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The 9/11 Commission and a National Counterterrorism Center: Issues and Options for Congress

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Summary

The National Commission on Terrorist Attacks Upon the United States (hereafter 9/11 Commission) issued its *Final Report* in July 2004. As one of its 41 recommendations, the 9/11 Commission recommended the creation of a National Counterterrorism Center (NCTC). As proposed by the Commission, an NCTC would have two primary functions — intelligence and joint operational planning. The Director of an NCTC would be appointed by the President with the advice and consent of the Senate, and would report to the Commission's proposed new National Intelligence Director. On August 27, 2004, the President signed an Executive Order establishing the NCTC. Legislatively, a draft *9/11 National Security Protection Act* has also proposed codifying an NCTC.

The Commission's recommendation would use the existing Terrorist Threat Integration Center (TTIC) as the foundation for an NCTC, a concept incorporated in both the Executive Order and in a draft legislative proposal. The TTIC's primary mission is to fuse, analyze and disseminate terrorism threat intelligence across the U.S. Government. Prior to the publication of the *Final Report*, the Intelligence Community was moving to collocate the TTIC with elements of the FBI's Counterterrorism Division, and components of the Central Intelligence Agency's Counterterrorism Center. Although the TTIC itself does not have any operational role, the functions and roles of the as yet un-named new entity, while devoid of a statutory basis, may be approaching the Commission's NCTC concept.

This report, which will be updated, examines a number of issues as Congress considers codification of an NCTC. One issue is whether the centralization remedy the Commission has recommended fits the problems associated specifically with the 9/11 intelligence failure and, perhaps more broadly, the systemic maladies affecting the Intelligence Community. While some say centralization is a remedy for lack of intelligence coordination, particularly across the foreign/domestic divide, others say it may have an unintended effect of creating a "Groupthink" bias, or an inclination of groups working under pressure to bolster information which supports the group's perceived conclusion, while discounting contradictory information. Some believe that the success of the Goldwater-Nichols DoD Reorganization Act of 1986 in improving inter-service relationships and in breaking down the individual military services' "stovepipe" problems makes it a valid model for Intelligence Community reform. Others note that Goldwater-Nichols applied to one cabinet department sharing the specialized military culture and with the military's unique mission of war-fighting. They argue that this does not necessarily make it a good model for a broad range of separate civilian and military agencies trying to improve analysis and operation. There may be no ideal model for Intelligence Community reform. The "joint operational planning" role recommended for an NCTC may be worthy of debate, as it is open to interpretation. There are at least four options for congressional consideration: (1) NCTC with intelligence and operational planning duties, (2) NCTC restricted to an intelligence role, (3) NCTC restricted to an operational planning role, and (4) status quo plus — viewing the newly forming collocated entity as a pilot program for a potential NCTC.

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The 9/11 Commission and a National Counterterrorism Center: Issues and Options for Congress

Background

In July 2004, the National Commission on Terrorist Attacks Upon the United States (hereafter, the 9/11 Commission) published its *Final Report* after holding 19 hearings, taking public testimony from 160 witnesses, and reviewing over 2.5 million pages of documents. Pursuant to Public Law 107-306, the report has been provided to the President and Congress, and active congressional consideration of these recommendations is ongoing. As one of its 41 recommendations,¹ the 9/11 Commission recommended the creation of:

a National Counterterrorism Center (NCTC), built on the foundation of the existing Terrorist Threat Integration Center (TTIC). Breaking the older mold of national government organization, this NCTC should be a center for joint operational planning *and* joint intelligence, staffed by personnel from various agencies. The head of the NCTC should have authority to evaluate the performance of people assigned to the center.²

As recommended by the Commission, an NCTC would have two primary functions:

- *Intelligence* — The proposed NCTC would serve as a “knowledge bank” of intelligence and strategic analysis for the entire U.S. government. It would pool all-source information, both foreign and domestic, about “transnational terrorist organizations with global

¹ The Commission has stated a preference that the 41 recommendations it made be considered as a cohesive package; that the adoption of individual recommendations in isolation from one another would somehow undermine the overall effectiveness of intelligence reform. Although the recommendation to establish a National Intelligence Director (NID) and the creation of a National Counterterrorism Center are two of the Commission’s most far-reaching proposals, it does not necessarily follow that the idea of the NCTC is inextricably linked to the formation of a NID. An NCTC could be established without the creation of a NID or vice versa. For information and analysis relating to the proposed NID position, see CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, by Alfred Cumming.

² The Final Report of the National Commission on Terrorist Attacks Upon the United States, p. 403.

reach.”³ The Commission intends that the intelligence function of an NCTC be built on the existing TTIC structure and absorb “... a significant portion of the analytical talent now residing in the CIA’s Counterterrorist Center and the Defense Intelligence Agency’s (DIA) Joint Intelligence Task Force — Combating Terrorism (JITF-CT).”⁴ Furthermore, an NCTC would “track implementation” of the execution of counterterrorism operations and “update plans to follow through on cases.”⁵

- *Joint Operational Planning* — The proposed NCTC would perform “joint planning.” Under the Commission’s recommendation, although an NCTC would not “direct the actual execution of these operations,” it would assign operational responsibilities to “... lead agencies, such as State, the CIA, the FBI, Defense and its combatant commands, Homeland Security and other agencies.”⁶

The Commission recommends that an NCTC have personnel and budgetary authorities, but it would not have any authority for policymaking,⁷ a function the report stated would be best left to the President and the National Security Council. The Commission’s report recommends the NCTC Director, who would be appointed by the President and confirmed by the Senate “... must have the right to concur in the choices of personnel to lead the operating entities ... focused on terrorism, specifically including the head of the Counterterrorist Center, the head of the FBI’s Counterterrorism Division, the Commanders of the Defense Department’s Special Operations Command and Northern Command, and the State Department’s Coordinator for Counterterrorism.”⁸ The Commission believes an NCTC should function as a civilian-led unified joint command for counterterrorism, and would have “tasking authority on counterterrorism for all collection and analysis across the government, right across the foreign and domestic divide.”⁹ In addition, the head of

³ Ibid., p. 404

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ The question of how the term “policymaking” is defined could affect any debate on differentiating the respective roles of an NCTC and the NSC’s counterterrorism staff, particularly with respect to the “joint operational planning” function the Commission proposed for an NCTC. If the development of broad strategies is interpreted as policymaking there could be an overlap, and thus potential confusion, between the role of the NSC staff officials responsible for counterterrorism contingency planning and those working similar issues at an NCTC.

⁸ Ibid., p. 405.

⁹ See Statement of Thomas Kean, in U.S. Congress, House Permanent Select Committee on Intelligence, Aug. 11, 2004, FDCH Political Transcripts. “Tasking Authority” in the Intelligence Community is defined, generally, as the authority and ability to request another agency of the Intelligence Community to dedicate human or technical intelligence collection resources toward an identified intelligence gap. The ability to audit, or ensure
(continued...)

an NCTC should, as proposed by the Commission, “work with” the Director of the Office of Management and Budget in developing the President’s aggregate counterterrorism budget.¹⁰

The Commission also recommends an NCTC report to a proposed National Intelligence Director (NID) located in the Executive Office of the President, who would in turn report to the President. The Commission created a NCTC concept to address the perceived problems below:

- *Lack of a Coordinator or Lead Agency (“Quarterback”).* According to the Commission, the numerous strategic and tactical maladies that contributed to the overall intelligence failure on 9/11 were caused, in part, because “... no one was firmly in charge of managing the case and able to draw relevant intelligence from anywhere in the government, assign responsibilities across the agencies (foreign and domestic), track progress, and quickly bring up obstacles to the level where they could be resolved.”¹¹
- *Inadequate “Jointness” — Crossing the Foreign-Domestic Divide.* The Commission points out a distinction between ad hoc cooperation and true joint action, oftentimes citing the example of reform of the Department of Defense (DoD) under the Department of Defense Reorganization Act of 1986 (P.L. 99-433, October 1, 1986, 100 Stat. 992-1075b — Goldwater-Nichols) as a model. The Commission cited ten missed operational opportunities which could have contributed to preventing the 9/11 attacks — and all involved lack of unilateral action on behalf of the FBI or CIA, or bilateral coordination across the foreign-domestic divide.¹² It cites three interrelated and tangible benefits of joint action: (1) more effective and comprehensive planning, (2) execution with one quarterback, informed by a common knowledge bank, and (3) pooling of relatively scarce counterterrorism talent.¹³
- *Lack of Adequate Integration Between Joint Intelligence and Joint Action.* The Commission’s report states that a “smart” government

⁹ (...continued)

accountability with respect to the fulfillment of taskings, has been an issue of perennial concern in the Intelligence Community.

¹⁰ The two central questions of budgetary control and personnel authority are also pivotal to the Commission recommendation to establish a National Intelligence Director. The extent to which the Congress creates such a NID position and provides it with broad Intelligence Community-wide budget and personnel authority may influence these same authorities with respect to the Director of the proposed NCTC.

¹¹ *Ibid.*, p. 400.

