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Reorganizing U.S. Domestic Intelligence

Assessing the Options

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Prepared for the Department of Homeland Security



HOMELAND SECURITY PROGRAM and
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Summary

September 11 drove home all too graphically the vulnerability of the United States to terrorism. One among several critical vulnerabilities was poor tactical intelligence. The signals of the September 11 attack went unassembled, and the tocsin of specific warning did not sound. In the wake of that failure, one of the questions on the U.S. agenda in the fight against terrorism is whether the country needs a dedicated domestic intelligence agency separate from law enforcement, on the model of many comparable democracies.

To examine this issue, Congress directed that the Department of Homeland Security Office of Intelligence and Analysis perform “an independent study on the feasibility of creating a counter terrorism intelligence agency” (U.S. House of Representatives, 2006, p. 122). We were not asked to make a recommendation, and this assessment does not do so. Instead, it carefully lays out the relevant considerations for and the pros and cons of creating such an agency.

Concerns and Possible Responses

If America’s counterterrorism-focused domestic intelligence, broadly conceived, is found wanting—and how to do better while preserving civil liberties is the policy challenge—changing organizations is one approach. But it is only one. Organizational approaches should be considered against a broader range of policy approaches—including spending more money, changing laws, and improving leadership or the means for sharing information. Our charge did not include detailed

assessments of the performance of any U.S. agency. Instead, we consider whether reorganization could be expected to achieve significant improvements with regard to the concerns commonly expressed about the current U.S. arrangements for domestic intelligence, concerns which may or may not be valid in light of ongoing reforms in domestic intelligence undertaken since September 11.

Table S.1 lays out several concerns expressed about domestic intelligence in the United States—based on interviews, a panel of experts, and a review of literature—and, in the right-hand column, possible solutions, including reorganization, that would be relevant to that concern.

To take one example, if the FBI is dominated by a law enforcement and case-based approach, then creating a new intelligence organization would indeed be one possible solution. But, as Table S.1 indicates, a number of other approaches could also be relevant. Increasing

Table S.1
Expressed Concerns and Possible Responses

Expressed Concern	Possible Responses
If the FBI is dominated by a law enforcement and case-based approach; and if, as a result, collection is dominated by case requirements and analysis is dominated by operational support then increase resources, change organization, change culture, change laws, change regulations or orders, and/or improve leadership.
If the FBI, CIA, and other agencies do not talk to each other then change organization, change culture, change laws, change regulations or orders, enhance collaboration, and/or improve leadership.
If too much poor-quality information is collected, and collection efforts are too uncoordinated then change regulations or orders, enhance collaboration, and/or improve leadership.
If analysis is fragmented and sometimes conflicting; and if the National Counterterrorism Center (NCTC), which acts as a central clearinghouse, mostly provides information to the President rather than to other intelligence organizations then change organization, change regulations or orders, enhance collaboration, and/or improve leadership.
If it is difficult to move information and analysis across the domestic intelligence enterprise then increase resources, change regulations or orders, enhance collaboration, and/or improve leadership.

resources might be necessary but not sufficient, since organizations tend to respond to more money by doing more of what they were already doing. In any event, the FBI's budget more than doubled between 2001 and 2008, from \$3.1 billion to \$6.4 billion.

Less dramatic organizational change could also be relevant. The Bureau created the National Security Branch to emphasize prevention and intelligence, particularly in the counterterrorism mission. That was part of an effort to transform culture in a number of ways, from recentralizing the management of terrorism cases, to training, to instituting a five-year "up or out" cap on supervisors to breed new leaders. Rapid growth means that more than half of FBI agents now have served for less than five years, presumably having joined an organization they did not perceive as dominated by traditional law enforcement. Changed laws, such as the PATRIOT Act, made it easier to collect counterterrorism intelligence, especially of the more exploratory sort, and changed regulations had the same effect, including dismantling the wall between intelligence and law enforcement.

Organizational Choices, Pros and Cons

Turning to the organizational dimension, "create a new domestic intelligence agency" can mean quite different things. This analysis focuses on the two most straightforward alternatives to the status quo, under which the FBI is charged with both domestic intelligence and law enforcement. The first alternative is to assemble parts of existing agencies to create a separate agency, one with a relationship to the Department of Justice similar to the one that the FBI already has. The second alternative is to create an "agency within an agency" in the FBI (or perhaps DHS).

If it remained at the FBI, the agency-within-an-agency would involve less short-term disruption than creating a stand-alone agency. How much it differed from what is being created in the FBI National Security Branch would be driven by decisions about how autonomous it should be in pursuing its intelligence mission. *Who* was recruited

and *how* they were trained and rewarded would be matters of great consequence.

