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Intelligence Gathering and Reform: The Case of the United States

According to Gregory Treverton, US intelligence reform remains a work in progress. While reorienting the FBI and creating the National Counterterrorism Center represent progress, establishing the Department of Homeland Security and the position of Director of National Intelligence do not.

By Gregory Treverton for ISN

The twin failures – the failure to warn of the September 11, 2001 terrorist attacks and the confident assertion in the fall of 2002 that WMD (weapons of mass destruction) would be found in Iraq – touched off a process of reforming the way US intelligence collects and deals with information. That reform process remains, a decade later, very much a work in progress. For the least noticed but probably most important of the changes, the reordering of priorities at the Federal Bureau of Investigation (FBI) from law enforcement to intelligence-led prevention, the balance sheet is relatively positive. The same is true for the National Counterterrorism Center (NCTC). However, for two other main changes – the creation in 2002 of the Department of Homeland Security (DHS), bringing together some 22 separate federal agencies and creating an Office of Intelligence and Analysis, and the creation in 2004 of a Director of National Intelligence (DNI) – the record so far is much more mixed.

Reshaping the FBI

Immediately after 9/11, FBI director Robert S Mueller, who had been in the post for one week at 9/11, moved quickly to pre-empt calls to take the domestic intelligence mission away from the FBI and give it to a new agency. The 9/11 Commission's diagnosis pointed straight at the limitations imposed by the FBI's culture of case-based law enforcement, saying that FBI agents were "trained to build cases, [and] developed information in support of their own cases, not as part of a broader more strategic [intelligence] effort." If information wasn't relevant to the case at hand, it wasn't information.

Mueller sent a reorganization plan to Congress in November 2001, making the Bureau's top priority, in the words of its website, "protect the United States from terrorist attack." FBI field offices around the country had been fiefdoms, but Mueller centralized management of the Bureau's counterterrorism program on the argument that there is no such thing as a local terrorism problem. The FBI's budget more than doubled between 2001 and 2008 from \$3.1 billion to \$6.4 billion. It increased from 34 to 101 the number of joint terrorism task forces (JTTFs), which bring together FBI agents, state and local law enforcement officials, and representatives from other federal agencies to investigate terrorism cases, with Mueller promising that no tip would go unpursued.

Mueller took a number of steps to upgrade the role of intelligence in the FBI. Before 9/11, the Bureau

was divided between agents and “support” – or, as one outsider put it, “agents and furniture.” And the furniture included intelligence analysts, along with other support from clerks all the way to laboratory scientists. In May 2003, Mueller created a more independent Office of Intelligence, naming an Executive Assistant Director (EAD) of Intelligence. The next stage of reorganization, in 2005, put the beefed-up Office of Intelligence back together with Counterintelligence and Counterterrorism in the National Security Branch (NSB). The intention was to create an intelligence-driven organization, a service within a service. Later, the Bureau created an intelligence career track (one of five) for special agents as part of its general effort to upgrade the status of intelligence within the organization.

The transformation was a sea-change for an organization in which agents were attracted and rewarded for being on the street with badge and gun putting bad guys in jail.

Terrorism is a matter for both intelligence and law enforcement, and the wall that used to separate the two, including within the FBI, has been all but erased. Now, for terrorism purposes, cases are platforms for investigation. The Field Intelligence Groups (FIGs) and their intelligence analysts are becoming valued parts of FBI squads in many field offices, though they remain torn between providing very operational support to colleagues and developing the broader intelligence and threat analyses that headquarters seeks.

Once the Bureau has a tip about a possible terrorist group, the *investigative* intelligence process of surveillance is not very different from following a possible criminal group, except that there is no probable cause that a crime is imminent. The harder challenge is looking for *unknown unknowns*, potential dangerous groups we don’t know we don’t know, in former Secretary of Defense Donald Rumsfeld famous typology.³⁴ That *exploratory* intelligence means looking for patterns or connections in large data sets, a task that raises privacy concerns because virtually all of the names considered will be people who have done nothing wrong.

NCTC

The Department of Homeland Security (DHS) was supposed to “connect the dots” in assessing the terrorist threat to the nation, and it included an Office of Intelligence and Analysis. However, connecting the dots was assigned to another new creation, the Terrorist Threat Integration Center (TTIC), which became the National Counterterrorism Center (NCTC) under the 2004 Terrorism Prevention and Intelligence Reform Act, which also created the DNI. The NCTC, like the TTIC, was seconded analytic talent from the CIA, FBI, Defense Intelligence Agency and others. In effect, the NCTC became the government’s counterterrorism “campus.”

The so-called “underwear bomber,” Umar Farouk Abdulmutallab, who attempted to blow up a flight to Detroit in December 2009 marked a turning point for a center that thought it was doing well. President Obama described the near-miss as a “systemic failure.” Abdulmutallab was in the Center’s sights, but it had not connected two reports that probably would have gotten him on the “no fly list”: his father’s visit the previous month to the US embassy in Nigeria to express concern over his lost son, and a report from Yemen about radical cleric Anwar al-Awlaki’s interest in a possible Nigerian operative.