¹² See “Operational Opportunities,” *Final Report of the National Commission on Terrorist Attacks Upon the United States*, pp. 355-356.

¹³ *Ibid.*, p. 401.

would integrate not just the intelligence collected across the government to inform various consumers, but also the operations (foreign and domestic) that may be required to pro-actively act upon this knowledge base. The Commission describes how the responsibility for joint planning is often left to the relatively small White House National Security Council,¹⁴ a coordinating body that was not necessarily designed to be directly involved in the execution of operations to implement the national security strategies it coordinates and develops.

Since the publication of the 9/11 Commission's *Final Report* in late July 2004, there has been substantial movement on the creation of a National Counterterrorism Center. On August 27, 2004, President George W. Bush signed *Executive Order National Counterterrorism Center* creating the NCTC. As created by the Executive Order, the NCTC has similar responsibilities to those which were recommended by the 9/11 Commission. Senator Pat Roberts has also proposed, in a draft *9/11 National Security Protection Act*, the codification of an NCTC.¹⁵ **Appendix I**, page 25, compares the main provisions of the 9/11 Commission's NCTC recommendation with the existing Executive Order and a draft legislative proposal on this matter.

The TTIC and the functions it performs are an integral part of an NCTC in the Commission's recommendation, the Executive Order, and the draft legislation.

The Existing Terrorist Threat Integration Center and an NCTC

The establishment of the TTIC was first announced in the January 2003 State of the Union speech. Established to remedy the often-stated pre-9/11 failure to "connect the dots" regarding counterterrorism intelligence, the organization's stated purpose is to "merge all (terrorist) threat information in a single location."¹⁶ The

¹⁴ The National Security Council (NSC) was created by the National Security Act of 1947 to "advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving national security." See 50 U.S. Code, Section 402. As a White House body in the Executive Office of the President, the NSC is structured according to a President's preferences. However, traditional functions of the Assistant to the President for National Security Affairs and the NSC staff include a policy advisory role and an institutional, process manager role. Although the NSC develops and promulgates national security policies and strategies and plans for contingencies, it is generally not directly involved in the *execution* of operations designed to implement those strategies, other than through its coordinating role. See Philip A. Odeen, "Organizing for National Security," *International Security*, vol. 5, no. 1, summer 1980. See also, Philip A. Odeen, Andrew J. Goodpaster, and Melvin R. Laird, *Toward a More Effective Defense: The Final Report of the CSIS Defense Organization Project*, The Center for Strategic and International Affairs, Georgetown University, Feb. 1985.

¹⁵ Draft bill circulated by Sen. Pat Roberts, dated Aug. 23, 2004. For a summary, see [<http://roberts.senate.gov/08-23-2004.htm>].

¹⁶ State of the Union speech, Jan. 28, 2003.

organization became operational in May 2003, and was intended to be a stand alone joint venture of the Intelligence Community. The TTIC Director is an employee of the Central Intelligence Agency (CIA) and reports to the Director of Central Intelligence (DCI); the TTIC Deputy Director is an employee of the Federal Bureau of Investigation (FBI). Member agencies of TTIC include the FBI, CIA, the Departments of Homeland Security, State, Defense, Health and Human Services, and Energy, as well as the Nuclear Regulatory Commission.¹⁷

How does the Commission's proposed NCTC differ from the TTIC? In hearings before the Senate Governmental Affairs Committee, TTIC Director John O. Brennan stated that once the TTIC has acquired, through its member agencies, the requisite number of strategic intelligence analysts, it would have the integrated intelligence analysis capability the Commission recommended for an NCTC.¹⁸ According to Mr. Brennan, the proposed NCTC would expand the number of TTIC partners, provide for an overall framework for how the constituent members interact, and constitute a recognition that the new organization was a "center of gravity" for analysis of counterterrorism intelligence. With such recognition, Brennan stated, would flow an ability to acquire additional analysts and further integrate counterterrorism intelligence. However, one of the most significant differences in what function(s) the proposed NCTC would perform that TTIC cannot now is joint operational planning. This function, which will be addressed more in-depth below, has not been very well defined, and may be regarded as the most contentious element of the NCTC proposal.

NCTC Institutionalizing Existing Practice? Another similarity between the TTIC and the proposed NCTC is based on the current reorganization of certain counterterrorism elements in the U.S. Intelligence Community. The TTIC, elements of the FBI's Counterterrorism Division (generally special agents and strategic intelligence analysts working on international terrorism), and some parts of the CIA's Counterterrorism Center are in the process of being collocated. Intelligence officials point out that this process of collocation is not a formal "merger" but rather an organizational construct that will allow existing agencies to integrate intelligence analysis, yet operate under their own legal authorities. As currently envisioned, and particularly from an operational perspective, each of these collocated agency elements will fuse their intelligence and information for greater analytical capability, but retain control over their own intelligence operations that may be informed by the enhanced integrated analysis. According to Director Brennan, the TTIC has completed its move to the new facility. John Pistole, the FBI's Executive Assistant Director for Counterterrorism and Counterintelligence has stated that the FBI has moved into the new location "no less than 100 people."¹⁹ Mr. Pistole believes the proposed NCTC, when compared to the new combined effort already in process,

¹⁷ See Statement of John O. Brennan, in U.S. Congress, Senate Committee on Governmental Affairs, "Assessing America's Counterterrorism Capabilities," Aug. 3, 2004.

¹⁸ See U.S. Congress, Senate Governmental Affairs Committee, Hearing on Assessing America's Counterterrorism Capabilities, Aug. 3, 2004, FDCH Political Transcripts, pp. 49-51.

¹⁹ *Ibid.*, p. 40.

serves to “... institutionalize some of the policies and practices that we are currently engaged in...”²⁰

Issues for Congress

The Commission’s recommendation to establish a National Counterterrorism Center raise potential issues for Congress. Many of these issues relate to centralization and information sharing, and the various roles of an NCTC.

Does the (Centralization) Remedy Fit the Problem? One of the structural and systemic problems often cited as contributing to the 9/11 intelligence failure was the failure of the Intelligence Community to “connect the dots.”²¹ The essence of this claim is that while there was a plethora of information indicating that Al Qaeda was planning to attack U.S. interests, there was insufficient information sharing and coordination between various elements of the U.S. government to prevent such an occurrence. More centralization is seen as a potential remedy to the lack of coordination and information sharing among existing intelligence entities. Centralization could bring together disparate elements of the Intelligence Community working against the same target with a common goal, albeit with different tools and means. Particularly from an intelligence analysis perspective, the possibility of having frequent interactions among analytical colleagues from the numerous agencies of the Intelligence Community could be highly valuable. As Philip Mudd, Deputy Director of the CIA’s Counterterrorist Center stated in recent congressional testimony in reference to the collocation of his unit with other counterterrorist elements of the Intelligence Community, “... I think collocation is underrated in terms of the importance for cooperation, and we have started moving.”²²

Centralization and Information Sharing. There are numerous intelligence centers²³ currently in existence across the Intelligence Community. Each was established based on the premise that integrating various intelligence disciplines — the methods by which intelligence is collected — with respect to a particular functional or geographic threat, could lead to more timely information sharing and

²⁰ Ibid., p. 33.

²¹ Some observers believe that while the failure to connect the existing dots may have contributed to the 9/11 intelligence failure, the more proximate reason for the failure was an inability of the U.S. government to *collect the right dots*. Simply stated, these individuals believe that the intelligence community failed to penetrate terrorist cells at home and abroad resulting in “... too few useful dots.” See Robert Bryant, “America Needs More Spies,” *The Economist*, July 10, 2003.

²² See Statement of Philip Mudd, “Assessing America’s Counterterrorism Capabilities,” Before the Senate Committee on Governmental Reform, Aug. 3, 2004, FDCH Transcripts.

²³ In addition to the CIA’s Counterterrorism Center and the TTIC, other intelligence centers include the Counterintelligence Center, the Weapons Intelligence Non-Proliferation and Arms Control Center, the El Paso Intelligence Center, the National Drug Intelligence Center, the Terrorist Screening Center, and the National Virtual Translation Center. See [http://www.intelligence.gov/2-community_centers.shtml].

a clearer assessment of that issue.²⁴ Some have questioned the success of the “center” concept, judging it a dubious organizational remedy to what may be a functional problem — that is, the cultural bias in the intelligence and law enforcement communities not to share information.²⁵ Furthermore, some say although the intelligence business is largely an inexact social science, and the intelligence function has inherent limitations, the establishment of integration centers (such as the CIA’s Counterterrorism Center in 1986) for “one-stop shopping” may have reinforced the implicit expectation that the mission to “preempt, disrupt and defeat terrorist activities at the earliest possible stage” was achievable within the United States with a high degree of confidence.²⁶

Another aspect of the sharing problem that contributed to the 9/11 intelligence failure was the lack of coordination between foreign intelligence²⁷ and domestic intelligence elements.²⁸ Over the years, a real or perceived “wall” had developed between the foreign intelligence and domestic intelligence entities of the Intelligence Community.²⁹ The Uniting and Strengthening American by Providing Appropriate

²⁴ In addition to an NCTC, the 9/11 Commission also recommends the establishment of National Intelligence Centers with respect to the following functional and regional threats: weapons of mass destruction proliferation, international crime and narcotics, China/East Asia, Middle East, and Russia/Eurasia. See *Final Report*, p. 413.

