partners, and civil society groups. The interviews were conducted between 2010 and 2012, mostly by phone, with the exception of six interviews that were conducted at fusion centers sites, three at civil society organization offices, two at a private industry office, and one at a government and industry conference. To recruit participants, the authors called each fusion center to ask if a representative (e.g., director, analyst) would be willing to participate in a study regarding the current functions and information-sharing practices of fusion centers. The first round of interviews (February 2010 to March 2011) asked all participating fusion center officials to respond to a set of open-ended questions regarding information sharing practices and organizational structures, while a second round of follow-up interviews (July to December 2012) asked fusion center representatives more detailed questions regarding the collection and dissemination of suspicious activity reports, the process of designing and adhering to privacy policies, and the unique identity and history of each site. For interviews with civil society and industry representatives, participants were identified primarily from published reports on fusion centers and secondarily through a process of referral and snowball sampling. These interviewees were asked the same types of questions as those asked of fusion center representatives—about information sharing practices, organizational structures, suspicious activity reporting, privacy policies, and organizational identities. The average length for all interviews was approximately one hour. In total, thirty-six separate fusion centers are represented in our interview sample.
- 1.5 In addition to interviews, we collected, coded, and analyzed government reports, as well as emails and other documents obtained through Freedom of Information Act (FOIA) requests. These include, for instance, over one thousand pages of emails pertaining to DHS and fusion center involvement in the spying on and policing of Occupy Wall Street activists during 2011, as obtained by The Partnership for Civil Justice Fund. These documents were analyzed to compare some of the actual practices and communications of fusion centers against the oftentimes more guarded and selective data obtained through interviews.
- 1.6 This article is organized into three complementary sections. In the first section we define and outline the key dimensions of trust according to Tschannen-Moran and Hoy's (2000) comprehensive framework. We then explore the extant literature on trust in the field of surveillance studies. In the second section, we draw on data from our field study with fusion center personnel to elucidate the ways in which these officials view gaining the trust of their stakeholders as an important factor in ensuring the successful and efficient completion of key tasks, such as intelligence gathering and analysis, legitimizing the presence of fusion centers as integral to the counterterrorism efforts of the U.S. government, and ensuring the continued existence and institutionalization of fusion centers in the security landscape. In this section, we highlight how fusion center personnel stress their attempts to protect privacy, safeguard civil liberties, and engage in community education and outreach to secure the trust of public and private stakeholders. In the third section, we analyze FOIA-released government reports and emails pertaining to the Occupy Wall Street protests to illustrate the substantial challenges faced by fusion centers in engaging equally with their respective stakeholders. Overall, these data suggest that the competing interests of the multiple stakeholders served by fusion centers often hinder the efforts and good intentions of fusion center personnel in building trust with their largest stakeholder, the public.

Dimensions of Trust

- 2.1 Trust involves the 'conscious regulation of one's dependence on another' (Zand 1972: 230). Fusion centers are dependent upon key law enforcement stakeholders, as well as the general public and private companies, to gather the information necessary to their mission, while at the same time these groups are at least theoretically dependent upon fusion centers for their safety and security. In such relationships of interdependence, it is theorized that trust functions to reduce uncertainty (Luhmann 1979), where for fusion

center staff this could mean financial commitments for their operation, and for the public and private spheres, it could mean faith that terrorism and crime are being mitigated.

2.2 Recognizing the nuances of the relationships upon which trust is based, Tschannen-Moran and Hoy (2000) conceptualize an informative multidimensional definition of trust. These scholars engaged in a comprehensive multidisciplinary review of journal articles regarding trust published over a period of four decades (1960-2000), identifying the most commonly noted components of trust throughout the literature. Based on their review of the literature, Tschannen-Moran and Hoy assert that 'Trust is one party's willingness to be vulnerable to another party based on the confidence that the latter party is a) benevolent, b) reliable, c) competent, d) honest, and e) open' (p. 556). If one is deemed *benevolent*, it is assumed that the person or group has the best interests of others in mind and will not harm another individual or group's well-being. Applied to fusion centers, this could refer to fusion centers' assurance that they will not infringe upon individuals' civil liberties and will protect privacy. *Reliability* entails knowing what can be expected from others on a consistent basis (e.g., the general belief that fusion centers consistently follow official policies, such as establishing a nexus to terrorism or criminal activity prior to disseminating information that has been collected). *Competence* suggests that one party must believe that the other party is able to adequately carry out the tasks required for their position (e.g., the public's belief that fusion centers are adept at identifying potential terrorist and criminal threats). *Honesty* implies that one will act with integrity and communicate truthfully (e.g., public confidence that the activities fusion centers report they are carrying out is representative of the actions in which they are actually engaging). Finally, *openness* involves the expectation that one will not withhold relevant information from key stakeholders (e.g., the belief that fusion centers are/will be transparent about their purpose and function). Tschannen-Moran and Hoy suggest that these five dimensions of trusting relationships do not necessarily need to be present simultaneously to build relationships of trust, but rather vary based on the degree of dependence and vulnerability between parties. Because Tschannen-Moran and Hoy's conceptualization of trust is nuanced and comprehensive and draws on a wide range of literature across disciplines, we find this to be a particularly useful framework for analyzing the complex trust dynamics of state surveillance.

