

4. Intelligence

James Lewis

The 9/11 attacks propelled intelligence reform to center stage in American politics. September 11 was an immense failure for U.S. intelligence, prompting Congress and the executive branch to respond with initiatives that promise reinvention and, perhaps, revitalization.

The centerpiece of reform is the reorganization mandated by the Intelligence Reform and Terrorist Prevention Act of 2004 (IRTPA). IRTPA was the culmination of a series of proposals to reform U.S. intelligence that began with the Boren/McCurdy initiative of 1992. The common elements of these proposals were the need to strengthen the director of central intelligence and to adjust U.S. intelligence efforts to meet new kinds of threats. Between 1990 and 2001, there were many proposals for reform, but little progress.

September 11 provided the impetus to move ahead. The 9/11 Commission's epic 2004 report seared the CIA for its failures and put intelligence sharing and a coordinating authority at the center of its recommendations for change. Congress wrote these two recommendations into IRTPA. The new law was also shaped to a surprising degree by ideas from business management. Its reforms are not sui generis, but part of a larger trend to modernize the federal government by adopting business practices. The concepts of information sharing and an enterprise architecture (restructuring a corporation to unify the efforts of its business units) for the intelligence community undergird the reform effort. The intelligence community in the United States is composed of many competing organizations; IRTPA's overarching goal is to meld these organizations into an integrated intelligence enterprise with a common mission and a powerful CEO.

Critics point out that, in the final regard, faced with opposition from the White House and the Department of Defense, Congress introduced ambiguous language and potentially crippling compromises into the legislation. Though the new director of national intelligence (DNI) is more powerful than the director of central intelligence, the DNI continues to share authority over intelligence activities with the secretary of defense, the attorney general, and the director of the FBI. Nor has the DNI's staff (in many ways an expanded version of the old and often ineffective Community Management Staff) yet gelled into a powerful coordinating body.

The new superstructure for intelligence faces many challenges. Chief among them is ensuring that information needed to prevent another catastrophic attack is collected and shared. In this, there has been some progress. Even before Congress passed IRTPA, the FBI and CIA (the most important of the counterterrorism agencies) began doing a much better job of working together in the war against terror. The new National Counterterrorism Center created by IRTPA has improved coordination and analysis on terrorist intelligence. Though the larger effort at information sharing among intelligence agencies has lost momentum, there has been progress in this important area. Aggressive global action by the reenergized and refocused FBI and CIA is the primary reason there has, so far, been no repetition of 9/11 in the United States, despite unremitting efforts by determined enemies—a success that is largely independent of IRTPA's reforms.

Much remains to be improved. First, the intelligence community's analytical capabilities are still uneven. The report of the commission on U.S. intelligence capabilities and Iraq's weapons of mass destruction (WMD) highlighted systemic problems in analysis. The community operates in a herd-like fashion. A previous set of intelligence reforms, reacting to the groupthink that distorted intelligence in the Vietnam War, tried to build in options for dissent, but an analyst who resists the herd's conclusions still does so at his or her own peril. Another problem involves deceit. Saddam tricked the United States and others. His regime might have lasted longer if he had cooperated with the UN, but he chose to bluster and lie. Analysts, swayed by Iraq's long involvement with WMD, did not question his deceptions. There is no simple cure for this kind of mistake, and our opponents are increasing their efforts to deceive and dissimulate. Finally, the experience with Iraq and WMD showed that when the United States does not like a country, it taints analysis. No scenario is too improbable if biases and dislike can lead analysts to abjure the necessary skepticism that must always be applied to intelligence.

It is comforting to imagine that the misreading of Iraq and WMD was the result of partisan distortion. Washington appreciates this kind of morality play, as it is easy to plot a happy ending. Keeping politicians and their staff out of analysis is always a good idea, but it is not enough. Problems like herd behavior, deceit, and dislike contaminate analysis. These problems are difficult to fix, particularly if we pretend they are not there. IRTPA's organizational reforms do not address analytical weaknesses. The interim solution to the problem of weak analytical capabilities in the intelligence community has been to rely, to a startling degree, on analytical services provided by private contractors.