²⁵ See Frederick P. Hitz and Brian J. Weiss, “Helping the CIA and the FBI Connect the Dots in the War on Terror,” *International Journal of Intelligence and Counterintelligence*, vol. 17, no. 1, spring 2004, p. 12.

²⁶ On the limitations of the intelligence function see Roberta Wohlstetter, *Pearl Harbor: Warning and Decision* (Stanford University Press, 1962) and its forward by Thomas C. Schelling. Schelling states “Surprise, when it happens to governments, is likely to be a complicated, diffuse, and bureaucratic thing,” arguably an apt description of the 9/11 intelligence failure. On the limitations of intelligence reform efforts, see also Richard K. Betts, “The New Politics of Intelligence: Will Reforms Work This Time?” [in] *Foreign Affairs*, May/June 2004. Betts states “At the end of the day, the strongest defense against intelligence mistakes will come less from any structural or procedural tweak than from the good sense, good character, and good mental habits of senior professionals. How to assure a steady supply of those, unfortunately, has never been clear.”

²⁷ Foreign intelligence means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence, except for information on international terrorism activities. See Executive Order 12333, *United States Intelligence Activities*.

²⁸ See 9/11 Commission Report, “Operational Opportunities,” pp. 355-356.

²⁹ Going back to the codification of the Intelligence Community in 1947, there was a reluctance on the part of many policymakers to unite foreign and domestic intelligence for fear that doing so would establish an American version of a secret police. See Stewart A. Baker, “Should Spies Be Cops,” *Foreign Policy*, winter 1994-1995. For an assessment of some of the intelligence abuses which led to the development of further restrictions and the congressional intelligence oversight committees, see U.S. Congress, Senate Select Committee to Study Government Operations, *Intelligence Activities and the Rights of Americans*, a Final Report with respect to Intelligence Activities, Apr. 26, 1976, see also Senate Committee on the Judiciary *Domestic Security Investigation Guidelines*, hearings, (continued...)

Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act, P.L. 107-56) and a decision of the United States Foreign Intelligence Surveillance Court of Review have provided the statutory and legal authorization for greater intelligence sharing between the foreign and domestic intelligence/law enforcement communities.³⁰

Notwithstanding these changes, some argue that the bureaucratic culture of some organizations can be a “silent killer of innovation,” including innovative thinking about information sharing. In recent testimony before the Senate Select Committee on Intelligence, Amy B. Zegart, a former NSC staffer, stated “Although any meaningful reform must start with structure, structural changes alone will not be enough.... Organizational culture is a silent but deadly innovation killer.... Fixing cultural pathologies that have crippled our intelligence system is hard, but not impossible. Two good first steps would be to change training and career incentives.”³¹ Consistent with other recommendations of the Commission, the FBI in particular is attempting to alter its culture by establishing a cadre of intelligence professionals who approach terrorism with a proactive and national security bias, as opposed to its traditional law enforcement and reactive approach.³² The concept of a knowledge bank such as an NCTC is another manner through which such authorities may be exploited to ensure that gaps between the foreign and domestic intelligence communities are filled.

Centralization and Analysis. While one of the weaknesses of the Intelligence Community has been a failure to share intelligence, according to some, another systemic problem has been an inability to adequately assess existing intelligence. Centralizing analytical capability is another contentious issue. Some

²⁹ (...continued)

June/Aug. 1982.

³⁰ Those elements of the USA PATRIOT Act that are most germane to enhanced sharing of information and intelligence with respect to national security include, in part, Title IX, “Improved Intelligence,” and Title V, “Removing Obstacles to Investigate Terrorism.” See also United States Foreign Intelligence Surveillance Court of Review, *In re Sealed Case*, 310 F.3d 717 (U.S. Foreign Intell. Surveil. Ct. Rev. 2002) (Decided Nov. 18, 2002); CRS Report RL30465, *The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and Recent Judicial Decisions*, by Elizabeth Bazan; and CRS Report RL31200, *Terrorism: Section by Section Analysis of the USA PATRIOT Act*, by Charles Doyle.

³¹ See Dr. Amy B. Zegart, Assistant Professor, Department of Public Policy, School of Public Affairs, University of California, Los Angeles, Written Remarks for the Record, The Senate Select Committee on Intelligence, Aug. 18, 2004.

³² The extent to which these strategic and cultural changes are far-reaching enough or being implemented successfully and in a timely manner across the FBI’s 56 Field Offices and 45 Legal Attache offices overseas is an open question. See CRS Report RL32336, *FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress*, by Alfred Cumming and Todd Masse. See also Statement of Maureen Baginski, FBI Executive Assistant Director — Intelligence, in U.S. Congress, House Select Committee on Homeland Security, Aug. 17, 2004.

think it could lead to a “group think”³³ mentality. *A Report on the U.S. Intelligence Community’s Pre-War Intelligence Assessments on Iraq*, published by the Senate Select Committee on Intelligence, concluded:

The Intelligence Community (IC) suffered from a collective presumption that Iraq had an active and growing weapons of mass destruction (WMD) program. This “group think” dynamic led the Intelligence Community’s analysts, collectors and managers to both interpret ambiguous evidence as conclusively indicative of a WMD program as well as ignore or minimize evidence that Iraq did not have active and expanding weapons of mass destruction programs. This presumption was so strong that formalized IC mechanisms established to challenge presumptions and group think were not utilized.³⁴

Some intelligence professionals argue that there are benefits to analytical decentralization and the intentional development of competing analyses. Consistent with this concern, and directed more at the proposed NID recommendation than the NCTC proposal, yet nevertheless germane, Henry Kissinger, former National Security Adviser and Secretary of State, recently wrote that an excessively centralized system may “magnify the inherent danger of intellectual conformity.”³⁵

The 9/11 Commission recognized the need to encourage and nurture innovative analysis and cited, as one of four systemic failures,³⁶ the lack of imagination³⁷ across

³³ Group think is a term coined by Irving Janis, a psychologist who published *Groupthink: Psychological Studies of Policy Decisions and Fiascoes*, (copyright 1982 — 2nd edition) which highlighted the tendency of individual members of a group operating under pressure to bolster the group’s perceived consensus and discount information which may question that consensus or the assumptions underlying it. Regarding protective measures designed to prevent group think, in an address to the CIA’s Directorate of Intelligence, Jamie Miscik, Director of the CIA’s Directorate of Intelligence (DDI), stated that dealing with the analytical issue of “inherited assumptions ... may be the single most important aspect of our tradecraft that need to be examined ... we need to do fresh research on topics, looking for new factors which could change our judgments, testing our hypotheses against viable alternatives, looking for new collection opportunities, and re-validating some assumptions and disposing of others.” DDI Miscik implemented a mandatory one-day Tradecraft Refresher Course to reinforce these principles. See DDI’s “State of Analysis” Speech, All Hands Meeting, CIA Headquarters, Langley, VA, Feb. 11, 2004.

³⁴ See U.S. Congress, Senate Select Committee on Intelligence, “Overall Conclusions — Weapons of Mass Destruction,” *Report on the U.S. Intelligence Community’s Pre-War Intelligence Assessments on Iraq — Conclusions*, July 2004, p. 4.

³⁵ See Henry Kissinger, “Better Intelligence Reform: Lessons from Four Failures,” *Washington Post*, Aug. 16, 2004, p. A17.

³⁶ The other failures were policy, capabilities, and management. See *Final Report on the National Commission on Terrorist Attacks Upon the United States*, p. 339.

³⁷ It may be worthy of noting, as did Dr. Mark Lowenthal, Assistant DCI for Analysis and Production, in testimony before the House Permanent Select Committee on Intelligence (Aug. 4, 2004), that imagination is not a panacea. He stated “We must always remember that intelligence analysis is — at all times — an intellectual activity. There is no formula or recipe. Even with the many well-known and practiced steps that we go through to
(continued...)

the U.S. government with respect to projecting scenarios in which Al Qaeda would conduct a catastrophic attack inside the United States using aircraft as weapons. The report states, “Imagination is not a gift usually associated with bureaucracy.”