2.3 Trust is an underexplored concept in surveillance studies (Ellis, Harper, and Tucker 2013). Those studies that do examine the connection between surveillance and trust are most often based on surveys measuring the public's perception of surveillance systems (Chan et al. 2008; Dimock et al. 2013; Gallup 2008; YouGov 2006). Findings from these studies suggest that there is widespread public distrust of state surveillance operations. For example, in Chan and colleagues' (2008) international study of privacy and surveillance, respondents were asked: 'when it comes to the privacy of personal information, what level of trust do you have that your government is striking the right balance between national security and individual rights?' Of the 1,000 individuals who were surveyed in the U.S., only 385 (38.5%) stated that they have high levels of trust in the government to strike such a balance. Similarly, the Pew Research Center for People and the Press surveyed 1,480 individuals in July 2013 (shortly after the latest NSA spying scandal), finding that 47% of respondents believe that the U.S. government's anti-terrorism efforts have 'gone too far in restricting the average person's civil liberties' (Dimock et al. 2013: 2). Additionally, this survey found that 56% of respondents believe that the 'government keeps too much information about its anti-terrorism programs secret from the public' (Dimock et al. 2013: 10). Ellis, Harper, and Tucker (2013) conducted a qualitative study involving semi-structured interviews with 31 individuals in the UK to explore the nuances of the trust dynamics between the public and state surveillance systems. This study highlighted respondents' feelings of discomfort with the surveillance and monitoring of UK citizens by the government and an overall skepticism of the government's 'intentions, integrity and benevolence' in the collection, use, and protection of the data generated by these surveillance practices (Ellis, Harper, and Tucker 2013: para. 7.3).

2.4 Scholars in the field of surveillance studies have explored the decline in trust relationships in modern society and questioned the extent to which this decline legitimizes further surveillance activities, possibly engendering greater mistrust in a self-reinforcing and ever-tightening noose (Lyon 2001; Marx 2006; Gilliom 2001). Steven Nock (1993), for instance, posits that in a society of strangers, individuals submit to systems of scrutiny in order to demonstrate their trustworthiness—and to verify the trustworthiness of others, through identification documents, credentials, licenses, and so on. If the possibility of anonymity could be a liberating dimension of urban living in the early 20th century, the intensification of myriad interpenetrating surveillance systems has led to a 'disappearance of disappearance' in today's world (Haggerty and Ericson 2000). As William Staples (2014) and others point out, what emerges is a culture of generalized suspicion, where everyone is (potentially) suspect and treated as untrustworthy, perhaps especially if they resist surveillance efforts. This includes mistrust in institutions as well, as David Garland (1995) observes: 'institutional authorities are viewed with deep suspicion rather than trust. But then given the routine abuses of power that occur, and the clear divergences of interest between state authorities and those over whom they exercise control, most of us have a lot to be paranoid about' (p. 3). And while institutional authorities, such as video surveillance operators, recognize

that they must *perform* trustworthiness for their various 'audiences' (Neyland 2006), this also reveals a situation where, as Mark Andrejevic (2013) writes, 'We have all become intelligence analysts' (p. 3), sifting through information without shared criteria for what counts as valuable or true. In such a world, trust is an especially scarce resource that must be actively constructed on an ongoing basis, even as the conditions for its existence erode.

2.5 In this paper we build upon organizational and surveillance studies perspectives on trust to make sense of the difficulties fusion centers face when trying to build trust among competing stakeholders. Binary models of trust are insufficient to account for the complexity of relationships that must be maintained in order for legitimacy to be achieved. Ultimately, as our data show, fusion centers choose to align themselves with law enforcement communities first, private industry second, and the public last. While this may be somewhat intuitive, as it serves to maintain the status quo, it is not inevitable, especially for such nascent organizational entities struggling to define their missions and find their places within a larger law enforcement landscape. Moreover, in the case of spying upon and policing Occupy Wall Street members, emails reveal that fusion center and DHS representatives recognize the treacherous waters they are swimming in, especially should a scandal erupt about their infringement on constitutionally protected activities. Therefore, an analysis of institutional trust should always assume a multi-actor milieu, internal tensions, and conditions of vulnerability.

Building Trust in Fusion Centers

3.1 The existence, legitimacy, and function of fusion centers are mediated by complex relationships of trust between fusion centers and local and federal government agencies, private sector partners, and the general public. As noted earlier, fusion centers require the trust of these stakeholders to facilitate the intelligence gathering and analysis process, legitimize the role of fusion centers in counterterrorism efforts, and support the continued existence and institutionalization of these centers. In this section, we detail how fusion centers assert their importance and novelty and make efforts—or at least claims—to protect the privacy and civil liberties of Americans. Despite these claims, we find that many fusion center personnel are concerned that the public is mistrustful of the role and function of fusion centers and worry that this could threaten their funding and sustainability. As a result, explicit outreach efforts have been made in an attempt to assuage public skepticism and further institutionalize fusion centers.

Legitimacy and trust

3.2 Uncertainty abounds for fusion center personnel regarding stakeholders' knowledge of fusion centers and the unique role they play in the intelligence community. Our interviews revealed a nearly ubiquitous concern among fusion center personnel that some stakeholders, particularly the public, do not understand what fusion centers are or do not perceive fusion centers as an effective and necessary element of counterterrorism and crime prevention in the U.S. For example, one fusion center director expressed his concern that

There's still a vast number of not just the public, but also the law enforcement community, [that] still doesn't completely understand what a fusion center does or how it complements the law enforcement mission ... Fusion centers by nature are very young in the intelligence community world, where compared to the FBI we're toddlers and the FBI are vetted senior experts at intelligence collection and dissemination. So I think a lot of law enforcement is still looking at fusion centers, and the public [is] as well, wondering if we are a redundant piece of the intelligence community, or maybe even more simply, not knowing at all what we do or that we even existed in the first place.

3.3 Because fusion centers are so new to the intelligence community, this director suggests that these centers have not had the time necessary to become established and recognized as a unique and effective force within the national security landscape. Furthermore, he expresses concern over the perception that the work of fusion centers is redundant. Indeed, the need for fusion centers was doubted by some of our respondents who worked in partnership with fusion centers or who worked in the field of civil liberties. For example, one software developer who works with fusion centers states: 'If [a fusion center] didn't have a reason to exist until we all learned of the Al-Qaeda threat, then it probably doesn't have a reason to exist today. Right?'