Because most public-sector organizations lack a handy bottom line, clarity in mission is critical, and that clarity provides a reason for thinking about a separate domestic intelligence agency. High-performing agencies begin with missions that are clear and clearly supported by Congress. For instance, the Social Security Administration's mission is to get checks and information to people who need them. By contrast, the Forest Service mission is split, to preserve public lands *and* produce resources from them.

Before its recent transformation, the FBI had a mission divided between law enforcement and intelligence. The question is whether a transformed FBI whose mission was intelligence-driven prevention would in fact have the clarity of a single mission. While law enforcement is a tool in prevention and can aid intelligence—if, for instance, the threat of prosecution helps recruit informants—the two remain quite different disciplines. The question is whether a transformed FBI whose mission was intelligence-driven prevention would in fact have the clarity of a single mission. Our assessment of other countries' domestic intelligence services suggested the value of a single focus, one that can foster what might be called a "culture of prevention" with respect to terrorism. Perhaps the single greatest teething pain of DHS—which brought together 180,000 employees from 22 existing agencies—has been that the constituent agencies did not share a single mission.

The other advantage of a separate service suggested by the review of other countries is that the new service might be able to draw on a wider, more diverse recruitment pool. The foreign services we reviewed feel that they are more able to attract individuals who would not normally be interested in entering a law enforcement profession, such as linguists, historians, social scientists, psychologists, economists and country/regional experts.

Yet the history of organizational design, and reorganization, in the public sector is cautionary in that it shows the process to be one of political competition among interests and interest groups. This helps explain why reorganizations in government so often seem to fail. If a new domestic intelligence service were created in "normal"

circumstances—that is, not in the wake of another major attack—the result would be a political compromise and an agency that would likely not reflect exactly what any participant in the process sought.

The devil would be in the details, which would themselves be the result of compromises in the political arena. For instance, if the authorizing legislation were written in very specific terms, that would tie the hands of future officials in the organization—or insulate them from future pressures, depending on one’s view of the outcome. The more independence a new agency had, the more autonomy it would have in shaping and sustaining its mission. If the new agency were located in some departmental hierarchy, it would surely matter which one: Being in the Department of Justice would make it part of an established organization dominated by law enforcement, whereas a location in DHS would subject it to the pressures of a work in progress, one now influenced by several forces, not the least of which are border control and crisis management.

Similarly, how many political appointees the agency had and whether they were appointed for fixed terms would also matter. The FBI is a very closed professional service, one dominated by its agents, with only a single political appointee—the director—and that appointee has a fixed, ten-year term. Until recently, lateral movements into the Bureau’s senior managerial ranks were rare, and even now they are driven by needs for technical or management expertise, not politics. These considerations would all be important for a new agency, as would the height and width of the agency’s hierarchy, the agency’s latitude in selecting and training the professionals that would compose it, and a host of other details.

An Approach for Considering the Uncertain Costs and Benefits of Organizational Change

Some costs of a new agency, such as the basic organizational costs, are relatively tangible. As a benchmark, the portion of the FBI budget allocated to prevent terrorism and promote the nation’s security, which includes both counterterrorism and counterintelligence activities,

is \$3.8 billion. In principle, if the entire National Security Branch, along with other government elements, were simply transferred to a new agency, the additional cost to the nation could be relatively small. There would still be, however, the costs of buildings and infrastructure (new data systems, new personnel systems and training, etc). Moreover, past experience suggests that while moving entire agencies is messy enough, attempts to move only parts are likely to be especially so. In this case, for instance, if the FBI-led Joint Terrorism Task Forces were transferred to a new agency, the FBI would have to duplicate the infrastructure, both physical and human, for reaching out to state and local authorities for law enforcement purposes. An “agency-within-an agency” likely would be cheaper, especially if it were built out of the National Security Branch. Yet it would still need new offices and infrastructure (new personnel systems, training facilities, and the like).

Other costs are more elusive—particularly the potential costs to privacy or civil liberties. On one hand, separating intelligence collection from law enforcement—that is, from the ability to act on that intelligence—could make a new service more acceptable to the public. Splitting the power to arrest and prosecute from intelligence efforts might be seen as safeguarding civil liberties. On the other hand, bounding intelligence by the pursuit of a specific criminal prosecution—the traditional law enforcement model as opposed to current FBI constraints—reduces the chance that individuals and groups will be watched long after they should have been dismissed as threats.