Even though the Commission recommends the establishment of what could be considered a centralized bureaucracy, it was aware that the “most serious disadvantage of the NCTC is the reverse of its greatest virtue ... that any clear cut centralization of authority to manage and be held accountable for (the struggle against Islamist terrorism) may concentrate too much power in one place.”³⁸ Nevertheless, the recommendation that NCTC be established illustrates that the Commission concluded that the overall benefits of “jointness” and centralization outweigh those arguments favoring analytical decentralization. In recent testimony before the House Select Committee on Homeland Security, Thomas H. Kean, Chair of the Commission, stated: “We believe our proposal will strengthen analysis and enhance competitive analysis,” arguing a robust NCTC with a strong official in charge of the Intelligence Community would have forced the type of sharing that could have prevented the attacks of 9/11.³⁹

There are potential tradeoffs and inherent tensions between remedies which address two of the major maladies facing the intelligence community — failure to “connect the dots” or of imagination, and analytical tendencies toward Groupthink. Remedies for the former include centralization, while those for the latter include the development of possibly decentralized analytical units in direct or indirect competition with one another. John Hamre, former Deputy Secretary of Defense, asserts that “... implementing an organizational solution to just one of these problems (connecting the dots) will worsen the other.” He proposed that if a NID be established, it only be given authority over the intelligence “factories” that is, the National Reconnaissance Agency, National Security Agency, and National Geospatial Agency, while leaving the “craft shops” conducting human intelligence collection and intelligence analysis more decentralized.⁴⁰ While this argument is directed more at the NID concept, it could also have implications for the centralization of strategic counterterrorism analysis within an NCTC.

³⁷ (...continued)

produce analysis, it remains an imprecise process. Neither the process nor the product will ever be perfect.”

³⁸ Ibid., p. 406.

³⁹ See Jeremy Torobin, “September 11 Commissioners Blunt About Homeland Intelligence Role,” *CQ Today*, Aug. 17, 2004.

⁴⁰ See Testimony of John J. Hamre, President and CEO, Center for Strategic and International Studies, in U.S. Congress, Senate Armed Services Committee, Aug. 16, 2004. See also John J. Hamre, “A Better Way to Improve Intelligence: The National Director Should Oversee Only the Agencies That Gather Data,” *Washington Post*, Aug. 9, 2004, p. A15.

Goldwater-Nichols and the Intelligence Community.⁴¹ The 9/11 Commission draws analogies between the recommendations it made and the substantial and positive changes that took place in the Defense Department as a result of the Goldwater-Nichols Act.⁴² Among some experienced intelligence professionals, conventional wisdom in the wake of 9/11 has been in favor of some version of a “Goldwater-Nichols for the Intelligence Community.” Specifically, proponents of this view point to Goldwater-Nichols provisions which increased the authority, responsibility and staff resources of the Chairman of the Joint Chiefs of Staff (JCS), with a corresponding diminution of the powers of the corporate JCS and other JCS members; increased the authority and responsibility of the unified and specified combatant commands which control U.S. forces globally; and changed officer personnel management policies so as to increase the importance of joint (interservice) assignments and expertise. Similar legislation, it is argued, would improve central management and control over the disparate components of the Intelligence Community. Some who have worked in the Defense and Intelligence communities at senior levels acknowledge that the Pentagon fiercely fought Goldwater-Nichols, but now, almost 20 years later, swears by its results.⁴³

Although some of the underlying coordination and “stovepipe” problems within the modern day Intelligence Community are similar to those facing the armed forces in the pre-Goldwater-Nichols era, there are several differences. For example, whatever the extent of the interservice coordination problems prior to Goldwater-Nichols, all of the DoD operated under the same broad legal and statutory authorities.⁴⁴ While each of the military services operated and trained with minimal joint coordination prior to Goldwater-Nichols, they all operated under the same legal authorities, Title 50, U.S. Code, War and National Defense. By contrast, the Intelligence Community is composed of 15 different agencies spread across numerous executive departments, and operating under some common and some distinct legal and regulatory authorities.⁴⁵

⁴¹ Robert Goldich, Specialist in National Defense, CRS, Foreign Affairs and National Defense Division, contributed to this section, and others, with respect to the Goldwater-Nichols Department of Defense Reorganization Act of 1986.

⁴² For an assessment of this act see, Gordon N. Lederman, *Reorganizing the Joint Chiefs of Staff: The Goldwater-Nichols Act of 1986*, (Greenwood Press, 1999).

⁴³ See John J. Hamre, “A Better Way to Improve Intelligence.”

⁴⁴ These legal authorities include 10 U.S.C. (Armed Forces), 32 U.S.C. (National Guard), 50 U.S.C. (War and National Defense), as well as 37 U.S.C. (Pay and Allowances Of the Uniformed Services).

⁴⁵ For example, the National Security Act of 1947 and Executive Order 12333 *United States Intelligence Activities*, outline the respective duties and responsibilities for members of the Intelligence Community. Yet the domestic intelligence community operates largely under Attorney General Guidelines which do not generally govern the overseas activities of the foreign intelligence or defense intelligence agencies. Similarly, depending on the subject area, the Director of Central Intelligence’s Directives (DCIDs) may or may not apply similarly across the Intelligence Community.

Although debatable, it could be argued that the “defense community” is more homogenous than the Intelligence Community. The Army, Navy, Marine Corps, Air Force, and the numerous interservice defense agencies and field activities are all in one cabinet department and, perhaps more importantly, share the unique common mission and culture of the uniformed military — preparing for and waging war. The Intelligence Community under existing law and policy could be perceived as more of a loose confederation of related agencies. As mentioned above, the *domestic* intelligence community, defined largely as the Department of Justice’s FBI, and the Department of Homeland Security’s Information Analysis and Infrastructure Protection (IAIP) Directorate, operates under guidelines that are separate and distinct from how the defense intelligence or even foreign intelligence entities operate. One ostensible reason for these different authorities is the value the United States places on civil liberties and ensuring that its intelligence apparatus is not permitted to exceed some boundaries with respect to the constitutionally protected rights of its own citizenry.⁴⁶ In short, while the attacks of 9/11 demonstrated a clear need to more closely integrate and make “joint” domestic and foreign intelligence, each of these communities continue to operate under different legal guidelines, and the need for these distinctions may remain if the United States is concerned about establishing an intelligence service that could be perceived as a “secret police.”⁴⁷

A Goldwater-Nichols type reform for the Intelligence Community could be interpreted as meaning the elimination of any distinctions between foreign and domestic intelligence. Henry Kissinger addressed the issue:

... it does not follow that eliminating the distinctions altogether is the best solution ... Foreign and domestic intelligence should not be merged but should be coordinated by task forces, depending on the subject. The coordination between domestic and foreign intelligence activities could be achieved by institutions such as the ‘National Counterterrorism Center’ ... and possibly by a presidential assistant for national intelligence, charged in addition with making certain that significant competing intelligence assessments reach the President.

⁴⁸

Some say eliminating altogether the distinctions between foreign and domestic intelligence services may create the impression that the United States is establishing a secret police, an impression that would likely undermine the credibility of the Intelligence Community.

⁴⁶ For further information on the civil liberties issues associated with terrorism, see CRS Electronic Briefing Book, *Terrorism and Civil Liberties*, by Charles Doyle, located at [<http://www.congress.gov/brbk/html/ebter137.html>].

⁴⁷ Like a pendulum, the balance a government strikes between its dual duties of protecting civil liberties and providing security for its populace is ever-shifting. While not necessarily a “zero sum” game, increased attention to, and additional legal authorities for, either of these public “goods” can have an impact on the other.

⁴⁸ See Henry Kissinger, “Better Intelligence Reform: Lessons from Four Major Failures,” *Washington Post*, Aug. 16, 2004, p. A17.

Proposed Joint Operational⁴⁹ Planning Role of an NCTC. As mentioned above, the 9/11 Commission proposed an NCTC would “perform joint planning” for the purpose of ensuring that all intelligence available to the U.S. Government on a terrorism target, and all means of U.S. power, be fully used to thwart terrorist attacks. In 2002, the Gilmore Commission presented a similar option which recommended the creation of an NCTC to fuse and analyze foreign collected and domestically collected intelligence and information on international terrorists. With respect to operations, the Gilmore Commission recommended:

... the collection of intelligence and other information on international terrorist activities inside the United States, including the authorities, responsibilities and safeguards under the Foreign Intelligence Surveillance Act, which are currently in the FBI, be transferred to the NCTC.⁵⁰

But, Philip Zelikow, Staff Director of the 9/11 Commission, testified that the problems of transnational management of operations were so central to the intelligence failure of 9/11 that the Commission determined that its version of an NCTC would have authority for joint planning exceeding the Gilmore Commission’s recommendation. In reference to a Commission staff trip to Pakistan and Afghanistan to investigate coordination with respect to the hunt for Osama bin Laden, Zelikow stated what they found was “... a number of disparate agencies with different legal authorities, all doing their thing, and then meeting every day, in a series of meetings, in many places, trying to make it all converge.”⁵¹

The proposed joint operational role of an NCTC is probably its most contentious element because operations are the means by which intelligence and defense organizations take tactical actions to implement broader national security goals and objectives, and they are considered highly sensitive. The dimensions of this role are not clear. The language of the Commission’s *Final Report* supporting the recommendation is open to interpretation, with the report stating at one point that “law or Executive Order must define the scope of such line authority.”⁵² A more

⁴⁹ The term “operations” as they relate to counterterrorism can have dual meanings. From a *military* perspective, the primary purpose of a counterterrorism “operation” is to achieve a political goal (e.g., preventing a terrorist act) through the application of military force. While intelligence may be collected through a military counterterrorism operation, it is, generally, secondary to the military goal of blunting a terrorist threat. Intelligence, both tactical and strategic, informs military action. From an *intelligence* perspective, the primary purpose of counterterrorism “operations” is to collect intelligence, through any of the intelligence collection techniques — human or technical. This intelligence becomes one input to a variety of consumers, from combatant commanders to national level policymakers.