3.4 Given concerns about the perceived utility of fusion centers, many fusion center directors and analysts we interviewed felt the need to explain the importance of their role in intelligence gathering, analysis, and dissemination. One fusion center director stressed the importance of fusion centers as unique in that they create a space that can consolidate information from a variety of sources and produce useful output for the intelligence community: 'You've gotta share information in order to accomplish the goal. You can't do everything yourself. These departments are too small to do it themselves. They have to reach out ... It's too large of a network to not share it.' Such information consolidation is perceived by many fusion center personnel as necessary to the process of mitigating criminal and terrorist threats. For example, one co-director of a fusion center suggested that the presence of threat was increasing, and thus, information sharing among intelligence agencies is vital to

curbing such threat: 'Crime certainly isn't going away. Threats are getting more significant. The only way to counter that is to be smart about it and share information. You know, it's gone beyond the traditional 'need to know, right to know' to as, you know, FBI has made it clear, to a mindset of 'need to share.' One supervisory intelligence officer at a fusion center noted that, given the perceived climate of threat and insecurity, fusion centers are an essential addition to the intelligence community:

It's absolutely foolish to take an approach with this new capability and this new threat as though somehow or another 1) that the FBI is all we need to deal with it in this nation, and that they can handle this singlehanded, and they don't need the help of the state and locals, because they absolutely do. And, 2) that there is no room to be patient with fusion centers as they're developing this capability.

3.5 Although this intelligence officer suggests that new forms of threat and insecurity create a need for fusion centers, he also acknowledges that due to the newness of fusion centers, it will take some time before fusion center personnel become effective members of the intelligence community. Frequent similar statements proclaiming the importance of fusion centers in the intelligence community may illustrate a sense of organizational insecurity wherein fusion center personnel feel compelled to establish the legitimacy and uniqueness of their work.

3.6 Establishing the legitimacy of fusion centers is intimately connected to trust. Without the trust of public and private groups in fusion centers, the perceived legitimacy of fusion centers may be weakened. For example, in discussing the legitimacy of their role in counterterrorism and crime prevention, fusion center personnel often assumed that the public was distrustful of the intelligence gathering and reporting practices of fusion centers. Invasive surveillance practices and spying on civilians were often cited in these conversations as problematic and incorrect public notions of fusion center activities. One division director at a fusion center stressed, 'We're not a secretive group. We're not a secret agency. You know, we are a piece of state government ... We are not a secret entity. We do not spy on U.S. citizens. That's not what we're here to do.' This statement reflects the sentiment of several fusion center officials who believe that because their role in intelligence gathering is not well understood by the public, fusion centers may be perceived as secretive organizations unjustly surveilling individuals, and thus not acting with the best intentions of the U.S. residents in mind (benevolence) or communicating their actions truthfully (honesty). Many fusion center officials maintain that they are doing important work that does not involve illegally spying on citizens or retaining unnecessary information. For example, another director of a fusion center asserts that 'the fusion centers' goal is not to spy on Americans and do all the things that the media tends to lean towards. We are looking at everyday law enforcement, public safety activity that's occurring, and trying to just be that second look, to make sure that something that's occurring one place doesn't tie into something [else].'¹ A sense of pride accompanied some fusion center officials' explanations of their work and the role of fusion centers: 'What we're doing is legitimate. It's honorable work and we're proud to be doing it ... we have to get people to understand that, and really understand what we're trying to do.' In light of many interviewees' concerns that the public is either suspicious or unaware of the mandate and activities of fusion centers, fusion centers may need to be more *open* about their purpose and function if they wish to build trust with members of the public.

Protecting privacy and civil liberties

3.7 In addition to noting what activities fusion centers do and do not engage in and the legitimacy of these activities, several fusion center officials asserted that they work hard to protect citizens' privacy and civil liberties: 'We're in compliance, complete compliance as far as our privacy policy and concern for civil rights [and] civil liberties. We have nothing to hide here.' The majority of fusion center officials we interviewed echoed this sentiment and gave detailed accounts of their efforts to protect the privacy and civil liberties of individuals residing in the U.S. For example, one analyst refutes the notion that fusion centers do not prioritize the protection of privacy and civil liberties:

Despite what some folks are saying, I think it's something that's taken very seriously. I think that they've done a significant amount of training on [privacy and civil liberties], that I think everybody's very sensitive to ... if [collected information] doesn't have an intelligence need, it gets destroyed. So yeah, I think that we're in compliance with 28 CFR [Code of Federal Regulations] Part 23 ... *We basically exist for public service, and we wouldn't want to violate the public trust, so that's obviously something that we take seriously.* [emphasis added]

3.8 Here, this analyst suggests that fusion centers should be considered as *reliable* entities because they respect the policies that protect the privacy and civil liberties of those residing in the U.S. The special agent in charge of a different fusion center does not state that all fusion centers necessarily comply with 28 CFR Part 23 - a clause of the federal Criminal Intelligence Systems Operating Policies that protects the constitutional privacy rights of individuals - but he stresses that the work of fusion centers is legitimate, as long as privacy and civil

liberties protections are always kept in check:

There's a lot of controversy and a lot of discussion taking place nationally about domestic intelligence work. And my position on that is this: Done correctly, criminal intelligence work is a legitimate law enforcement public safety function. As long as we're constantly keeping our eye on the ball here, and understanding that there has to be a criminal predicate or a nexus to terrorism before we start collecting the different information on our citizens, or those that are not necessarily citizens but living within our boundaries, what we do is legitimate ... we shouldn't be afraid to talk about what we do because it's legit.

