



## **Reforming Law Enforcement, Counterterrorism, and Intelligence Collection in the United States**

### ***Staff Statement No. 12***

Members of the Commission, with your help, your staff has developed initial findings to present to the public on the FBI's current capacity to detect and prevent terrorist attacks upon the United States. These findings may help frame some of the issues for this hearing and inform the development of your judgments and recommendations.

This report reflects the results of work so far. We remain ready to revise our understanding as our work continues. This staff statement represents the collective effort of a number of members of our staff. Peter Rundlet, Christine Healey, Caroline Barnes, Lance Cole, and Michael Jacobson did most of the work reflected in this statement.

We were fortunate in being able to build upon strong investigative work done by the Congressional Joint Inquiry and by the Department of Justice's Office of the Inspector General. We have obtained excellent cooperation from the FBI and the Department of Justice, both in Washington and in six FBI field offices across the United States.

It is important for us to emphasize that during the course of our investigation we met outstanding FBI and Department of Justice employees—including analysts, agents, translators, and surveillance specialists, among others—who strive daily to overcome great obstacles for little recognition in order to safeguard our country. Their dedication, effort, and sacrifice are remarkable.

On September 4, 2001, Robert Mueller became the Director of the FBI. Soon after the attacks, Director Mueller began to announce and to implement an ambitious series of reforms aimed at, in his words, "transforming the Bureau into an intelligence agency." The FBI's leadership has set in motion an impressive number of potentially significant reforms. We believe the FBI is a stronger counterterrorism agency than it was before 9/11.

Most of the proposed reforms are a work in progress. Institutional change takes time. In field visits last summer and fall, two years after 9/11, we found there was a gap between the announced reforms at FBI headquarters and the reality in the field. There may have been additional progress since then.

We divide our discussion of these reforms and the FBI's current capacity to detect and prevent terrorist attacks in the United States into the following four broad areas, tracking the critiques in

Staff Statement No. 9: management priorities and strategy; intelligence collection and processing; strategic analysis; and knowledge management.

### **Management Priorities and Strategy**

After 9/11, the FBI abandoned its former opaque structure of “tiered” priorities in favor of a short, clear list of priorities. It made “protecting the United States from terrorist attack” the number one priority. It downgraded the priority attached to once sacrosanct parts of the Bureau’s mission, including general crimes and narcotics enforcement, which are being left more to state and local agencies or the Drug Enforcement Administration.

FBI leadership also moved quickly to centralize the management of the counterterrorism program. This centralization represents a shift away from the pre-9/11 “Office of Origin” model in which the field office that initiated a case maintained control over it. All significant international terrorism cases and operations are directed from FBI headquarters. Director Mueller explained that “counterterrorism has national and international dimensions that transcend field office territorial borders and require centralized coordination to ensure that the individual pieces of an investigation can be assembled into a coherent picture.”

Director Mueller has also endeavored to transform the reactive, law enforcement culture of the FBI. In the course of announcing reforms in May 2002, Director Mueller said, “What we need to do better is be predictive. We have to be proactive.”

Along with these changes, the FBI has received large increases in funding since 2001. Appropriations to the FBI’s National Security program have nearly doubled between September 11 and today. The FBI reports that the number of counterterrorism agents has increased from about 1350 on 9/11 to nearly 2400 today. It has also increased the number of analysts and language translators supporting the counterterrorism mission. The FBI has also created a number of specialized counterterrorism units at its headquarters. These include a unit to analyze electronic and telephone communications, a unit to exploit intelligence gleaned from documents or computers seized overseas by intelligence agencies, a surge capacity to augment local field investigative capabilities with specialized personnel, and a section to focus on the financial aspects of terrorism investigations.

Because of Director Mueller’s efforts, there is widespread understanding that counterterrorism is the FBI’s number one priority. However, many agents in the field were offended by the Director’s statements that the FBI needs a new, proactive culture. Some agents who had worked counterterrorism cases before 9/11 felt prevention had always been part of their mission. We also found resistance to running counterterrorism cases out of FBI headquarters. Many field agents felt the supervisory agents in the Counterterrorism Division at headquarters lacked the necessary experience in counterterrorism to guide their work. In addition, because the organizational chart for the Counterterrorism Division has changed many times since 9/11, some field office personnel told us that they no longer have any idea who is their primary point of contact at headquarters.