As that example illustrates, not only are data for judging performance in short supply and uncertainties large, many of the critical issues turn on values. In these circumstances, we applied a framework called “break-even analysis.” This approach offers insight into how good a domestic intelligence agency would have to be, given a presumed level of threat and estimates of cost, to warrant creating it. It lets different people apply their own assessments and their own values.

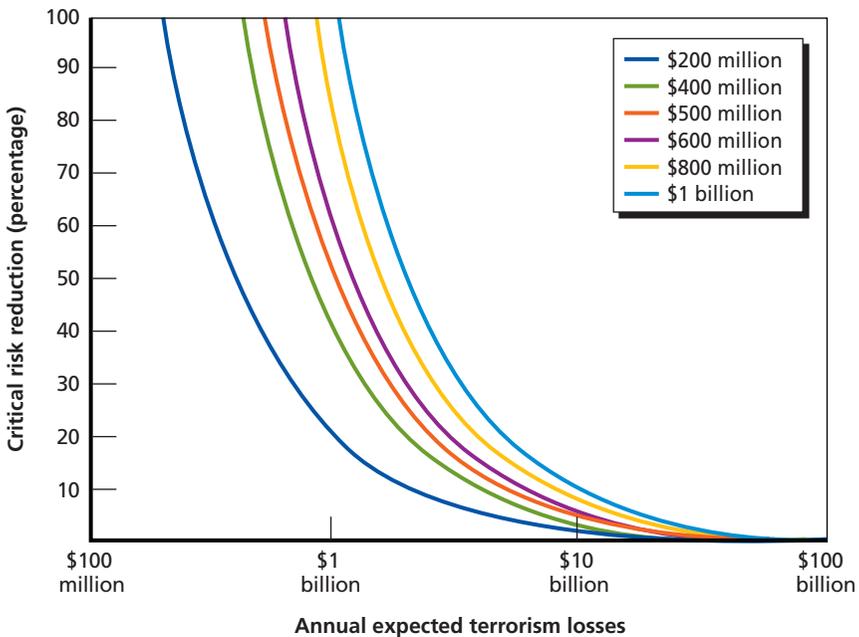
Framing the risk of terrorist attacks in this approach is done in terms of the expected dollar cost of terrorism. As a starting point, estimates of the total cost of the September 11 terrorist attacks would suggest annual losses in the range of \$1 billion to \$10 billion—this is an average over time, with losses in any given year ranging from zero to

much higher. We chose a wider range of average annual losses, from \$100 million to \$100 billion.

Figure S.1 maps the amount of threat reduction that a new arrangement for domestic intelligence would have to produce to justify creating it—to “break even”—given different costs and different assumptions about the level of risk the nation faces. For instance, if total domestic intelligence agency costs were estimated at \$500 million annually, as shown in Figure S.1, then to break even the new service would have to reduce the nation’s risk of terrorism by 50 percent if the annual risk were assumed to be \$1 billion level, whereas it would only have to reduce the terrorism risk by 5 percent if that risk is assumed to be \$10 billion.

What this analysis shows is that the choice turns on what level of terrorism risk is assessed or assumed, topics on which experts and

Figure S.1
Costs, Risks, and Risk Reduction for New Domestic Intelligence Arrangements



policymakers differ considerably. For instance, assuming expected annual losses from terrorism of \$100 billion per year, even a modestly effective agency can be justified at relatively high absolute cost. In principle, effects on privacy and civil liberties should be determined by the *mission and rules* governing collection, storage, and sharing of information, not on the *design* of the organization doing the collecting and storing. Yet it seems reasonable to assume that creating a new agency would imply that the nation sought more, and perhaps more intrusively collected, domestic intelligence. Otherwise, why do it? As a result, these intangible costs should be considered in any decision on structuring a domestic intelligence agency.

The results presented here are more a framework for policy debate than an answer to a specific policy question. The break-even framework presented here requires addressing the full range of costs and benefits of a policy choice in a common way. If people debating intelligence policy and the desirability of creating a new domestic intelligence agency disagree, this framework provides a systematic way to identify why they disagree. Do they differ on the terrorist risk, on the likely effectiveness of a reorganized domestic intelligence effort, or on how to protect civil liberties? Recognizing and addressing source of difference will, we hope, lead to a more productive debate than a simple fight over final conclusions.

The underlying message of this report is one of caution and deliberation. In an area in which metrics for direct assessment are limited and questions of values loom large, it is critical to consider carefully the implications and potential outcomes of significant policy changes. That is all the more so in this case, when creating a new organization or sharply reorganizing an existing one would have reverberations on existing efforts across a web of institutions and people at many levels inside and outside government.