There are also serious problems with the collection of intelligence. As with analysis, these problems pre-date 9/11, but the attack gave a greater sense of urgency to improving both technical and human collection. The organizational reforms of IRTPA do not address many of these collection problems, perhaps on the assumption that the more powerful DNI and more integrated intelligence community created by the act will make the needed repairs.

Public discussion of intelligence reform has paid less attention to technical collection, but this is where the United States spends the bulk of its money and gets the bulk of its classified information. Reforming technical collection is an immediate priority for the DNI. The United States has spent hundreds of billions of dollars since the 1950s to build massive technical collection systems—chiefly for “sigint” (signals intelligence) and for imagery collected from space. The United States designed this collection architecture for large, static, conventional military opponents, and it worked reasonably well against them. These collection systems are less effective against nimble opponents who blend easily into civilian populations, but that is only one problem. Technological change has eroded collection capabilities. The United States' opponents are now much more aware of technical collection and routinely seek to evade it, often with success. None of these problems are irremediable (particularly for sigint), but progress will require approaches that blend intelligence disciplines and adopt new technologies for collection.

Conventional wisdom suggests that the solution to the declining value of technical collection is to increase our capability for “humint” (human intelligence or intelligence collected by the classic techniques of espionage). Humint reached its nadir in the 1990s. Stations were closed, the clandestine service shrank, and the number of U.S. spies reached a historic low. Direct support to

military operations was emphasized at the expense of other missions. Worse yet, a culture of timidity and legalism seeped into clandestine work. Well-intentioned guidelines on agent recruitment, for example, were interpreted to mean that the CIA could no longer enlist individuals with questionable backgrounds. Unfortunately, it is often these individuals who are willing to become agents and have access to needed information. George Tenet, director of central intelligence from 1997 to 2004, did much to reverse these damaging trends, but rebuilding the clandestine service remains a national priority.

Some in Congress argue that the United States should change intelligence budget priorities to spend less on technical collection and more on espionage. Instead of satellites, they argue, the nation needs more of its citizens to become spies, wearing keffiyahs and sneaking into Osama's tent to hear the big plan. The premise—strengthening humint—has merit, but the prescription Congress draws from it is wrong.

Throwing money only goes so far in rebuilding espionage capabilities. Spying needs professionals. To be professional, spies need experience, and that experience cannot be bought. It must be gained through apprenticeship and practice. There is also a limit to how many spies a country can usefully deploy. The number of U.S. agents fell far too low in the 1990s, but above a certain number, spies compete with each other for the best sources. They trip over their counterparts from other agencies, or put third-rate informants on the payroll to show they are doing their job. There are only so many potential foreign agents available for recruitment, and adding more case officers or more money will not change this. Some of these problems may lessen if the new National Clandestine Service, created to manage all humint activities overseas, proves to be effective.

The environment for clandestine work is also more challenging. The United States has greatly strengthened international cooperation with foreign intelligence agencies to meet the jihadi threat, building on relationships that pre-date 9/11. However, the international context for U.S. intelligence activities has become decidedly unfavorable in the last five years. The European Parliament investigates and condemns CIA operations. Italy has gone so far as to arrest its own chief of military intelligence for cooperating with the United States and issued warrants for 21 Americans it believes were involved in the capture of a terrorist living in Milan. The unremitting hostility U.S. intelligence agencies face from broad sections of the European political spectrum affects both operational capabilities and the larger U.S. diplomatic effort, and the reputation of U.S. intelligence in many parts of the world where we must operate and find cooperation is worse than it has ever been.