The expertise of agents, analysts, linguists, and surveillance personnel contribute to effective counterterrorism operations. However, FBI personnel continue to be pulled away from counterterrorism to assist on criminal investigations. At present, the FBI attempts to address field office reassignments and disruptions primarily through its inspection process.

Director Mueller believes that, while counterterrorism is the number one priority, all agents should have training and experience in traditional criminal matters. The Director expects to implement by October a special agent career track that requires new agents to start at a small FBI office and be exposed to each of the FBI's four program areas for their first three years. The programs are counterterrorism/counterintelligence; cyber; criminal investigative; and intelligence. Thereafter, agents will be transferred to one of the largest field offices with a primary assignment in an area of specialization. The FBI will also require agents who seek to be promoted to Assistant Special Agent in Charge or Section Chief to have an intelligence officer certification.

### **Intelligence Collection and Processing**

The FBI is widely regarded as one of the best post-event investigative agencies in the world. Many outside experts spoke to us about the FBI's incredible forensic abilities, as illustrated by the Lockerbie case, which enable agents to piece together evidence of a crime. The question after 9/11 has been whether the FBI can also collect intelligence that will lead to the prevention of attacks.

Director Mueller's articulation of priorities has reached the field. FBI personnel consistently told us the current policy is that no counterterrorism lead will go unaddressed, no matter how minor or far-fetched. They also told us that there should be no backlog on translations for international terrorism cases.

Many agents in the field told us that there is a new aggressiveness in pursuing international terrorism cases and a new push for agents to recruit more sources and assets. Agents are no longer required to open parallel intelligence and criminal cases for each terrorism investigation. The "wall" is down. All international terrorism cases are now treated simply as counterterrorism investigations.

The USA PATRIOT Act, passed by Congress approximately six weeks after 9/11, provided additional investigative tools and has lowered or removed legal hurdles that were widely believed to have hindered the FBI's intelligence investigations. The Attorney General Guidelines, which set forth the standards and parameters of the FBI's investigative authority, have also been changed by Attorney General John Ashcroft. These Guidelines now allow for greater flexibility in employing investigative methods, such as permitting agents to attend public events and to search the Internet, including publicly available subscription services, before opening an investigation. These legal and policy changes have prompted significant public debate about the appropriate balance of civil liberties, privacy, and security. Many of these issues were addressed during the Commission's hearing last December.

Nearly all FBI personnel we interviewed praised these legal and policy changes. When pressed to describe which of the new authorities are most helpful to them and how they employ them, however, there was much less certainty. In fact, there appears to be widespread confusion—even among DOJ and FBI personnel—over what the PATRIOT Act actually allows. Although the FBI has revamped and increased its training programs, the FBI’s General Counsel recently conceded that much more training and guidance must be provided to personnel in the field.

Many agents in the field told us that although there is now less hesitancy in seeking approval for electronic surveillance under the Foreign Intelligence Surveillance Act (or FISA), the application process nonetheless continues to be long and slow. Requests for such approvals are overwhelming the ability of the system to process them and to conduct the surveillance. The Department of Justice and FBI are attempting to address bottlenecks in the process.

To develop a collection strategy, FBI headquarters has recently undertaken an Intelligence Capabilities Survey of field office intelligence collection derived from all sources. This survey is an appropriate first step in an effort to obtain a comprehensive view of the FBI’s capability to collect intelligence against its investigative priorities and to identify the critical gaps in collection.

Recruitment of sources has increased, but agents recognize more sources are needed. Michael Rolince, who at the time was Acting Assistant Director of the Washington field office, told us that although the FBI knows “ten times” more now about the radical Islamic community in his territory than it did before 9/11, its knowledge is at about 20 on a scale of 1 to 100. A supervisor of an international terrorism squad told us the FBI has not adequately reached out to the communities in which it should be developing sources. He believes that while agents are complying with the FBI’s policy that they investigate any lead that comes in, other systematic collection work is left undone. There have not been many instances in which the FBI has been able to recruit an asset to go abroad with specific collection requirements. Despite the widespread view that assets and informants are the best source of intelligence on where potential terrorists are and what they are doing, many agents complained to us that the training they received on how to recruit, validate, and maintain assets was inadequate.