⁵⁰ See *Fourth Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (Gilmore Report), Dec.15, 2002, p. iv.

⁵¹ See U.S. Congress, Senate Governmental Affairs Committee, hearing, Aug. 3, 2004, FDCH Political Transcripts.

⁵² See *Final Report of the National Commission on Terrorist Attacks Upon the United States* (continued...)

strict or literal interpretation of the report language may lead one to conclude that an NCTC would engage in joint planning only at the strategy level, leaving tactical details, and actual operational execution to other agencies. However, given that terms like “joint planning” and “operations” can and are construed as meaning more definitive and defined tasks to be accomplished by existing entities and staff — particularly in the military — a more direct and controlling role in operations for an NCTC could also be envisioned. There are unanswered questions not only on the scope of this authority, but also on how the authority would be implemented. Some of these questions include:

- *Operations and the Relationship Between Operational Personnel and Analysts.* In both the Defense Department and within the Intelligence Community, “operations” are considered highly sensitive because they can be covert, and involve the deployment of intelligence sources and methods which must be protected to prevent detection. Some observers have expressed concern that giving an NCTC ambiguous joint operational planning responsibilities will reduce the effectiveness of the operational elements of existing intelligence agencies. According to former Deputy DCI Richard Kerr, “The concern is that you dilute the offensive operational elements”... of the CIA by deploying its best personnel outside the agency doing essentially defensive work “mainly concerned with analyzing threats and providing warnings.”⁵³ Moreover, there is also a concern that by detailing an agency’s operational or analytical personnel to an NCTC, the loss of the close relationship⁵⁴ between analysts and operational personnel at their respective home agencies may undermine the success of the overall counterterrorism mission — to preempt and prevent terrorist attacks against the United States and its interests.
- *Planning.* The term “joint operational planning” likely connotes different activities to representatives of different agencies of the Intelligence Community. “Planning” and joint planning are generally thought of as terms of art within the overlapping defense and intelligence communities. In the military, the term “joint operational planning” has a very well-defined interpretation. Joint

⁵² (...continued)
States, p. 406.

⁵³ See Shaun Waterman, “Terror Center ‘Hurting Intel Operations’,” *United Press International*, Aug. 13, 2004.

⁵⁴ In the Intelligence Community, it is generally thought that intelligence analysts and intelligence operators should have a “close” relationship, with strategic and tactical analyses informing operational plans and strategies, and raw intelligence from operations being fed back into the analytical cycle. Analysts should, generally, be responsive to the needs of intelligence operators, yet not be captive of, or beholden to, those responsible for operations. For the sake of analytical integrity, organizational schemes should ensure that the relationship is not so close as to compromise the integrity and independence of thought that characterizes value-added analysis.

operational planning is “... conducted within the chain of command that runs from the National Command Authorities (President to the Secretary of Defense) to the combatant commanders and is primarily the responsibility of the Chairman of the Joint Chiefs of Staff and the combatant commanders.”⁵⁵ It is a “sequential process performed simultaneously at the strategic, operational and tactical levels of war.”⁵⁶ Among other activities, it involves decisions about how to deploy military assets to achieve national security goals and objectives developed and outlined by the National Command Authority, as assisted by the National Security Council. It involves prioritizing targets, deciding which military resources should be deployed against certain targets, when and how. The Joint Staff at the Pentagon, particularly J-3 (Operations) and J-5 (Strategic Plans and Policy) are most directly involved in joint operational planning. The doctrine with respect to joint operational planning in the Intelligence Community may not be as well developed and formal as it is in the Defense Department. Therefore, in the context of an NCTC, the scope and substance of joint operational planning could very well be dependent on a specific operation in question (domestic or international, military or civilian) and the agencies involved in that operation.

- *Legal Authorities and the Chain-of-Command.* If a strict interpretation of the Commission’s recommendation on an NCTC’s role in coordinating joint operational planning is taken, it is likely that neither new legal authorities, nor adjustments to existing chains-of-command would be necessary. In response to the question of whether an NCTC’s joint planning role would interfere with the chain of command for military operations, the Commission’s Chairmen testified:

The NCTC would not break the military chain of command...it would be like the J-3 for Operations in the Joint Staff ... the J-3 is not part of the formal chain of command between the President, Secretary of Defense, and the combatant commanders — but everyone agrees that joint operations planning is essential. The NCTC would develop joint plans for terrorism operations with military officers directly involved in that planning. If the Secretary of Defense didn’t like the plan, the plan would change. Or, the head of the NCTC would have to bump this issue up to the National Security Council and the President for resolution.⁵⁷

Some questions underlying this envisioned role involve which personnel at an NCTC would be responsible for this operational planning role. Would individuals

⁵⁵ See *Doctrine for Planning of Joint Operations*, Joint Publication 5-0, Apr. 13, 1995, p. 9.

⁵⁶ *Ibid.*

⁵⁷ See U.S. Congress, House Armed Services Committee, prepared Statement of Chairman Thomas Kean and Vice Chairman Lee Hamilton of the National Commission on Terrorist Attacks Upon the United States, Aug. 10, 2004, p. 7.

from the J-3 Staff be “dual hatted” to serve both the Defense Department’s chain-of-command and the Director of an NCTC? In addition to the military, both the CIA’s Counterterrorism Center and the FBI’s Counterterrorism Division engage in counterterrorism operations overseas and at home, respectively. Will the chains-of-command for how these agencies operate be altered in any manner, or does the military model outlined by the Commission apply to the foreign and domestic intelligence entities as well? If an NCTC has tasking authority, can it, under existing law, task the military to engage in domestic intelligence operations?⁵⁸

The Executive Order creating the NCTC (signed August 27, 2004 by President George W. Bush) stipulated that “... each agency representative to the Center, unless otherwise specified by the Director of Central Intelligence, shall operate under the authorities of the representative’s agency.”⁵⁹ The 9/11 Commission stated that with respect to the authority for planning joint operations that “...law or Executive Order must define the scope of such line authority.” A strict interpretation of the joint planning role as outlined by the 9/11 Commission would appear to be consistent with the Executive Order’s direction with respect to these authorities.

- *“Tracking Implementation” Aspect of Joint Operational Planning.* In one hypothetical case involving the overseas travel of a suspected international terrorist, the Commission outlines a NCTC role of drawing on its government-wide counterterrorism database, tasking of individual agencies to undertake certain actions with respect to this travel, and being accountable for “... tracking the progress of the case, ensuring that the plan evolved with it, and integrating information into a warning.”⁶⁰ This “tracking” function is fairly nebulous. The Commission’s report states that the Director of an

⁵⁸ The Posse Comitatus Act (18 U.S.C. §1385) reflects an American tradition of preventing the use of U.S. military forces within the United States, except in certain circumstances. These circumstances include, but are not limited to, the authority of the President to “... call out the armed forces in times of insurrection and domestic violence” (10 U.S.C. §§331-335) and “... authorizing the armed forces to share information and equipment with civilian law enforcement agencies” (10 U.S.C. §§371-382). See CRS Report 95-964 S, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, by Charles Doyle. See also CRS Report RS20590, *The Posse Comitatus Act and Related Matters: A Sketch*, by Jennifer Elsea. Under existing law [50 U.S. C. §403-3(d)(1)], the Central Intelligence Agency “... shall have no police, subpoena, or law enforcement powers or internal security functions....” Similar restrictions on military activities can be found at 10 U.S.C. §375. For information of the Defense Department’s creation of the Northern Command (NORTHCOM), the primary mission of which is to deter, prevent and defeat threats and aggression aimed at the United States and, “... as directed by the President or Secretary of Defense, provide military assistance to civil authorities, including consequence management operations.” See [http://www.northcom.mil/index.cfm?fuseaction=s.who_mission]. See also CRS Report RS21322, *Homeland Security: Establishment and Implementation of Northern Command*, by Christopher Bolckcom and Steve Bowman.

⁵⁹ See *Executive Order National Counterterrorism Center*, Aug. 27, 2004, p. 4.

⁶⁰ See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 405.

NCTC would “help coordinate the operational side”⁶¹ of the agencies of the Intelligence Community conducting intelligence operations. Like the tracking function it recommends, the “help coordinate” function the Commission recommends also leads to many questions. What level of detail would be reported back to an NCTC? Would field military commanders, FBI Special Agents-in-Charge, or CIA Chiefs-of-Station have to coordinate all decision-making with NCTC officials? Would an NCTC define operational success or failure? Which entity and officials would ultimately be accountable for the success or failure of the operation? Is the National Security Council adequately staffed to resolve what may be numerous potential conflicts between agency operational heads and the Director of an NCTC with respect to tactical operations?