The problems with analysis, collection, and coordination are significant and will preoccupy the DNI and the White House for years to come, but the chief dilemma for reform lies in the conduct of domestic intelligence. The increased importance of domestic intelligence in the fight against terrorism raises many thorny questions. Effective counterterrorism must avoid the cumbersome handoffs between foreign intelligence and domestic law enforcement that crippled our initial responses to al Qaeda. Terrorism transcends national boundaries. Terrorists operate in the United States. For this reason, the line between foreign and domestic intelligence that we have long recognized in our laws and policies no longer makes sense. But the line's purpose was to protect civil liberties; if it is gone, what protections will take its place? None of the significant reform

efforts to date addresses those questions. IRTPA simply sidestepped the issue. Passage of the Homeland Security Act provided no answers either; no one believes that the new Department of Homeland Security, given its many weaknesses, should be in any way responsible for leading domestic intelligence.

Domestic intelligence is an uncomfortable problem. Americans do not like domestic spying, and a long series of unhappy experiences—the Red Scare of 1919, McCarthyism, COINTELPRO, and Watergate—shows that there is good reason for this dislike. The legal structure that shapes U.S. domestic intelligence activities grew out of Watergate-era concerns over a White House that used intelligence and law enforcement assets for domestic political ends. Now, however, this legal structure is fracturing under the pressure of Islamic terrorism.

The president's decision to use the National Security Agency (NSA) to conduct surveillance on domestic telephone calls, without the blessing of the Foreign Intelligence Surveillance Act (FISA) Court created by 1970s reforms, highlights fundamental problems that failing to address the issue have caused. The administration found that the authorities for domestic communications surveillance and oversight were inadequate to its needs. Its solution was to assert that the president's constitutional authority allowed him to engage in domestic surveillance without approval of the FISA Court. Congress, in its oversight role, was either acquiescent or supine. The result has been controversy and uncertainty.

In the debate leading to IRTPA, there was some discussion of creating a U.S. equivalent of MI5 (the UK service for domestic intelligence), but the idea did not advance very far. Establishing a new agency charged with domestic surveillance would have created serious risks to civil liberties, and aligning its authorities with constitutional protections would have been an arduous task.

Expanding the FBI's role in domestic intelligence avoids the many dilemmas concerning oversight, court authorization, and the relationship between intelligence gathering and police powers that a new domestic intelligence agency would face. It also avoids the upheaval that creating yet another major new agency would cause. The administration took a step toward strengthening the FBI's domestic intelligence effort in 2005 when, using existing authorities and resources, it directed the FBI to merge its intelligence, counterterrorism, and counterintelligence divisions into a new National Security Branch (NSB). However, some doubt the FBI's ability or enthusiasm for this task, and it is unclear whether restructuring the FBI alone is sufficient for effective counterterrorism.

That the president thought it necessary to take these actions with the NSA and FBI suggests that IRTPA's reforms are irrelevant to or inadequate for the most pressing task the intelligence community faces—preventing another 9/11. Finding a way to confront terrorists, who may be citizens and who operate with equal ease inside and outside the United States, without damaging civil liberties will require a long and thorny examination of whether and how to change the daunting thicket of laws that surround intelligence. IRTPA's unspoken hope was that reorganization and information sharing would provide enough improvement to obviate the need for a difficult debate on how to conduct intelligence in a world where foreign and domestic are

no longer meaningful distinctions. If the war on terror drags on for a generation, as some predict, this debate will be unavoidable.

Discomfort and tension between an open and legalistic democracy and the practice of intelligence is inevitable. This discomfort helped to drive intelligence reform in the 1970s, and it still resonates in the public debate. However, the threat today is immediate and direct, as 9/11 made clear. Further reform is still essential. An intelligence apparatus designed to operate against other government bureaucracies is ill-suited for the inchoate and globally diffuse opponents we face today. Globalization increases our opponents' capabilities and shortens the time available to detect, warn, and prevent. Reorganization is not reform, although it can provide the means and opportunity for change. Our metric for success must be improved performance by the intelligence services, including the FBI. IRTPA and the work of the DNI and his staff are only the start of a complex process for improvement. While we may find this process difficult to complete, success in intelligence reform will make the difference between surviving the war on terrorism and winning it.