Another ongoing problem is the shortage of qualified language specialists to translate the intercepts. While highest priority cases are supposed to be translated within 24 hours, the FBI cannot translate all it collects. According to a recent report by the Department of Justice Inspector General, “the FBI shortages of linguists have resulted in thousands of hours of audiotapes and pages of written material not being reviewed or translated in a timely manner.” The choice is between foregoing access to potentially relevant conversations and obtaining such conversations that remain untranslated. Despite the recent hire of 653 new linguists, demand exceeds supply. Shortages of translators in languages such as Arabic, Urdu, Farsi, and Pashto remain a barrier to the FBI’s understanding of the terrorist threat.

In addition, language specialists suffer from not being part of an integrated intelligence program. During our field visits, language specialists told us that their summaries and translations are usually not disseminated broadly, not uploaded into a searchable database, and not systematically analyzed for intelligence value. The individual case agent has the responsibility for determining

whether the information should be disseminated and to whom. Several language specialists expressed concern that neither the case agents nor the analysts coordinate with them sufficiently. As a result, the language specialists often lack the proper context to understand the significance of otherwise innocuous references they hear or read. Moreover, we have learned that if a language specialist mishandles a translation, there are few checks to catch the error.

Finally, at every office we visited, we heard that there were not enough surveillance personnel to cover the requests to conduct live physical surveillance of identified terrorist suspects. Like the language specialists, surveillance personnel are not treated as part of an integrated intelligence program. In most cases, their logs are not searchable electronically and they do not meet regularly with case agents to learn about the targets and the broader investigation.

### **Strategic Analysis**

In response to widely recognized shortcomings, an Analysis Branch was created in the Counterterrorism Division soon after 9/11 with the mission of producing strategic assessments of the terrorist threat to the United States. The College of Analytical Studies also was created at the FBI's Quantico training facility to improve the quality of training for new analysts.

On January 30, 2003, Director Mueller announced what FBI leadership has described as the "centerpiece" of its effort to improve intelligence analysis: the establishment of the Executive Assistant Director for Intelligence. Mueller stated that "the directed and purposeful collection and analysis of intelligence has not previously been a primary mission focus of the FBI." The position was created to provide one official with direct authority and responsibility for the FBI's national intelligence program. The many responsibilities assigned to the new Executive Assistant Director fall into four general areas: intelligence collection, analysis, dissemination, and intelligence program management.

In April 2003, Director Mueller appointed Maureen Baginski, a former executive of the National Security Agency, to this new position. Under Baginski, the FBI has embarked on a series of proposals designed to integrate intelligence into the FBI's operations. She has directed that each field office create a centralized intelligence component called the Field Intelligence Group. FBI leadership is also striving to professionalize and elevate the status of analysts.

Agents and analysts in the field had heard of these changes. But many were still confused by the pace and number of changes and are uncertain about their titles and roles. We question whether the new intelligence program has enough staff and resources to serve as an engine of reform. It is too early to judge whether the Field Intelligence Groups will develop into the centralized intelligence components they are intended to become.

We are concerned whether the qualifications, status, and role of most analysts in the field have changed in practice. In the past, analysts were often promoted from secretarial and administrative positions, and they too often served as "catch-all" support personnel.

We spoke with analysts who were discouraged by the pace of reform. Indeed, we heard from many analysts who complain that they are able to do little actual analysis because they continue

to be assigned menial tasks, including covering the phones at the reception desk and emptying the office trash bins. As a consequence, many of the agents have very low expectations about the type of assistance they can get from analysts. Furthermore, there appears to be no process for evaluating and reassigning unqualified analysts. To retain analysts, the FBI will have to provide them with opportunities comparable to those offered by other intelligence agencies.

The FBI reports that its Counterterrorism Analysis Branch at headquarters has produced more than 70 strategic assessments. The demand for tactical analysis and executive-level briefings, however, has made it difficult for senior managers to focus their resources sufficiently on strategic analysis.

## **Knowledge Management**

The terrorist attacks of September 11 revealed significant deficiencies in the FBI's information sharing capabilities and processes—both with respect to sharing information internally with FBI components, as well as externally with intelligence and law enforcement partners at the federal, state, and local levels. While progress has been made in addressing these deficiencies, problems remain.