Proposed Intelligence Role of an NCTC. The proposed NCTC intelligence role is less controversial than the joint operational planning role because of ongoing and historical efforts to integrate information and intelligence for analytical purposes. In the parlance of Goldwater-Nichols, the proposed intelligence function at an NCTC would be most analogous to the Joint Staff’s J-2 (Intelligence) group. However, prior to the Commission’s recommendation to establish an NCTC, there had been considerable uncertainty with respect to which agency had the lead for counterterrorism analysis within the U.S. government.⁶² Analytically, all 15 agencies in the U.S. Intelligence Community, and even agencies outside the Community, had analysts researching and analyzing aspects of terrorism.

In November 2002, Congress passed the Homeland Security Act of 2002 (P.L. 107-296) establishing the Department of Homeland Security (DHS). The law established within DHS a Directorate for IAIP to, among other functions, “... identify and assess the nature and scope of terrorist threats to the homeland ... and understand such threats in light of actual and potential vulnerabilities to the homeland.”⁶³ Subsequently, on January 28, 2003, President George W. Bush, in the State of the Union address, established the TTIC. Unlike the Department of Homeland Security’s IAIP Division, TTIC has no statutory basis. Some have asserted that TTIC has usurped certain statutory analytical roles of the DHS IAIP and, that TTIC’s analytical responsibilities should, at some point, be transferred to the IAIP. At a recent Homeland Security Summit, Representative Christopher Cox is quoted as stating, “... Personally, I have been willing to countenance TTIC as an interim step, but as we

⁶¹ Ibid., p. 566.

⁶² In response to questions on this issue from the Senate Committee on Government Affairs, DHS Secretary Ridge, FBI Director Robert S. Mueller III, DCI George Tenet, and TTIC Director John O. Brennan responded in a letter to the Committee dated Apr. 13, 2004, that “In order to ensure that no vital piece of information is missed and to ensure that all departments and agencies, as well as our national leadership, receive the best possible analytic support, it is necessary to treat the analysis of terrorism-related information as a shared responsibility.”

⁶³ See P.L. 107-296, Title II, Information Analysis and Infrastructure Protection, Subtitle A, Directorate for Information Analysis and Infrastructure Protection: Access to Information, Section 201, Responsibilities of the Under Secretary.

build [IAIP], I think we ought to look forward to an end game where the Secretary of Homeland Security is ultimately responsible for ..." the fusion and analysis of terrorist intelligence.⁶⁴

In 2003, Congress held hearings to address the respective counterterrorism analytical responsibilities of the FBI's Counterterrorism Division, the DHS IAIP, and TTIC.⁶⁵ In a response to post-hearing questions for the record following testimony before the Senate Committee on Governmental Affairs, the FBI Director, TTIC Director, DCI, and Secretary of Homeland Security attempted to clarify the roles of TTIC, DHS's IAIP, the DCI's Counterterrorism Center, and FBI Counterterrorism analysts. The response states, in part, "Whereas the TTIC's terrorism analytic mission is global in nature, IAIP's mission is singularly focused on the protection of the American Homeland against terrorist attack." In terms of primary responsibility for terrorism information analysis, the executive response referenced above states "TTIC has the primary responsibility in the USG for terrorism analysis (except information relating solely to purely domestic terrorism), and is responsible for the day-to-day terrorism analysis provided to the President and other senior policymakers."⁶⁶ Furthermore, this response stipulates that the FBI, CTC, and IAIP will retain a largely tactical analytical capability to support their respective investigative and operational missions.⁶⁷ In recent testimony Vice Chairman Hamilton clarified the analytical role the Commission envisioned for IAIP when he stated:

... the locus of analysis moves to the National Counterterrorism Center, but IAIP continues to exist. It continues to support the department requirements — infrastructure protection, support to state and local authorities — but the overall analysis moves to the National Center.⁶⁸

⁶⁴ See Chris Strohm, "House Chair Says DHS Should Lead Intelligence Analysis," *Government Executive*, June 7, 2004.

⁶⁵ Joint Hearing of the House Select Committee on Homeland Security, and the House Judiciary Committee, at which leaders of TTIC, IAIP and the FBI's Counterterrorism Division testified, July 22, 2003.

⁶⁶ See Apr. 13, 2004 letter from Secretary Ridge *et al.* to Sens. Collins and Levin. See [http://govt-aff.senate.gov/_files/040413ttic.pdf].

⁶⁷ *Ibid.* The Commission concurs with the principle that agencies should retain independent analytical staffs to support their respective tactical missions. The Commission's *Final Report* states: "The NCTC will not eliminate the need for executive departments to have their own analytic units. But it would enable agency-based analytic units to become smaller and more efficient," p. 566.

⁶⁸ Hearing Before the House Select Committee on Homeland Security, Aug. 17, 2004, FDCH Political Transcripts.

As the Commission's Report suggested, "... the NCTC should have ultimate responsibility for producing *net* assessments⁶⁹ that utilize Homeland Security's analysis of domestic vulnerabilities...."⁷⁰

Counterterrorism Analysis: Relative Scarcity of Human Capital.

While the supply of analysts with expertise in counterterrorism (achieved largely through a combination of formal academic training and experience) will likely increase over the medium-to-long-term, the quantity of qualified analysts available in the short term is limited. If many of the Intelligence Community agencies are going to retain analytical programs to support their own operational needs, yet will also be responsible for assigning analysts to an NCTC, it is likely that there will be a shortage of qualified counterterrorism analysts. This could negatively affect the quality of analysis at these agencies and their ability to carry out their own missions. Even if an NCTC were to gain independent hiring authority (unlike the current TTIC model which cannot recruit independently but instead relies on Intelligence Community assignees), it would still compete with Intelligence Community agencies currently recruiting intelligence analysts.⁷¹ FBI, TTIC, DHS and CIA officials have all voiced the concern that they are competing against one another for the same talent pool.⁷²

Codification of the Executive Order? As mentioned above, on August 27, 2004, President George W. Bush signed an Executive Order to create a National Counterterrorism Center.⁷³ According to press reports, the Executive Order is only designed to serve as an interim measure preceding White House support for future legislation with respect to intelligence reform.⁷⁴ According to the Executive Order, the NCTC would: "serve as the primary organization in the U.S. Government for analyzing and integrating all intelligence possessed or acquired by the U.S. Government pertaining to terrorism and counterterrorism, excepting purely domestic

⁶⁹ The Commission defines net assessments as comparing enemy capabilities and intentions against U.S. defenses and countermeasures. See *Final Report*, p. 404. This may be a diminution of the IAIP's codified responsibility to "... understand such threats in light of actual and potential vulnerabilities to the homeland."

⁷⁰ See *Final Report*, p.565.

⁷¹ The FBI, for example, is attempting to recruit in excess of 800 "intelligence" analysts this calendar year.

⁷² See Aug. 3, 2004 Hearing Before the Senate Governmental Affairs Committee, FDCH Political Transcripts.

⁷³ See Executive Order 13354 of Aug. 27, 2004, *National Counterterrorism Center*. See also [<http://www.whitehouse.gov/news/releases/2004/08/20040827-5.html>].

⁷⁴ See Douglas Jehl and Philip Shenon, "Bush Preparing to Bolster CIA Director's Power," in *New York Times*, Aug. 27, 2004. See also Walter Pincus, "Bush's Intelligence Moves Don't Attain Scope Urged by 9/11 Panel," in *Washington Post*, Sept. 2, 2004, p. A4. Other Executive Orders and Directives signed on Aug. 27, 2004 include Strengthening the Sharing of Terrorist Information to Protect Americans, Establishing the President's Board on Safeguarding Americans' Civil Liberties, Strengthened Management of the Intelligence Community, and Homeland Security Presidential Directive 11 Comprehensive Terrorist-Related Screening Procedures.

counterterrorism information.”⁷⁵ It would also “conduct strategic operational planning for counterterrorism activities”⁷⁶ by integrating all elements of national power. While the Executive Order provides that the NCTC will not “... direct the execution of operations ...,” it will have the authority to “... assign operational responsibilities to lead agencies for counterterrorism activities ... to support strategic plans to counter terrorism.”⁷⁷ Any agency objection to assignments made by the NCTC would be raised to the NSC or Homeland Security Council for resolution. The NCTC would also “undertake ... all functions assigned to the Terrorist Threat Integration Center.”⁷⁸ Functioning as a “shared knowledge bank” on known and suspected terrorist and international terror groups, the NCTC would also disseminate its reports, and analyses to “... the President, the Vice President in the performance of Executive functions, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of Central Intelligence and other officials of the Executive Branch as appropriate.”⁷⁹ The NCTC Director would be appointed by the Director of Central Intelligence, with the approval of the President; the NCTC Director would report to the DCI. Subject to existing reprogramming authorities,⁸⁰ the Executive Branch would be able to dedicate existing intelligence community resources to the NCTC.