This agent in charge recognizes that it requires constant vigilance to ensure that privacy and civil liberties are protected when engaging in intelligence gathering and reporting. He also implies that such protections are the norm and that fusion center officials should therefore be more *open* and willing to talk about the nature of their work—a key facet of trust-building.

3.9 Nonetheless, there is a perception that fusion centers are not fully trusted by the public, prompting some fusion center directors to offer a variety of explanations:

It takes times as well for a new kid on the block to gain some respect and to gain some trust of the public and I don't have a problem with that, [but] I think time will tell if fusion centers are able to become self-sustaining at some point. We have a hard road ahead of us to earn that trust from the public, but that's the pitfall, is any time we make a mistake, it gets blown up, and any time we have a success, nobody talks about it.

This director sees creating an awareness of fusion centers as central to gaining the trust of the public, which is in turn viewed as an important facet of ensuring the continued existence of fusion centers. He wishes public awareness of fusion centers was increasing 'faster, because I'm worried about the, the fiscal side of it too.' Another key element of this director's concern is that any mistakes that are made by fusion centers are amplified and further hinder the centers' abilities to garner public trust, particularly in terms of being viewed as *benevolent* or *competent* entities. Several fusion center officials shared this concern. For example, another fusion center director discussed the intense public scrutiny that fusion centers face: 'If something happens somewhere that's bad to the United States or bad to a specific location, it's 'how come we didn't know about it?' And then once that goes away, about six months later, people are saying that we're the boogeyman and we're collecting information we shouldn't be collecting. So it's a roller coaster ride.' Hence, some fusion center personnel believe that not only are they unfairly scrutinized for engaging in intelligence operations, but also for failing to *competently* protect the public from every criminal and terrorist threat that exists.

Relationships and trust building with stakeholders

3.10 Many fusion center personnel highlighted their efforts to build relationships with key stakeholders, including private enterprises and the general public. Relationships with the private sector were mentioned as an increasing priority of many fusion centers. An analyst at one fusion center describes private companies as a key stakeholder and thus, 'whenever they report something suspicious at their facility or at their company, you know, they are one of our stakeholders. We are you know, beholden to them, you know, that's how we view it.' In addition to feeling a sense of obligation to protect private companies from terrorist or criminal threats, fusion center personnel stressed the importance of building relationships of reciprocity with private entities that would facilitate bidirectional information sharing. As one fusion center commander explained:

Our plan is that everything that we see on the law enforcement side, if it can be scrubbed down to an unclassified level and if it's worthwhile to send out to private sector, we do that. Also a lot of trend type information or specific threats to that sector, whether it's transportation, whether it's nuclear, whatever ... [we have] five analysts [who] do nothing else but the private sector ... but of course, we're encouraging two-way communication, suspicious activity reporting, which is big.

A supervisory intelligence analyst at another fusion center noted that they rely heavily on private businesses to report suspicious activity, suggesting that companies are sometimes more keen to share information than local law enforcement officers because they are trying to protect their assets.

3.11 While the public was frequently noted as a key stakeholder with whom trust building is imperative, only a few fusion center officials recounted explicit efforts to build relationships with local communities. The limited data on fusion centers connecting with community members may be due, in part, to the fact that much of the work carried out by fusion center officials involves secondary analysis of information collected by agencies and personnel operating on the ground, such as local police forces (Wasserman 2010: 7). In our interviews, fusion center personnel who emphasized the importance of building relationships of trust with the public primarily discussed such relationships as important in facilitating increased reporting of suspicious activity. However, one fusion center director also emphasized building relationships with particular ethnic and cultural groups in the

community as a way of preempting terrorist threats:

About two years ago, Al-Qaeda of the Arabian Peninsula became a very big issue, and Yemen seemed to be the hub of that. And one of the concerns that we had, much like the Somali population was where are these folks at in our district, and do we know those communities, are we engaged with them that we could hopefully have enough prior engagement that we could preempt, you know, they'd be forthcoming to let us know that there was a problem with some radicalization or you know, a potential attack type situation ... These are not all terrorists, you know, 99.9% of them are really good people, but as you come across this, you should be communicating with these people, and asking these questions, and trying to garner these relationships.

3.12 Here, this director believes that terrorist cells abroad may influence the actions of individuals sharing the same ethnic or cultural background or that members of the Yemeni community may have important information regarding potential terrorist threats, rationalizing the notion that the fusion center must make a concerted effort to reach out to members of such communities. Although this official perceives engagement with the Yemeni or Somali community as central in facilitating the flow of information regarding suspicious activity, the attempts of fusion centers to build relationships with particular ethnic communities due to their assumed connection to terrorist cells abroad is highly problematic and may, in fact, impede the development of trust between the fusion center and community members. This is explicitly noted in the 'Guidance for Building Communities of Trust' report published by the U.S. Department of Justice, which states that the 'inappropriate use of race, religion, gender, and other related factors to form judgments is unacceptable but also greatly harms the credibility of fusion centers and creates a widespread perception of bias and mistrust, which can take years to restore' (Wasserman 2010: 7). As such, it is important for fusion center personnel to carefully consider the ways in which their attempts to build relationships of trust with certain community groups can be compromised by unchecked biases.

3.13 While some fusion center officials see community outreach as essential to suspicious activity reporting, many also view public outreach as essential to building a greater awareness of the purpose and function of fusion centers. One such fusion center has a comprehensive community outreach agenda that entails both formal and informal initiatives. This center seeks to train citizens in the reporting of suspicious activity while increasing public awareness of the role of fusion centers. As part of its formal outreach initiative, this fusion center contracts with a 'vetted' private company to provide half-day training sessions for citizens on crime and terrorism indicators and reporting. Additionally, this center relies on local law enforcement personnel to communicate the purpose and function of fusion centers to community members:

Our local Chiefs, our local Sheriffs, our local State Troopers, they're the ones with the connections in their communities, they're the ones that can do the outreach that's not so formalized ... they tell their friends, their neighbors, their kid's teachers, the people that work at their post office and their bank, what a fusion center does, and that level of acceptance is I think where we gain the most traction.