### *Information Sharing within the FBI*

Although there are many explanations for the failure to share information internally, one of the most common is the FBI's outdated information technology, the Automated Case Support system in particular. It employs 1980s-era technology that is by all accounts user-unfriendly. More troubling, the system cannot be used to store or transmit top secret or sensitive compartmented information.

For a variety of reasons, significant information collected by the FBI never gets uploaded into the Automated Case Support system, or it gets uploaded long after it is learned. One of the reasons for this is the traditional approach to cases, in which information is treated as "owned" by the case agent and maintained in a paper case file. One official told us that headquarters personnel visiting the field have been amazed at the information they found in the paper files.

Agent after agent told us that the primary way information gets shared is through personal relationships. There does not appear to be any recognition that this system fails in the absence of good personal relationships.

Some steps to address these ongoing problems have been taken. The attempt to centralize control over the field offices has been made, in part, to ensure that all of the counterterrorism information collected is brought together in one place and disseminated. These steps, driven in part by the Director's responsibility since 9/11 to brief the President daily on terrorist threats, have helped get information from the field to headquarters.

However, improvements have been slow. Many current officials told us that the FBI still does not know what information is in its files. Furthermore, the Department of Justice's Inspector

General reported in December 2003 that the FBI had not established adequate policies and procedures for sharing intelligence.

The FBI has had a longstanding plan to upgrade its information technology systems. The FBI has upgraded desktop terminals, established new networks, and consolidated databases. However, the replacement of the antiquated Automated Case Support system has been delayed once again. The Director recently told us that the new Virtual Case File system, which is supposed to enhance internal FBI information sharing, should be ready by the end of the year.

### *Information Sharing with the Intelligence Community*

As we described yesterday, while top-level officials had frequent contacts and exchanges of information, the overall performance of the FBI and other intelligence community agencies in sharing information was troubled. A tradition of protecting information in order to preserve it for trial, concerns about compromising sources and methods, the absence of a reports officer function, and the lack of sophisticated information technology systems have all contributed to the FBI's reputation of being what one former NSC official called an information "black hole."

In July 2002, the FBI created the new National Joint Terrorism Task Force at headquarters to "enhance communication, coordination and cooperation between federal, state and local government agencies." At present, this headquarters task force consists of 38 government agencies. Similarly, the FBI has increased the number of Joint Terrorism Task Forces (JTTFs) in the field from 35 before 9/11 to 84 today, with more than 1,500 outside representatives participating on a full-time basis. Although the JTTFs vary in size and focus from office to office, they are designed to be "force multipliers," pooling the expertise from many agencies to assist in the collection and sharing of intelligence related to counterterrorism.

The FBI has also begun to hire and train reports officers. Reports officers glean intelligence from case files, briefing notes and elsewhere; summarize the information; and format it for dissemination to the intelligence and law enforcement communities. Although filling these new positions has gone slowly—indeed none of the field offices we visited had permanent reports officers in place at the time of our visits—the program is now underway.

The passage of the USA PATRIOT Act also has facilitated greater information sharing. The Act provides for the sharing of intelligence information obtained under FISA with FBI criminal agents and Department of Justice prosecutors. The Act also requires the expeditious disclosure of foreign intelligence information acquired during the course of a criminal investigation to the Director of Central Intelligence.

Despite all of these efforts, it is clear that gaps in intelligence sharing still exist. Michael Rolince, the acting Assistant Director of the Office of Intelligence, put it more bluntly: we are kidding ourselves if we think that there is seamless integration among all of the agencies. Former Acting FBI Director Thomas Pickard told us that the most difficult thing about information sharing is trying to figure out what information will actually be important to someone else. John Brennan, the Director of the Terrorist Threat Integration Center, told us that he is seeing a "cacophony of activities" within the Intelligence Community but no strategy and

planning. Coordination and collaboration are insufficient, he told us. A fundamental strategy for joint work, for integration, is key. This is a problem neither the FBI nor the CIA nor any other agency can solve on its own. We found there is no national strategy for sharing information to counter terrorism.

In the field, JTTF members cannot easily obtain needed information from intelligence agencies. They are expected to go through FBI and CIA headquarters. For example, the process of obtaining name traces from the Intelligence Community is slow and unsatisfactory.