While there are numerous legislative proposals to reform the Intelligence Community, one draft bill (the *9/11 National Security Protection Act*) calls for the establishment of an NCTC. Appendix I, page 25, compares the main provisions of the 9/11 Commission’s NCTC recommendation with the existing Executive Order and the draft legislative proposal on this matter. Under the 9/11 National Security Protection Act, an NCTC could be one of numerous centers “... established for each substantive mission of the national intelligence service.”⁸¹ An NCTC would “...conduct strategic analysis of strategic terrorist threats, and carry out the duties of

⁷⁵ See *Executive Order National Counterterrorism Center*, p. 1.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, p. 3.

⁷⁹ *Ibid.*, p. 2.

⁸⁰ Currently, the DCI “... with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the National Foreign Intelligence Program to another such program and, ... may transfer personnel authorized under for an element of the Intelligence Community to another such element for periods up to one year.” See 50 U.S.C. §§ 403-404. This authority is, however, subject to numerous legal restrictions and practical constraints. The National Foreign Intelligence Program “... refers to all programs, project, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the DCI and the head of the United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by the United States Armed Forces.” See 50 U.S.C. §401a.

⁸¹ Other centers envisioned in this legislative proposal are counterintelligence, counterproliferation, and counternarcotics.

the Terrorist Threat Integration Center (TTIC)...⁸² Under this proposal, an NCTC would also direct “...the tasking of national intelligence collection using technical and human means... and the tasking of analysis and production of intelligence and the dissemination of such intelligence....”⁸³ With respect to counterterrorism operations, an NCTC would “coordinate the intelligence and intelligence-related operations of the United States Government.”⁸⁴ It would also “provide advice and assistance to the President, National Security Council, the National Intelligence Director, and the heads of other appropriate departments and agencies...on the strategic direction of civilian and military affairs ...”⁸⁵ related to terrorism. From a personnel perspective, the Director of an NCTC would be appointed by the National Intelligence Director. Under this proposal, an NCTC would have a separate budget account in the intelligence budget.

Legislation codifying the establishment of an NCTC would make the organization more permanent, allow the Congress to consider specific authorization and appropriations for such an organization, including the possibility of newly created analytical full time equivalent (FTE) positions, and demonstrate the sense of Congress that such a center is in the national interest. Codification would also allow the Congress the opportunity to authorize the specific functions and authorities under which the NCTC operates and confirm the NCTC Director.

Proposed Personnel Authorities of an NCTC. There are major personnel-related issues associated with potential establishment of an NCTC. The first involves the official to whom the NCTC Director reports. The Commission recommends that the Director of an NCTC report to the proposed National Intelligence Director who, in turn, would probably report to the President. The Executive Order establishing the NCTC stipulates that the NCTC Director reports to the Director of Central Intelligence. Under the 9/11 National Security Protection Act, the NCTC Director would report to the proposed National Intelligence Director. Given the joint operational planning role that the 9/11 Commission proposed for an NCTC, an argument could also be made that in the absence of a NID, the Director NCTC could report to either the existing DCI, or to the Special Assistant to the President for National Security Affairs.

The second issue involves the authority of the NCTC Director compared to other appointed counterterrorism officials in the Intelligence Community. Under the Commission’s proposal, and as mentioned above, the Director of an NCTC, “... must have the right to concur in the choices of personnel to lead the operating entities of the departments and agencies focusing on terrorism, specifically including the head of the Counterterrorist Center, the head of the FBI’s Counterterrorism Division, the commanders of the Defense Department’s Special Operations Command, and

⁸² See 9/11 National Security Protection Act, p. 29.

⁸³ *Ibid.*, pp. 27-28.

⁸⁴ *Ibid.*, p. 27.

⁸⁵ *Ibid.*

Northern Command, and the State Department’s Coordinator for Counterterrorism.”⁸⁶ The specifics of the right to concur raise questions. If there is a dispute, for example, between the Secretary of State and an NCTC on a potential appointment for the State Department’s Coordinator for Counterterrorism, does the NSC or some other entity or official resolve the dispute? If a newly appointed and confirmed NCTC Director does not approve of existing officials in these named positions, can he or she fire the incumbent — in essence can one political appointee fire another?

And third, there is a fundamental question about whether a “center” such as an NCTC should be staffed with its own independent employees (that is, have its own FTE positions and recruit, hire, train and retain them independent of the personnel practices of its constituent agencies) or, like the existing TTIC, rely on assignees from existing Intelligence Community agencies. In general and historically, the personnel practices and promotional incentives of Intelligence Community agencies have indirectly contributed to a system that does not encourage an agency’s best and brightest employees to undertake a detail or assignment to a community center. According to a former NSC official, “Several years ago DCI Tenet issued a directive requiring that officials do a rotational tour in another intelligence agency to get promoted to senior ranks ... every intelligence agency, including the CIA, ignored him. Taking temporary assignment in an agency outside one’s home is still viewed as a career-limiting move.”⁸⁷ It could be argued, however, if an NCTC became *the* center with respect to counterterrorism, as the Commission intends, then it could become a more attractive assignment. Moreover, changes in Intelligence Community personnel policies requiring certain assignments to joint interagency details as a prerequisite for promotion to a senior level may also prove effective. If an NCTC continues current TTIC practice, assignee staffing, the Commission recommends allowing leaders of an NCTC to be the “rating officials” for assessing the performance of assignees while at the center.

Proposed Budget Authorities of an NCTC. The Commission recommends that the head of the proposed NCTC should “work with the Director of the Office of Management and Budget in developing the president’s counterterrorism budget.”⁸⁸ The issue of the extent to which the Director of an NCTC develops, coordinates, executes, and controls, the counterterrorism budget is linked to the authorities that may or may not be given to the proposed NID. Theoretically, if a NID or strengthened DCI were given “... an appropriation for national intelligence and apportion the funds to the appropriate agencies, in line with that budget, and with authority to reprogram the funds among the national intelligence agencies to meet

⁸⁶ See *Final Report*, p. 405.

⁸⁷ See, Dr. Amy B. Zegart, Assistant Professor, Department of Public Policy, School of Public Affairs, University of California, Los Angeles, Written Remarks for the Record, The Senate Select Committee on Intelligence, Aug. 18, 2004. p. 6.

⁸⁸ See *Final Report*, p. 405.

any new priority,”⁸⁹ the Director of an NCTC may serve as the NID’s primary advisor with respect to the allocation of counterterrorist funds.

Options

Given the issues outlined above, there are at least four broad options the Congress may consider with respect to the potential statutory creation of an NCTC. Each of the options could be adjusted, particularly with respect to an NCTC’s reporting relationships and placement in the Executive Office of the President. These options include:

NCTC with Intelligence Fusion and Joint Operational Planning Roles. This option would essentially adopt the Commission’s proposed role for an NCTC. Supporters of such an option could state that such a centralization would remedy the lack of coordination between foreign and domestic Intelligence Community agencies having counterterrorism responsibilities — the alleged proximate cause of the 9/11 intelligence failure. Supporters could also argue that this option would ensure there is one person in charge of both the domestic and international counterterrorism analysis, who is responsible for planning operations based on analysis of the entire U.S. Government’s “knowledge bank” on terrorism. However, critics could argue that notwithstanding the view that not all counterterrorist analysts should be incorporated into an NCTC, that by centralizing analysis of counterterrorism information, an NCTC could foster, as an unintended consequence, an analytical tendency toward Groupthink. This may be particularly true if an NCTC represents the U.S. Government’s only center for strategic analysis, while responsibility for tactical analysis remains within individual agencies of the Intelligence Community. Moreover, some critics could argue that by detailing intelligence analysts and those responsible for joint operational planning to an NCTC, the offensive operational effectiveness of the Intelligence Community agencies currently conducting counterterrorism operations could be diminished.

NCTC Restricted to an Intelligence Role. Under this option, an NCTC would have no responsibilities for joint operational planning. Essentially, an NCTC would represent a knowledge bank for analysis, which could be called upon by all Intelligence Community agencies conducting counterterrorism operations. In practice, an NCTC would look like the current TTIC, only with additional agency membership, perhaps significantly more analysts, as well as additional authority over personnel and budgetary matters. Supporters of this option could argue that while the concept of having a knowledge bank for intelligence analysis is sound, operational planning is unique depending upon the Intelligence Community or Defense Department entities involved; thus operational planning should remain the province of existing agencies. These proponents might add that while there are also

⁸⁹ The *Final Report* made this recommendation with respect to the budgetary authorities of the proposed NID. Pending legislation before the Congress provides for various measures to enhance either the DCI’s existing authorities with respect to reprogramming funds (See 50 U.S.C. §§ 403-404), or a proposed NID’s authority over the intelligence budget. See also CRS Report RL32524, *Side-by-Side Comparison of 9/11 Commission Intelligence Reforms and Legislative Proposals*, by Alfred Cumming.

clear benefits to “joint” operational planning, major decisions such as which agencies should be brought into individual joint operational planning exercises should be left to the agencies originating the operation. Critics of this option could argue that in order to prevent the next catastrophic terrorist attack against the United States, there must be one individual in charge who can integrate not only intelligence analysis with respect to threat assessments, but also the operations which may be based on an holistic assessment of the threat. Simply stated, these critics could argue, the organizational separation of strategic counterterrorism intelligence from joint operational planning based on that intelligence would likely result in a dysfunctional Intelligence Community.