Here, it is evident that this official views being *open* and *honest* with the public about the role and function of fusion centers as central to building trust.

3.14 Although nearly every fusion center official we interviewed discussed the importance of building a relationship with private and public stakeholders in order to establish trust and facilitate information sharing, the competing interests of some partners seems to make this task particularly challenging. For example, in the case of the Occupy protests, to which we will turn next, the interests of private entities often outweighed those of the public in guiding the actions of fusion centers, which likely increased public mistrust of their mission and activities.

Case Study: Occupy Wall Street Protests

4.1 Building trust is a slow process whereby fusion centers must demonstrate that they are *benevolent* entities that are acting in the best interests of their stakeholders. Despite the intent and effort of many fusion center personnel to establish relationships of trust with other government agencies, the private sector, and the public, instances in which fusion centers engage in activities that contradict their stated principles and goals can prevent or severely damage such trust relationships. During the Occupy Wall Street (OWS) protests that occurred in cities throughout the nation in 2011 and 2012, evidence from email communications released from some fusion centers under Freedom of Information Act (FOIA) requests suggests that fusion center officials, along with FBI and DHS personnel, were actively monitoring the constitutionally protected activities of Occupy protestors in various cities throughout the nation.^[1]

4.2 This section draws on data from our interviews with fusion center officials and from email communications from fusion center personnel involved in monitoring Occupy events. Our data reveal an apparent disconnect between the policies and practices of fusion centers during the Occupy protests: in interviews they claim to distinguish constitutionally protected protest activity from potential threats to public safety

during protests, but internal emails tell a different story of fusion centers gathering and disseminated intelligence on individuals not involved in any form of criminal activity. Furthermore, evidence suggests that in the interests of maintaining relationships with their private partners and helping these companies protect their assets, some fusion center personnel infiltrated Occupy meeting spaces and camps to collect information on civilians engaged in the protests. Thus, it appears that the interests of private entities outweighed those of the public in determining the actions of certain fusion center personnel and that the production of intelligence on protestors and the *dissemination of this intelligence to private companies* took place despite its apparent illegality and likelihood of hampering trust-building efforts with the public.

Fusion center monitoring of Occupy protests

4.3 Under federal law, those who engage in protests are partaking in an activity protected by the First Amendment of the U.S. Constitution. In the interviews we conducted in 2012, participating fusion center officials were asked about the protection of civil liberties and privacy in relation to protest activity. In response, each of these officials very clearly articulated that protesting was a constitutionally protected activity and that such events did not warrant information gathering and intelligence production. Rather, fusion center officials generally commented that their main concern with respect to protests was ensuring that public safety was not jeopardized. Like other fusion center officials who discussed their responses to protest activity, one fusion center director related how his staff treated Occupy protests in his state:

We treat our Occupy movement strictly as the freedom and the rights of free speech, and we look at the angle of public safety and protection of life and property. So the only information that we are willing to collect on with regards to groups that are formed in a legal and lawful manner, is whether or not there's an impact to, say you know if they're going to assemble in a park, you know is there a threat to anybody else that's not part of that group? Is the group becoming violent? If it's just free speech, there's absolutely nothing we want to do with it.

Several other fusion center officials remarked that they tend to do an initial assessment of organized protests to ascertain whether there is any possibility of violent or criminal activity, and if they believe that the protests will be peaceful in nature, they do not monitor them.

4.4 However, an examination of email communications released under FOIA requests illustrates that, in fact, the Occupy protests were being carefully monitored by several fusion centers. For example, Terrorism Liaison All-Hazards Analyst, Brenda Dowhan, at the Arizona Fusion Center, also known as the Arizona Counter Terrorism Information Center (ACTIC), sent requests for information (RFIs) to other fusion centers and law enforcement agencies across the nation in order to ascertain the growth of the OWS movement throughout the country. Thirty-one fusion centers and law enforcement agencies provided information regarding OWS protests, 'significant events,' and arrests, illustrating that at least some monitoring of OWS protests was occurring, although the extent to which these 31 agencies were monitoring protestors is unclear (Hodai 2013). From the FOIA requests made by the Center for Media and Democracy (Hodai 2013), however, it is apparent that the main fusion center in Arizona, ACTIC, was actively surveilling many peaceful protestors as early as October 2, 2011. For example, a dispatch officer from the Phoenix Police Department (PPD), presumed to be Saul Ayala, was asked to infiltrate the Occupy Phoenix group (Hodai 2013). In an email communication on October 4, 2011, Sergeant Tom Van Dorn stated: 'I was contacted by Mark Schweikert and asked to send Saul to the planning meeting this past Sunday for intel gathering only at this point.' This officer was sent undercover, assuming the identity of 'Saul DeLaura,' who presented himself to Occupy Phoenix organizers as a homeless man who had formerly been involved in anarchist movements in Mexico (Hodai 2013). The information collected by 'Saul DeLaura' was sent to Sergeant Van Dorn, who would then send the information to ACTIC personnel. In addition to acquiring information on Occupy Phoenix protest organizers through an undercover agent, ACTIC allocated analyst Brenda Dowhan to actively monitor members of Occupy Phoenix and related activist organizations. The PPD supplied Dowhan with logs of information containing names of individuals who had been issued warnings, citations, or who had been arrested in relation to Occupy Phoenix events (most of which were based on violating the city's 'urban camping' ordinance), and which included personal information, such as social security numbers, physical descriptions, ID numbers, and home addresses. Dowhan was also responsible for monitoring Facebook pages and blogs, which were referred to as 'open source intelligence,' and for distributing any information she gathered to law enforcement and counterterrorism personnel via daily 'Occupy Phoenix Social Media and Events Updates.'