If FBI exploratory analysis deals with unknown unknowns, NCTC’s is often in a category Rumsfeld didn’t mention, *unknown knowns*, things we don’t know we, but perhaps another agency, know. In the aftermath of the case, NCTC moved to make watchlisting, a tedious and expensive task, everyone’s business, and reached out to other agencies. It created a data layer to connect foreign and domestic information, a layer with protections in the form of anonymizing information. It developed a *pursuit* approach, based on cases, not targets, to follow interesting but thin pieces of information. As a result, its watchlists became larger but generated fewer complaints over false positives – ranging from

toddlers to Senator Edward Kennedy – which had plagued the Center’s early years.

Creating the DNI

The blue-ribbon panel that investigated 9/11 stayed around Washington to lobby for its recommendation, principal among which was the creation of the Director of National Intelligence (DNI). The commission’s argument was that the absence of a person with overall responsibility for coordinating the nation’s intelligence capabilities contributed to the failures that led to 9/11. In fact, the failures had been more in coordination at the working level than of broad strategic direction, and the bare fact that 9/11 had occurred was enough to spur much better day-to-day coordination, along with the change in mission at the FBI. Nevertheless, in another blue-ribbon panel’s words, the community was “fragmented, loosely managed, and poorly coordinated.”

The 2004 act created the DNI, and the former Director of Central Intelligence (DCI) became just the CIA Director. Previously, the DCI had two hats, manager of the CIA and also coordinator of all the intelligence agencies, and the act intended to give the DNI more power, especially over budgets and personnel, than the DCI had. However, in eleventh-hour negotiations with Congress, especially the armed services committees, the sticking-point was the power of the DNI over intelligence in the Defense Department, especially the big technical collectors of data – the National Security Agency (NSA), the National Geospatial Intelligence Agency (NGA) and the National Reconnaissance Office (NRO), which account for the vast bulk of the US national intelligence budget.

In the event, the law gave the DNI a role in appointing most of the directors of other agencies, but that seems to be the last heard of such authority. The DNI develops the National Intelligence Program (NIP) – that is, the broad budgets for all sixteen national intelligence agencies. Yet given that the big collectors’ budgets are in Defense, and their directors report to the Secretary of Defense, the DNI’s increase in authority over the DCI is more apparent than real. While DNIs did acquire responsibility for the President’s Daily Brief, the crown jewel intelligence product which had been the responsibility of the CIA, the first few DNIs have been cautious in exerting their authority beyond the PDB. When the third DNI, Admiral Dennis Blair, took on Obama’s CIA director, Leon Panetta, over who would control what had been CIA stations abroad (and with the White House staff over closer intelligence relations with France), it was Blair who lost and departed in 2010, though that outcome probably had more to do with White House connections than the DNI’s authority.

DHS and “Information Sharing”

If the simple fact of 9/11 has made for better cooperation among the federal “three letter agencies,” especially the CIA and FBI, the challenge of sharing intelligence “downward” remains daunting. Some 700,000 law enforcement officers in 18,000 law enforcement agencies, as well as private sector managers of critical infrastructure, are the eyes and ears in the fight against terrorism. However, few of those officers have security clearances to see intelligence produced by federal agencies, and security procedures are designed to limit information to those with a “need to know.” Moreover, the language of “information sharing” implies that agencies “own” their information to share as they see fit. It also implies that the sharing is in one direction, from the federal agencies to state and local authorities.

The FBI JTTFs established by the FBI are a step towards better cooperation, but they are mostly in the *investigative* intelligence business, parceling out cases once identified to various law enforcement agencies. A newer DHS initiative, “fusion centers,” are meant to assemble strategic intelligence at the regional level, also bringing together federal, state and local officials, and to involve the private sector. To say they are a work in progress would be an understatement: in the words of a 2012 Senate investigation, “fusion centers forwarded ‘intelligence’ of uneven quality – oftentimes shoddy, rarely

timely...occasionally taken from already-published public sources, and more often than not unrelated to terrorism.” The criterion for the investigation was narrow – how are fusion centers contributing to the federal counterterrorism effort.

Yet the fusion centers seem destined to take different paths. Some will disappear, as federal funding wanes and the contributing local agencies decide their talent is better used at home. Virtually all will move away from a singular focus on terrorism to an “all crimes” or even an “all hazards” approach. Where terrorism is not much of a threat, they may become drivers of intelligence-led policing. In the process, DHS’s Office of Intelligence and Analysis seems unable to decide on its mission. If the first frontier in intelligence reform to cope with the terrorist threat was better cooperation among the three-letter federal agencies, the second is reaching downward to state and local authorities and the third is reaching out to the private managers of “public” infrastructure. The second and third frontiers are still not fully explored, and they perhaps raise the question, one mostly unspoken, of just how important the terrorist threat really is in the middle 2010s.

[1] The other categories were *known knowns*, what we know we know, and *known unknowns*, what we know we don’t know. The distinctions were not new with Rumsfeld but he used them in a Pentagon press briefing, December 12, 2002.

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