DOMESTIC INTELLIGENCE AND NATIONAL SECURITY REFORM PROPOSALS

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In the post-September 11th era, a variety of measures have been advocated to improve domestic counterterrorism intelligence. These efforts are due to the restricted and haphazard procedures for interagency information sharing in the United States preceding the terrorist strikes. A majority of the criticism focused upon the procedures within the Federal Bureau of Investigation (hereinafter, FBI), and some called for the establishment of a new domestic security service that would focus on prevention, rather than simply investigating terrorist acts once they occur.

The supporters of creating a domestic intelligence agency (hereinafter DIA) draw parallels between its proposed structure and the United Kingdom’s Security Service. The Security Service, better known as MI-5 (hereinafter, MI-5) is an intelligence agency staffed by civilians whose responsibility is simply domestic intelligence. MI-5 personnel cannot initiate law enforcement activities or cases and cannot arrest or detain law enforcement suspects. Critics of the concept claim that it would add needless complexity to the system, slow down rather than promote information flows among agencies, and threaten civil liberties.

Ultimately, the Bush Administration chose instead to press reforms within the FBI and new bureaucratic arrangements within other parts of the federal government, which purport to provide the country with a more robust, comprehensive, and rationalized structure for the analysis and dissemination of terrorism information. Steps have been taken to overhaul the intelligence function of the FBI, including
and act on the importance of separating the intelligence collection function from the law enforcement function, providing information to those agencies that have the authority to take action.

Another advocate for DIA is Senator John Edwards. Senator Edwards proposed legislation that would create such an agency, entitled the “Homeland Intelligence Agency (HIA),” in February 2003, in the Foreign Intelligence Collection Improvement Act (hereinafter, FICIA). The thrust of the FICIA is removing intelligence functions from FBI and placing them in a new HIA. 13

Senator Edwards’s HIA would focus on information gathering, not law enforcement, so it could better perform the job of tracking terrorist operatives in this country and coordinating intelligence with local law enforcement and other federal agencies. 14 “As long as the end game at FBI continues to be law enforcement – opening investigations, arresting suspects, and putting them in jail – FBI will never be able to do successfully what a true intelligence agency must do: collect the right information, fit it into a bigger picture, provide it to analysts and policymakers, and help design a range of appropriate solutions.” 15

HIA would be established as part of the Department of Homeland Security (DHS) and its responsibilities would be the collection of foreign intelligence inside the United States, analyzing that intelligence, and then disseminating the information to all appropriate Federal, state and local officials. Senator Edwards stressed that the DHS without the aid of a new agency and the Terrorist Threat Integration Center (TTIC) will not be able to accomplish the domestic intelligence task. Specifically, Senator Edwards believes the TTIC’s mission is too specialized because it is focused on intelligence analysis, whereas HIA would incorporate collection as well. 16 See Appendix A for a graphic depiction of Senator Edwards’s model.

The FICIA states the mission of the HIA is to support the Director of Central Intelligence in discharging the responsibilities of the Director as the head of the intelligence community by serving as the entity within the U.S. government solely responsible for the collection and analysis of foreign intelligence and counterintelligence inside the
United States. Like the Central Intelligence Agency (CIA), the HIA would have no police, subpoena, or law enforcement powers. Additionally, the head of the organization, the Director of Homeland Intelligence (“DHI”), would provide for prompt and efficient dissemination to the other elements of the intelligence community, agencies of the United States government as the President may designate, and the entities of State and local governments performing first responder and law enforcement roles in connection with terrorist activity.

MI-5 and Senator Edwards’s proposed HIA share similar characteristics. In 1909 the United Kingdom established the Secret Service Bureau, which would later become MI-5, to conduct counter subversion operations against Germany and the Soviet Union. The office operated under the direction of the government until 1989 when its functions became statutory within the Security Services Act of 1989 (SSA). The SSA described MI-5’s mission as the “protection of national security and, in particular, its protection against threat from espionage, terrorism, and sabotage, from the activities of foreign powers, and from actions intended to overthrow or undermine parliamentary democracy by political, industrial, or violent means.”

This act was amended in 1996 to respond to the end of the Cold War and the Irish Republican Army temporary cease-fire and address the growing domestic criminal threat. The amended act extended MI-5’s authority to include supporting law enforcement but MI-5 could not act as an “independent law enforcement agency.” MI-5’s directors are also required to report to Britain’s home secretary, the country’s chief law enforcement official, and its operation is also subject to the oversight of a Parliamentary intelligence and security committee.