4.5 In addition to active surveillance of Occupy protest organizers in Arizona, documents released under a FOIA request made by the Partnership for Civil Justice Fund point to the active surveillance of Occupy protestors in Boston by the Boston Regional Intelligence Center (BRIC), a DHS-recognized fusion center (Isikoff 2013; Partnership for Civil Justice 2013). For example, a report written by a DHS official working at the Boston fusion center on September 30, 2011 stated:

Approximately 100 people are listed as attending the Take Back Boston Rally on the event's Facebook page and Occupy Boston organizers are encouraging people to attend it as well ... The BRIC has received information that approximately 700 people will participate in the Take Back Boston march, with approximately 100 people staying to camp out as part of Occupy Boston.

Although fusion centers in Arizona and Massachusetts were monitoring Occupy protests, it is unknown to what extent other fusion centers surveilled Occupy protestors. FOIA requests from DHS illustrate that some DHS officials were concerned about creating the semblance (and paper trail) of illegal surveillance. For example, the Senior Privacy Analyst for Intelligence at DHS sent out a memo to other DHS officials strongly advising them against fulfilling requests from fusion center personnel for information regarding Occupy protests:

PRIV [Privacy] and CRCL [Civil Rights and Civil Liberties] supports the position that the Occupy Wall Street-type protesters mostly are engaged [in] constitutionally protected activity. We maintain our longstanding position that DHS should not report on activities when the basis for reporting is political speech. We would also be loath to pass requests for more information on the protests along to the appropriate fusion centers without strong guidance that the vast majority of activities occurring as part of these protests is protected. To do otherwise might give the appearance that DHS is attempting to circumvent existing restrictions, policies, and laws ([Partnership for Civil Justice 2012](#): 6).

This memo expresses the privacy analyst's concern that if fusion centers were to be provided with the information they requested from DHS regarding the OWS protests, DHS may appear to be evading federal law. The privacy analyst continues to say that in exceptional circumstances, such as when the situation pertains to 'persons demonstrating illegal or suspicious behavior and attempting to use the protests to obscure their activity,' surveillance of these individuals may be warranted 'as long as there is no attempt to link the suspicious/illegal behavior to first amendment protected activity' ([Partnership for Civil Justice 2012](#): 6).

4.6 Although several released documents highlight the efforts of some DHS officials to dissuade fusion center and DHS analysts from collecting information regarding OWS protests, more recent FOIA releases from DHS and recently released documents from the FBI, an agency with which fusion centers share intelligence, show that officials in both of these federal agencies were also actively monitoring OWS protests around the country in 2011 and 2012 ([Partnership for Civil Justice 2012](#), [2013](#); [Wolf 2012](#)). For example, Mara Verheyden-Hilliard, the Executive Director of the Partnership for Civil Justice Fund, describes how released FBI documents illustrate that Occupy protestors were actively surveilled by the FBI:

FBI documents just obtained by the Partnership for Civil Justice Fund (PCJF) ... reveal that from its inception, the FBI treated the Occupy movement as a potential criminal and terrorist threat ... The PCJF has obtained heavily redacted documents showing that FBI offices and agents around the country were in high gear conducting against the movement even as early as August 2011, a month prior to the establishment of the OWS encampment in Zuccotti Park and other Occupy actions around the country ([Wolf 2012](#)).

Verheyden-Hilliard argues that the intense level of Occupy-related surveillance conducted by the FBI positioned Occupy protestors as a potential criminal and terrorist threat.

4.7 Evidence from the aforementioned FOIA releases from fusion centers in Arizona and Massachusetts, DHS, and the FBI illustrate the difficulty of making an argument as to whether fusion centers and their federal partners were wholly engaged in spying on Occupy protestors. As illustrated earlier, fusion center personnel we interviewed were careful to mention the importance of not monitoring constitutionally protected activities, such as protests. Moreover, according to documents released from DHS, we see that some authorities in this agency made statements discouraging their employees and employees of fusion centers from monitoring Occupy protests. However, other FOIA-released documents reveal that personnel in fusion centers and federal agencies were, in fact, monitoring constitutionally protected activities. These competing narratives and conflicting pieces of evidence show some of the tensions among fusion centers as disparate, highly local organizations with flexible missions and ambiguous accountability structures ([Citron and Pasquale 2011](#); [Regan and Monahan 2014](#)).

4.8 Although spying on Occupy protestors may not have been widespread throughout the country, the fact that multiple agencies actively monitored peaceful protestors is concerning, especially as it signals a retrenchment of protections put into place—in the wake of Watergate and COINTELPRO—to prevent just such abuses. In the context of this paper, breaches of privacy and civil liberties may suggest to members of the public that fusion centers are not *benevolent* entities that seek to protect the best interests of civil society.

The role of private entities in Occupy monitoring

4.9 While violations of privacy and civil liberties were a particularly troubling reality during the Occupy protests, perhaps equally disturbing was the involvement of private companies ([Wolf 2012](#); [Hodai 2013](#); [Partnership for Civil Justice 2012](#), [2013](#)). The most extensive example of how private interests were upheld at the expense of the rights of American citizens is found in the efforts of the Arizona Fusion Center (ACTIC) to monitor

planned protests of private companies and organizations, such as the CITI Bank, the Salt River Project (a public-private Arizona water utility corporation), and the American Legislative Exchange Council (which has a number of private sector members).