Compounding the problem of inadequate coordination at the field level is the lack of access by field agents to information systems that operate at the top secret level or above. Very few field agents or analysts have access to Intelink, a worldwide web of information classified at the top secret level. Such terminals have to be maintained in Sensitive Compartmented Information Facilities and such spaces in FBI field offices are extremely limited. To get access to such systems, for instance, many agents and analysts on the New York JTTF have to leave their building, cross the street and enter a separate building. They must then go to the secure room, which is barely large enough to accommodate a few people comfortably. Keep in mind that before 9/11, the New York office was the key FBI office working on international terrorism.

Basic connectivity is still a problem for some FBI field offices. The then-acting Director of the Washington field office told us last August that he still could not e-mail anyone at the Department of Justice from his desk. He said that the Washington field office, which is the second largest field office in the country, still has only one Internet terminal on each floor.

### *Information Sharing with State and Local Law Enforcement*

The FBI also needs to be able to coordinate effectively with the hundreds of thousands of state and local law enforcement officers around the country to prevent terrorist attacks. In recognition of the need to work better with state and local law enforcement, Director Mueller announced the creation of the Office of Law Enforcement Coordination in December 2001. The FBI also sends an unclassified weekly Intelligence Bulletin to over 17,000 law enforcement agencies in the United States. The FBI has granted clearances to many police chiefs and other law enforcement officials to increase information sharing.

We spoke with several state and local law enforcement officials who told us that the FBI is doing a much better job sharing *threat*-related information. However, the Inspector General for the Department of Justice found that the reports “varied as to content and usefulness.”

We heard complaints that the FBI still needs to share much more operational, *case*-related information. The NYPD’s Deputy Commissioner for Counterterrorism, Michael Sheehan, speculated that one of the reasons for deficiencies in this information sharing may be that the FBI does not always recognize what information might be important to others. For example, if a source mentions something about New York City to an FBI agent in Seattle, this information could be relevant for the NYPD and should be shared immediately. Los Angeles Police Department officials complained to us that they receive watered-down reports from the FBI. They said FBI agents have been told for years that their careers would be at stake if they improperly shared information. In their view, despite recent progress this attitude will take a



long time to change. We have been told that the FBI plans to move toward a “write to release” approach that would allow for more immediate and broader dissemination of intelligence on an unclassified basis.

Central to the effort to coordinate with state and local officials is the expansion of the JTTFs that now exist in every field office. Indeed, Larry Mefford, the FBI’s former Executive Assistant Director for Counterterrorism and Counterintelligence, called the JTTF structure “the foundation of the Bureau’s information sharing efforts.” All of the outside representatives on the JTTFs have top secret security clearances, just as all FBI agents do, and they may pass along certain information to their home agencies on a cleared and need-to-know basis.

We found, however, that the role of agency representatives varies from office to office. Information sharing is often ad hoc and depends upon the personalities involved. Although the representatives bring additional personnel to the FBI, the JTTF structure has not produced the full cooperation between the FBI and state and local law enforcement.

Most outside representatives on these task forces have an understanding of terrorism that is limited to the cases they are working on. Thus, they can not reasonably be expected to be the conduit for all threat and case information that may be important to their home agency.

One state counterterrorism official told us only a very small percentage of state and local police officers serve on the JTTFs and that “important information obtained from these national investigations does not reach the officers responsible for patrolling the cities, towns, highways, villages, and neighborhoods of our country.” We heard this concern from other state and local counterterrorism officials. As a result, several state and local law enforcement agencies have begun to develop their own counterterrorism efforts, separate and apart from the FBI.

### **Looking Ahead**

Two-and-a-half years after 9/11, it is clear that the FBI is an institution in transition. We recognize Director Mueller’s genuine attempts to transform the FBI into an agency with the capacity to prevent terrorism. He has made progress. Important structural challenges remain to be addressed in order to improve the flow of information and to enhance the FBI’s counterterrorism effectiveness. These challenges include:

- The relationship between headquarters and field offices;
- The relationship between the FBI, the JTTFs, and state and local law enforcement;
- The place of the FBI in the overall Intelligence Community; and
- The respective roles of the FBI, the new Department of Homeland Security, and the Terrorist Threat Integration Center.