Although there are important parallels regarding function, oversight, and jurisdiction between the proposed HIA and MI-5, there are also very important distinctions. First, there is a clear difference in the British form of democratic governance, a unitary parliamentary democracy, versus the U.S. presidential/congressional system with a strong tradition of federalism. As a result of the primacy of the Cabinet and the Parliament, the British executive has fewer constraints in policy development and implementation than has the U.S.

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<th>Summary of the Foreign Intelligence Collection Improvement Act Of 2003 (S.410)</th>
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<td><strong>Issue</strong></td>
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<td>Functional Transfers</td>
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<td>State and local connectivity</td>
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President. Additionally, the U.S. has a formal, written constitution securing rights for individuals, while the U.K. does not. Within the US, the end result of statutory interpretation rests with the Supreme Court deciding the constitutionality of U.S. laws, including those involving governmental intrusion into the lives of its citizens in the name of security and domestic intelligence. The U.K.’s Parliament has final authority.\footnote{27}

Many critics view HIA as way for the government to spy on its own citizens and are concerned with the implications for civil liberties.\footnote{28} In Gregory F. Treverton’s, “Terrorism, Intelligence, and Law Enforcement: Learning the Right Lessons,” the author says it is important to screen a proposed security measure through to determine whether or not it will fix the current problem.\footnote{29} The questions being, is there too much pain for very little gain in the areas of citizen convenience and personal privacy and what are the costs, specifically, to civil liberties?\footnote{30}

Despite the UK’s established system for the prevention of government abuses, MI-5 has experienced a checkered past concerning the protection of civil liberties. MI-5 conducted intrusive investigations of political activist groups such as National Union of Mineworkers and the Campaign for Nuclear Disarmament based on their opposing political views to administration policies.\footnote{31} In the case of the mineworker’s party, MI-5 actually targeted the group’s leaders and conducted a counter-subversion operation which consisted of false accusations of embezzlement and corruption.\footnote{32} MI-5 abuses, if replicated within the US may be too much “pain” for the US to bear on its democratic shoulders. In a decision of the Supreme Court of Israel, President Barak stated, “This is the destiny of democracy, as not all means are acceptable to it and not all practices employed by its enemies are open before it.”\footnote{33}

Operational failures are also an issue when examining the cost-benefit analysis of a separately placed DIA. In 1995, police sources claimed MI-5 ignored “coded warnings” about an Irish Republican Army bomb received an hour before the actual detonation. Two people were killed and 100 were injured. MI-5 also possessed information regarding the October 2002 terrorist attacks in Bali but did not issue a warning and twenty-four British nationals were killed in the Bali bombing. In January of 2003, the Chief Inspectorate of Constabulary wrote a report expressing concern over organizational tensions (between the police and MI-5) surrounding chief jurisdiction of certain joint operations.\footnote{34}

The problems of information sharing inadequacies are already present within the current framework of the US government as evidenced by the jurisdictional dispute over national security information between FBI and Central Intelligence Agency (CIA). If the UK has a DIA already in place and is still experiencing similar problems that the US is without one, Treverton’s notion of “little gain” is an important factor to consider.

A further approach to the intelligence dilemma is to create an agency called the domestic intelligence service (DIS) but incorporate it into an already existing entity: CIA. This is the suggestion of former CIA Director, John Deutch, who testified before the 9/11 Commission on October 14th, 2003.\footnote{35}

At the 9/11 Commission hearing, Mr. Deutch expressed concern over the fact that the Director of Central Intelligence (hereinafter DCI) “has little executive authority” over intelligence programs they, themselves, are responsible for. Executive authority for the DCI exists only over CIA. However, FBI and the Defense Department conduct intelligence activities without the DCI having proper authority in key decision making. Mr. Deutch defined “executive authority” as a combination of two functions: budget/resource allocation and the everyday management of operations. He stressed that although this executive authority exists for foreign intelligence collection, there is a substantial amount of domestic intelligence CIA should be controlling.\footnote{36}