- 4.10** To illustrate how private interests were upheld at the expense of the public by ACTIC, we can examine the Occupy protest of the American Legislative Exchange Council (ALEC) meeting that occurred from November 28 to December 2, 2011. Following their debut public demonstration in October 2011, the largest protest action organized by Occupy Phoenix involved protesting ALEC for allowing corporations to become members of an organization of state lawmakers. The influence afforded to corporations in shaping state legislation was a point of concern for many Occupy Phoenix members, and hence, they staged a multi-day protest of the ALEC meeting. Documents released by ACTIC illustrate that fusion center officials and their local law enforcement partners gathered intelligence regarding the planned ALEC protest and shared this information with ALEC and their private affiliates. For example, an email sent by Sergeant Van Dorn to ACTIC members on October 26, 2011 reported:

Saul [the undercover agent] has stated that the Anarchists have officially posted the 'resist ALEC' on their website but they haven't discussed specifics on how to disrupt the conference [sic]. There are also two websites that might be worth the TLO's [ACTIC 'Terrorism Liaison Officers'] monitoring ... According to Saul they are supposed to be having 'resist ALEC' training this weekend in downtown Phoenix as well. Kepp you updated [sic].'

Saul's clandestine presence in the Occupy Phoenix group also facilitated the acquisition of personal information on individuals engaged in planning the Resist ALEC protests, which was then used by ACTIC's Terrorism Liaison All-Hazards Analyst, Dowhan, to create a 'face sheet' containing photographs of 24 'persons of interest to the ALEC conference.' On November 17, Dowhan emailed Intelligence Bureau Analyst, Annette Roberts, stating:

The ACTIC has identified groups that intend 'Shut ALEC Down.' While some may merely protest the event, such as Anti-SB1070 and the Occupy Phoenix movement, anarchist groups have shown a determination to disrupt and shut down the event with the use of violent tactics experienced by other states hosting these meetings. The Phoenix Police Department is taking the lead to identify and intercept persons they believe to pose a threat to the event or attendees.

Based on claims of a supposed anarchist threat, the 'face sheet' was distributed by ACTIC to public law enforcement agents as well as to security officers hired by ALEC. The presence of local law enforcement and private security contractors was high during the ALEC protests. Although the protests were non-violent, several individuals were arrested for 'trespassing' (one of whom was on the 'face sheet') or for 'crossing a police line,' and several protestors were pepper sprayed by police officers (Hodai 2013).

- 4.11** Following the ALEC protest, the Arizona Fusion Center continued to monitor the activities of Occupy Phoenix members and other activists. For example, Dowhan followed several social media sites used by Occupy activists and would suggest to her superiors that they alert their private partners (Hodai 2013). For example, on February 3, 2012, Dowhan wrote the following email:

In regards to ALEC, there was an interesting comment by Occupy Chappell [Note: it is not known who, or what, 'Occupy Chappell' is], stating: 'again, i say, collectively (nationally=occupy movement) we should buy a private sector membership into alec and hit them on the head! !BAM! =)' [link to alec.org private sector membership page] [sic]'

In closing, ACTIC Terrorism Liaison All-Hazards Analyst Dowhan wrote, 'ALEC might need to be aware that people are actually thinking about this as an option to get on the inside.' FOIA-released documents suggest that such monitoring of activists occurred well into 2012.

- 4.12** Although it is unknown to what extent other fusion centers around the country were aiding their private 'partners' through intelligence sharing, there is substantial evidence that suggests that the FBI, a main partner of fusion centers, worked closely with private companies to monitor and thwart Occupy protest efforts throughout the country. For example, as early as one month before the Occupy Wall Street protest was launched in mid-September 2011, released documents reveal that the New York FBI was meeting with representatives of the New York Stock Exchange to discuss the planned protests and that the FBI was contacting private businesses to alert them that they might be the target of upcoming OWS protests. A further example of the ways in which the FBI prioritized the interests of private partners over those of the public is illustrated through the development of 'a strategic partnership between the FBI, the Department of Homeland Security and the private sector ... to raise awareness concerning this type of criminal activity [referring to OWS activity along West Coast Ports]' (Partnership for Civil Justice 2012). Moreover, the secrecy of this collaboration with the private sector is evident from the 'handling notice' on the document stating that the information is 'meant for use primarily within the corporate security community. Such messages shall not be released in either written or oral form to the media, the general public or other personnel' (Partnership for Civil Justice 2012). Verheyden-Hilliard of the Partnership

for Civil Justice Fund suggests that the FOIA-released documents from fusion centers, DHS, and the FBI concerning their partnerships with private enterprise 'show these federal agencies functioning as a de facto intelligence arm of Wall Street and Corporate America' (Wolf 2012). This evidence suggests that the interests of private partners were upheld at the expense of protecting the privacy and civil liberties of American citizens engaged in OWS protests. The next section will highlight some of the public's reactions to the monitoring of OWS events by members of the intelligence community.

Occupy monitoring and public trust

- 4.13 While public awareness of fusion centers may not be widespread, there has been commentary from members of the public regarding the monitoring of OWS events by fusion centers and other government agencies that work in partnership with fusion centers. For example, one email from a citizen to Phoenix Police Department Commander Louis Tovar reads as follows:

Dear Sir or Madam, Please consider leaving the Occupy movement alone. They speak for me and I suspect a large portion of America who are upset with corporate greed and the ability to purchase politicians and their votes. We are going to take America back for its citizens, and it would probably be better for your careers not to get in the way.
Thanks[,] David Mullin (Hodai 2013).