NCTC Restricted to a Joint Operation Planning Role. Under this option an NCTC would not have any responsibility for analysis of the threat, yet would be responsible for joint operational planning. A variation of this option could have an NCTC responsible for just international or solely domestic operations (and intelligence collection). While the TTIC would continue to exist, an NCTC would focus its energies utilizing TTIC analyses and assisting elements of the Intelligence Community to jointly plan operations to preempt and prevent terrorist attacks against U.S. interests at home and abroad. Supporters could argue the benefits of joint operational planning are so tangible and important that this function should be the sole focus of an NCTC. Under this option, an NCTC would build close relationships with the TTIC for analysis, but maintain a separate structure to ensure the integrity of TTIC analysis. These supporters might also argue that benefits of joint operational planning are so great that resistance to it must be surmounted. They might note that the individual military services were all vehemently opposed to the Goldwater-Nichols Act when it was debated and enacted in 1986, but have long since acknowledged its overwhelmingly positive effect on DoD operational planning and actual conduct of military operations. Critics could argue, because the relationship between operations and analysis should be close, it makes little sense to maintain an artificial and organizational distinction between TTIC and an NCTC with only joint operational planning responsibilities. Critics might add that an NCTC with sole responsibilities for joint planning might simply draw away existing and scarce operational planning talent that would be best left in the agencies and close to the actual operators.

Status Quo “Plus.” Under this option, TTIC would continue on its current path, and Congress would provide rigorous oversight of the ongoing Executive Branch effort to collocate elements of the FBI’s Counterterrorism Division, the TTIC, and elements of the CIA’s Counterterrorism Center. Supporters could argue that what is happening on the ground today is, in essence, a piloting of the NCTC concept. These supporters could argue that further executive action and/or formal legislation may be premature at this time. Supporters of this option might also argue that a better way to coordinate across the domestic/foreign intelligence divide is to further utilize the interagency task force concept, bringing together experts across the Intelligence Community and other agencies to coordinate counterterrorism matters without creating permanent new bureaucracies. And finally, supporters might argue that a quickly codified *de facto* “merger” between foreign and domestic counterterrorism agencies could discount the complexities associated with these issues. On the other hand, critics could argue that a lack of codification of existing practice could result in the perception that the United States is implicitly endorsing

the creation of what could be perceived as a secret police, a development which may further undermine the credibility of the Intelligence Community in the eyes of the public. Critics could argue that while the U.S. Government is moving in the right direction on counterterrorism, the status quo, even with enhanced oversight, is unacceptable, and reform is not taking place quickly enough. Critics might also contend that it is essential that Congress and the Executive Branch expeditiously and clearly define what have been historically somewhat vague relationships, duties, and roles among foreign, domestic, and military intelligence agencies with respect to counterterrorism. Without such an explicit overarching and codified framework for coordination across the foreign/domestic divide on counterterrorism thereby covering any potential intelligence gaps, the United States may repeat the same mistakes it made prior to the attacks of 9/11.

Conclusion

With respect to the functions an NCTC would perform, the 9/11 Commission's proposals appear to be fairly consistent with a draft legislative proposal, as well the *Executive Order National Counterterrorism Center*. However, whether an organization identical to the Executive Order's NCTC, or some variation, is codified may depend on whether lawmakers believe that centralization can remedy what some consider to be a major cause of the 9/11 intelligence failure, inadequate sharing of existing intelligence across the foreign/domestic divide. Conceptually, centralization produces benefits through closer coordination and sharing of information. Historically, organizational culture also has played an important role in impeding information sharing. It is possible that organizational changes may have the greatest probability of success if they are combined with shifts in organizational cultures, as well as human resource practices that reinforce a sense of jointness in the Intelligence Community. One potential unintended consequence of centralization can be, however, the discounting of contentious or contrarian views of national security threats. Continued awareness of this possible unintended consequence along with training to ensure that competitive analyses and independent thought, which identifies and questions underlying and/or inherited assumptions, may go a long way toward ameliorating any "groupthink" tendencies. The relationship between intelligence analysts and operators is another important issue which may be worthy of some debate. As qualified operational and analytical talent is in relatively short supply in the short-term, centers may be a force to positively leverage the scarcity of human resources. However, detailing a substantial portion of one's strategic analytical or operational planners to a center could have negative implications for a contributing agency's own counterterrorism effectiveness in carrying out assigned missions.

Appendix I: National Counterterrorism Center - A Side-by-Side Comparison of the 9/11 Commission Recommendation, the Executive Order, and Draft Legislation

National Counterterrorism Center Side-by-Side

Issue	9/11 Commission (Proposed)	Executive Order (signed Aug. 27, 2004)	9/11 National Security Protection Act (draft)
Structure	Proposed NCTC established as Center within the Executive Office of the President.	NCTC created as of Aug. 27, 2004. Exists within Intelligence Community.	Proposed NCTC created within the Office of the National Intelligence Director, housed within the National Intelligence Service.
Leadership and reporting relationships	NCTC Director appointed by the President with rank of deputy head of cabinet department. Subject to Senate advice and consent. <i>Reporting.</i> NCTC Director reports to the proposed National Intelligence Director.	NCTC Director appointed by the Director of Central Intelligence (DCI) with the approval of the President. <i>Reporting.</i> NCTC Director reports to the DCI, who has “authority, direction, and control over the Center and the Director of the Center.”	NCTC Director is appointed by the National Intelligence Director. <i>Reporting.</i> NCTC Director reports to the Deputy National Intelligence Director.

Issue	9/11 Commission (Proposed)	Executive Order (signed Aug. 27, 2004)	9/11 National Security Protection Act (draft)
Duties and responsibilities	<p><i>Intelligence.</i> Modeled on DoD Joint Staff's J-2 (Intelligence). Serves as "knowledge bank." Leads strategic analysis, pooling all-source (foreign and domestic intelligence) about transnational terrorist organizations. Develop's "net assessments" (comparing enemy capabilities and intentions against U.S. defenses and countermeasures). Uses TTIC as "foundation."</p> <p><i>Operations.</i> Performs "joint operational planning." Assigns operational responsibilities to lead agencies, yet does <i>not</i> direct the actual execution of these operations. "Tracks" implementation of operation or case.</p>	<p><i>Intelligence.</i> Primary U.S. Government organization for "analyzing and integrating all intelligence possessed or acquired by the U.S. Government pertaining to terrorism and counterterrorism, excepting purely domestic terrorism information." Shall "undertake...all functions assigned to the TTIC."</p> <p><i>Operations.</i> Conducts "strategic operational planning for counterterrorism activities...assigns operational responsibilities to lead agencies for counterterrorism activities,"but "... shall not direct execution of operations." Each agency in the Center "shall operate under the authorities" of their representative agencies</p>	<p><i>Intelligence.</i> Directs tasking of national intelligence collection, as well as analysis and production of intelligence and dissemination of such intelligence. Provides President, National Security Council, the National Intelligence Director, and heads of other appropriate agencies on the strategic direction of civilian and military affairs, identifies intelligence requirements and priorities. Also conducts strategic analysis of terrorist threats and carries out duties of TTIC.</p> <p><i>Operations.</i> Coordinates intelligence related operations.</p>
Staff	<p>Detailees and Assignees</p>	<p>Heads of agencies conducting diplomatic, financial, military, homeland security, intelligence, or law enforcement shall "...make available to the Director of the Center such personnel, funding, or other resources, as the DCI...may request."</p>	<p>None mentioned.</p>
Budget authority and structure	<p>NCTC Director "works with" OMB Director in "developing the president's counterterrorism budget."</p>	<p>None mentioned.</p>	<p>Sets up separate budget account for NCTC. Director NCTC coordinates the development of the budget for the National Intelligence Program.</p>

Issue	9/11 Commission (Proposed)	Executive Order (signed Aug. 27, 2004)	9/11 National Security Protection Act (draft)
“Centers”	<p>One of six centers — others include weapons of mass destruction proliferation, international crime and narcotics, China/East Asia, Middle East, Russia/Eurasia.</p>	<p>Executive Order only pertains to NCTC. However, existing Centers include Weapons Intelligence Non-Proliferation and Arms Control, the El Paso Intelligence Center, the National Drug Intelligence Center, the Counterintelligence Center, the Terrorist Screening Center, and the National Virtual Translation Center.</p>	<p>In addition to NCTC, proposes that the NID should consider establishing centers for counterproliferation, counterintelligence, and counternarcotics.</p>
Prohibitions and dispute resolution	<p>NCTC not a “policymaking body.” Disputes with respect to operations resolved by the NSC.</p>	<p>Agencies inform NSC and Homeland Security Council of “...any objections to designations and assignments made by the Center in the planning and coordination of counterterrorism activities.”</p>	<p>None mentioned.</p>