Mr. Deutch urged the Commission to understand his most important change would be to give the DCI executive authority for domestic intelligence collection where U.S. persons are concerned. He called it a “Domestic Intelligence Service” and said it would report to and be responsible to the DCI in the same fashion as the current structure of CIA.\footnote{37} See Appendix B for a graphic depiction of John Deutch’s model.
John Deutch’s model for DIA also shifts the balance of authority between the DCI and the Secretary of Defense. There are three main intelligence initiatives for the US: the national foreign intelligence program (which the DCI controls), the joint military intelligence program, and the tactical intelligence program. The DCI does not have operational control over two out of the three listed programs because they exist within the Department of Defense. Some of the most important divisions within the Department of Defense that the DCI doesn’t have authority over are the National Security Agency, the National Imagery and Mapping Agency, the Defense Intelligence Agency, and the National Reconnaissance Office. To fix this dilemma, John Deutch would have the Secretary of Defense would retain control over the “day-to-day” management of the agencies whereas resource allocation authority would be vested in the DCI. 38

CIA is a foreign intelligence collection and analysis agency. Deutch’s proposal merges domestic and foreign responsibilities under one umbrella. Regarding inconsistent goals, FBI was not alone in its failure to protect America. CIA’s function of gathering and analyzing foreign intelligence clearly included facts and events surrounding September 11th which were never properly relayed to FBI. In June of 2001, members of CIA met with FBI officials from the New York Field Office working on the USS Cole bombing in Yemen. CIA knew two men attending a meeting in Malaysia with a suspect in the USS Cole case were now in the US and refused to release that information. The two men, Khalid al-Mihdhar and Nawaf al-Hazmi were hijackers involved with the September 11th terrorist plots.39 What indication is there CIA’s domestic arm would be any more effective at releasing vital information than its parent agency was with vital foreign intelligence?

Former Deputy Secretary of Defense, John J. Hamre, testified before the National Commission on Terrorist Attacks upon the United States that a division should be created within FBI to handle counter terrorism intelligence work.40 And although it would be under FBI its everyday management would fall under the responsibility of the DCI subject to approval and direction of the Attorney General. This would keep domestic intelligence responsibility at the same place it is now, within the Justice Department.41 See Appendix C for a graphic depiction of John Hamre’s model.

Several initiatives are already underway by Federal, and many state and local entities attempting to address the needs of domestic intelligence and information sharing.

The Terrorist Threat Integration Center (TTIC) is under the direction of the Director of Central Intelligence and started operations on May 1, 2003. The center analyzes terrorist-related information collected domestically as well as internationally to form a comprehensive “threat picture.” It is centralized so that information from all sources is shared, integrated, and analyzed. The TTIC is staffed by members of CIA, FBI, DHS, the Department of Defense, and other federal agencies. A senior U.S. government official heads the agency and reports to the Director of Central Intelligence. The operational advantage is the TTIC combines the efforts of FBI’s Counter Terrorism Division, the DCI’s Counter Terrorism Center, and places them in one facility.42

Many major metropolitan centers have Joint Terrorism Task Force Centers. (JTTF). JTTF divisions consist of FBI, state, and local authorities. Before September 11th, there were only 33 JTTF offices around the country and now there are 66.43 There is also a JTTF information sharing initiative that was piloted in St. Louis, Missouri between the FBI, Illinois State Police, St. Louis Metropolitan Police Department, and other law enforcement entities.44 This initiative combines investigative records of federal, state, and local entities within a single database. The data base gives the actual text of investigative records and allows the cross-referencing of names, addresses, phone numbers, scars, marks, and other criteria. Each agency that enters data will be able to access it through four levels of security access.45

Domestic Intelligence is an idea many government officials hope will prove to be a permanent solution to our nation’s security needs. The difference in opinion arises, however, in where to place this DIA and how to structure it. There are several frameworks being proposed. As discussed above, Senator Edwards believes that a DIA should exist under the DHS. John Deutch wants to transfer the Department of Defense to the CIA and establish a domestic arm of the CIA. And John Hamre believes the most efficient response will be to enhance
Various local and statewide initiatives are listed and described in the table below:

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<tr>
<th>Name</th>
<th>Lead Agency</th>
<th>Participants</th>
<th>Type and Purpose</th>
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<tr>
<td>Statewide Anti-Terrorism Unified Response Network (SATURN)</td>
<td>Massachusetts Executive Office of Public Safety</td>
<td>Massachusetts; Massachusetts state and local agencies; federal entities.</td>
<td>SATURN was developed to collaborate the efforts of combating terrorism by unifying and improving response from public, fire, emergency, management, and police officials from communities across the state as well as key community, leaders, state agencies, and federal entities. This network’s goals are to educate about, prepare for, respond to, and prevent acts of terrorism.</td>
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<tr>
<td>Regional Domestic Security Task Force (RDSTF)</td>
<td>Florida (Florida Department of Law Enforcement)</td>
<td>Various Florida state agencies</td>
<td>Established in each of the seven state operational regions. The task force is composed of subcommittees including Health/Medical, Emergency Medical Management, Law Enforcement, Fire Services, and Public Affairs. The RDSTF works to improve Florida’s ability to detect and prevent terrorist threats by collecting and disseminating intelligence information, promoting security audits and vulnerability assessments, and the protection of critical infrastructure.</td>
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<tr>
<td>CATIC</td>
<td>California Department of Justice</td>
<td>Federal, state, and local law enforcement</td>
<td>This is the state’s clearinghouse for all terrorist-related activities and investigations. It collects, analyzes, and disseminates info to its 100,000 law enforcement officers, other law enforcement agencies, and, FBI. DIA is working to connect it with the NYPD’s division of counter terrorism.</td>
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### Initiatives and Efforts to Share More Information, continued

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<tr>
<td>Los Angeles County Sheriff’s Department: Office of Homeland Security</td>
<td>Los Angeles County Sheriff’s Department</td>
<td>Local law enforcement, state, county, and federal agencies</td>
<td>This was established to enhance the department’s response to potential threats on local homeland security. The department works in conjunction with other federal, state, county, and local agencies with the similar mission. The Terrorism Early Warning Group was created as a subdivision of the Sheriff’s Department in 1996. This group shared information and focused efforts between federal, state, and local entities to enhance Los Angeles County’s ability to respond to acts and threats of terrorism.</td>
</tr>
<tr>
<td>New York Metropolitan Counter-Terrorism Committee</td>
<td>New York City law enforcement agencies</td>
<td>Various local, state, and federal law enforcement agencies</td>
<td>The committee comprises FBI, the NY State Office of Public Security, and the NYPD. The committee shares intelligence and assists with joint training exercises. It has five subcommittees. One of those subcommittees is Intelligence and Investigations which is working to create a data base of all interactions with suspicious individuals by metropolitan law enforcement agencies.</td>
</tr>
<tr>
<td>Maritime Domain Awareness (MDA)</td>
<td>U.S. Coast Guard</td>
<td></td>
<td>Works to assess vulnerabilities, threats, and targets of interest on the water. MDA is the comprehensive information, intelligence, and knowledge of all entities within America’s waterways that could affect our safety, security, economy, and environment.</td>
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### Appendix: A

**A Domestic Intelligence Agency**

Based on Senator John Edward’s Model for a Homeland Intelligence Agency

**United States Intelligence Community**

- Central Intelligence Agency
- Federal Bureau of Investigation
- National Security Agency
- Department of Defense
- State Department
- Department of Homeland Security
- Homeland Intelligence Agency
- Director of National Intelligence
- HIA Office of Inspector General
- HIA Office of Privacy and Civil Liberties Protection
- Domestic Intelligence Agents and Staff
- Judiciary


Required judicial approval before the most secretive and invasive investigations of religious and political groups.
Appendix B
A Domestic Intelligence Agency
Based on Former CIA Director John M. Deutch’s Model of a Domestic Intelligence Service


Appendix C
A Domestic Intelligence Agency
Based on the Testimony of Dr. John J. Hamre’s Recommendations for Improved Domestic Intelligence Collection Analysis

ENDNOTES


4 See Feikert and http://www.mi5.gov.uk


7 See Fifth Annual Report, p. 30.
8 See Fifth Annual Report, p. 31.
10 See Fifth Annual Report, p. 31
11 See Fifth Annual Report, p. 31
12 See Fifth Annual Report, p. 31.
17 See Foreign Intelligence Collection Improvement Act of 2003, S.410, §112(a)(1),(4).
18 See FICIA at (a)(2)(c)
19 See FICIA at (a)(2)(c)
22 See http://www.mi5.gov.uk.
23 See Domestic Intelligence in the United Kingdom.
24 See Domestic Intelligence in the United Kingdom.
25 See Domestic Intelligence in the United Kingdom.
27 See Domestic Intelligence in the United Kingdom.
33 Public Committee Against Torture in Israel v. The State of Israel, 1999. 53(4) Israeli Supreme Court Reporter 817-848.
40 See Sixth Public Hearing of the National Commission on Terrorist Attacks Upon the United States, December 8, 2003.
42 See United States General Accounting Office, GAO-03-760.
44 See United States General Accounting Office, GAO-03-760.
45 See United States General Accounting Office, GAO-03-760.
46 See United States General Accounting Office, GAO-03-760.