Tovar forwarded the email to several PPD officials, commenting: 'Fyi ... I've had a few of these types of email. I'm sure you all have to ... fyi [sic]' (Hodai 2013). The PPD Assistant Police Chief of the Homeland Security Division, Tracy Montgomery, received the email from Tovar and forwarded it on to several personnel with following message: 'Interesting e-mail threatening our careers. Anyone know the name?' (Hodai 2013). As a result, Dowhan from the Arizona Fusion Center tracked down Mullin and acquired his personal information. Not only does Tovar's email reveal that other citizens were concerned about the monitoring of Occupy activists ('I've had a few of these types of email. I'm sure you all have to[o]'), but also that in response to these concerns, *the fusion center investigated those members of the public making the complaints* (in this case, Mullin, who was expressing concern about the unjustified monitoring of OWS activists).

- 4.14 Concern regarding fusion centers' unwarranted monitoring and targeting of activists, OWS-related and otherwise, was highlighted in our interviews with civil society representatives. One person we interviewed who was preemptively arrested (pre-OWS) during a political rally expressed his distrust of fusion centers and described how his arrest led him to find out about the existence of fusion centers. He had been surveilled by the fusion center in his state, and he questioned the motives for arresting him when he had not engaged in any sort of activity that could be considered criminal or presenting a nexus to terrorism. He reflects on this as follows:

I sit here telling myself too, when you put me in the same league as Hamas, you've got a problem. We have to differentiate the difference between dissent and danger. You know we have to discern that, that there are things that are dangerous, but there are things that are not dangerous, but necessary to a free society and we have to take these risks in order to remain a democracy.
This individual describes his fear that activists are often equated with terrorists, leading fusion centers and other government agencies to monitor and collect information on individuals who are merely engaging in lawful political dissent.

- 4.15 Additionally, members of two other civil society organizations noted their unease with the role of fusion centers in spying on and sharing 'intelligence' regarding civilians and activists who are not engaging in criminal or terrorist activity. One member of a civil liberties organization said: 'I do feel that some of those dangers [of terrorist or criminal threats] are exaggerated, and I feel concerned that the government is using it as a, as a means of getting people to, you know, just keeping them under surveillance.' A member of another civil liberties group expressed his concern, based on FOIA-obtained materials, that fusion centers are collecting information on activists and sharing it with federal agencies and local law enforcement personnel in violation of 28 CFR 23 and therefore infringing on those individuals' constitutional rights.

- 4.16 The role of fusion centers in monitoring and producing 'intelligence' on activists, particularly those affiliated with OWS, and the ways in which these centers have shared such intelligence with their private partners compromises the notion that fusion centers are acting in the best interests of the public (benevolence), adeptly identifying terrorist threats (competence), consistently following official policies that protect the privacy and civil liberties of members of the American public (reliability), and being truthful and transparent about the activities in which they are engaging (honesty and openness). Although the fusion center officials in our study purport to act in accordance with official policies, and stress the importance of doing so in order to build trust with members of the public, the evidence presented in the above case study suggests that fusion centers do not view public trust as a priority. In a climate of growing concern with government surveillance programs, fusion centers' decision to view corporations as valuable partners but concerned members of the public as threats is a form of

institutional myopia that may also undermine their long-term sustainability.

Conclusion

- 5.1 Drawing upon empirical data on DHS fusion centers, this paper has sought to illustrate some of the complexities of trust relationships with regard to state surveillance. Trust is central to maintaining the legitimacy of law enforcement entities, and violations of trust are a key reason behind criticisms of such entities. Perceived violations of trust can manifest for many different reasons—from *incompetence* (e.g., fiscal irresponsibility), to *lack of transparency* (e.g., not being open about the specific activities in which some fusion centers engage), to a perceived *lack of benevolence* (e.g., breaches of privacy and civil liberties)—but beyond the reason, there is an implied sense of affront when criticisms come to light, and this lends emotional weight to discourses about the wrongs committed by state surveillance organizations.
- 5.2 Fusion center actors seem well aware of these dangers and are generally wary of scrutiny by the media or others because of the unpredictability of how information might be interpreted or how it might look if placed in a different context than that of its origin. One response has been to erect 'zones of opacity' to shield their activities from scrutiny, for instance by circumventing freedom of information requests and by evading meaningful public oversight (Monahan and Regan 2012). A related response is to anticipate future critique and construct discourses, such as the ones quoted in this paper from interviews and official emails, where actors say the right things (e.g., that they are following the letter of the law), even if in practice that is less than clear. Such actions do not lend themselves to the perception of fusion centers as *honest* or *open* entities, which are central components of trust (Tschannen-Moran & Hoy 2000).
- 5.3 Rather than viewing these self-protective measures simply as dissimulation and evidence of insincerity on the part of fusion center personnel, it may be more productive to understand them as symptoms of institutional vulnerability and daunting challenges to represent a diverse range of stakeholders with incommensurable interests and unequal power. As the Occupy Wall Street case study shows, when the interests of corporations come in direct conflict with the objectives of activists, law enforcement agents, including those working at fusion centers, predictably move in to protect the status quo. Public trust is compromised in such a situation, but perhaps the deeper question to ask is why fusion centers are in a position to use counter-terrorism tools against peaceful protesters in the first place. With the mission drift of these entities—from counter-terrorism to all-crimes and all-hazards (Monahan 2011)—there has not been a corresponding move to increase their transparency and oversight.
- 5.4 If there were robust public oversight of fusion center activities, this would not eliminate the challenges they face in courting many different stakeholders, but it would shift some of the weight toward the public because those working in fusion centers would know, rather than simply fear, that questionable actions would be scrutinized and could lead to disciplinary actions or dissolution of their organizations. The goal should not be to decrease the institutional vulnerability of such actors, per se, but instead complement it with robust transparency and accountability mechanisms so that public trust is continuously pursued and maintained, not merely as lip-service but as a relationship backed by actions.

Notes

- 1 The emails were released under FOIA requests made by DBA Press and the Center for Media and Democracy (Hodai 2013).

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