

This web site was frozen on September 20, 2004 at 12:00 AM, EDT. It is now a Federal record managed by the National Archives and Records Administration. External links were active as of that date and time. For technical issues, contact webprogram@nara.gov. For questions about the web site, contact legislative.archives@nara.gov.



NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

[About the Commission](#) | [Report](#) | [Hearings](#) | [Staff Statements](#) | [Press](#) | [Archive](#) | [For Families](#)

Sixth public hearing of the National Commission on Terrorist Attacks Upon the United States

Statement of John MacGaffin to the National Commission on Terrorist Attacks Upon The United States December 8, 2003

Chairman Kean, Vice Chairman Hamilton, distinguished members of the National Commission on Terrorist Attacks upon the United States; it is an honor for me to appear before you today and to provide whatever modest assistance I can in your vital and extremely difficult task. Neither the American people nor our Federal, State and Local governments have yet been able to fully understand the long-developing crisis in National Security which suddenly revealed itself to us on 9/11. Neither have we been able to fully understand what is happening to us nor why it has happened. Consequently, it should be no surprise that we have not yet been able to set a clear course for the future and to

Current News

The Commission has released its final report. [\[more\]](#)

The Chair and Vice Chair have released a statement regarding the Commission's closing. [\[more\]](#)

The Commission closed August 21, 2004. [\[more\]](#)

Commission Members

Thomas H. Kean
Chair

Lee H. Hamilton
Vice Chair

determine what steps we must take to increase the likelihood that such disasters can be prevented in the future. Attacks by those who carried out the events of 9/11 have continued against American interests since that time, although none as yet taken place again within the United States itself. But that is just a matter of time. It falls to your Commission, therefore, to provide the clearest possible view of the causes of 9/11 - both the motivations and passions of those abroad who are consumed with hatred for us, as well as an understanding of the workings of the national security elements of government which served us well before 9/11 and those that did not. It is only with this information that you will be able to judge the adequacy of those changes which have been put in place since September 2002 and to highlight those things still to be done. A difficult task, but one in which failure is not an option.

I hope that my experience in both government and the private sector over the past 35 years will be of some value to your efforts. For more than 30 years as an officer of the CIA, I served primarily in the Middle East (Beirut, Saudi Arabia, Jordan, Cyprus, Turkey) and, as a consequence, devoted a large portion of my professional attention to the problem of terrorism and the efforts of our government and those of our allies to counter it. From 1992 until retirement from CIA, I was Associate Deputy Director for Operations. I then spent five years as Senior Advisor to the Director and Deputy Director of the FBI, with primary responsibility for improving the interaction and cooperation between CIA and FBI and in assisting the FBI as it expanded its relations and interactions with foreign law enforcement agencies. Counterterrorism was obviously a primary focus here, as it was during the following period when I chaired, on behalf of the Secretary of Defense, The DCI and the Director of the FBI, a commission to reform national counterintelligence (understood in this context

Richard Ben-Veniste
Fred F. Fielding
Jamie S. Gorelick
Slade Gorton
Bob Kerrey
John F. Lehman
Timothy J. Roemer
James R. Thompson

Commission Staff

Philip D. Zelikow
Executive Director

Chris Kojm
*Deputy Executive
Director*

Daniel Marcus
General Counsel

to include the entire universe of threats, secretly implemented, which would cause unacceptable harm to our national and economic interests - terrorist organizations as well as hostile foreign intelligence services.) Finally, I now head a Washington based firm which provides training and on-the-ground assistance to individuals and organizations who must go into harms' way and face the dangers of terrorism in places like Iraq and Afghanistan. Obviously, my testimony and comments here today reflect only my own views and do not in any way pretend to represent the thinking of any of my previous employers or associates.

All Americans have personalized the ways in which the attacks of 9/11 came home to them. For me it was the awful understanding, sometime during the night of September 11-12, of the magnitude of my failure, and that of my colleagues at the FBI, CIA and DOD, to fully implement those systemic changes to our national security structure writ large that could have prevented this attack. Harsh, but true. Put even more baldly, if the elements of our national security structure - CIA, FBI, NSA, DoD, NSC, DOJ and others - had actually established and implemented those changes and improvements in the way each operated and interacted - separately as well as jointly - that we had told ourselves, the Congress and the American people had already been accomplished, then the story of 9/11 could well have been different. The tragedy is that we had the vision, but not the will.

The focus of this discussion is "Government Organization and Domestic Intelligence". I will not therefore address those elements of national security which are focused primarily abroad. Before moving on to what to some will seem to be unfair attention to the inadequacy of the domestic intelligence piece and those government organizations that are responsible for it, let me make clear my view that those foreign focused entities - CIA, NSA, DoD and

others - have much improvement to make on their sides as well. This, however, is not the proper forum for that discussion.

Is the Problem Domestic Intelligence Collection or Analysis?

Last July, John Hamre and I and five other colleagues collaborated on an article published in *The Economist* and entitled "America Needs More Spies" (July 10th, 2003). It focuses on the critical requirement to improve the collection of intelligence domestically. We asserted that the harsh facts of the 9/11 tragedy are that "secret members of a conspiratorial foreign organization operated clandestinely abroad and in this country for almost a decade before September 11th to plan, lay the groundwork for and successfully carry out a surprise attack on the United States. The activity was conducted by the leadership in Afghanistan, by plotters in the shadow of a Hamburg mosque, by operational travelers from abroad and by an established al-Qaida support structure based in this country."

The bulk of the criticism of the national security establishment's performance has centered on a failure "to connect the dots." While I concede a lack of analysis and interagency communication might have contributed marginally to this intelligence failure, the main cause was a lack of effective collection against al-Qaida - both domestically and abroad. While academics working at leisure and with the benefit of hindsight might now claim 9/11 could have been/should have been prevented on the basis of the information available beforehand, I believe those available "dots" were insufficient. The reason? Because of a lack of effective collection, the USG did not have good information on the plans, capabilities and intentions of al-Qaida -- the basis for any defensive or offensive action against any enemy. My remarks address this issue in the context of domestic collection. Under current ground rules, domestic intelligence collection is

the primary, if not exclusive, responsibility of the FBI.

Before proceeding further, however, we must clarify a distinction which - sometimes unwittingly and sometimes intentionally - has clouded this debate for years. That is, we must make the critical distinction between "collection" and "gathering" as it pertains to intelligence. While the FBI correctly highlights its unmatched ability to gather evidence - and with it information - there is nonetheless a National Security imperative which distinguishes intelligence collection from a similar, but different, function found in Law Enforcement.

"Gathering" which is not driven/informed by specific, focused National Security needs is not the same as "intelligence collection" as the DCI and the Intelligence Community understand that term. This collection is accomplished not incidental to law enforcement, but by conscious, specifically targeted, operational clandestine espionage activity, whether technical, human or a combination of both. "Collection", as I will use the term today, means those intelligence activities which are dictated by, and coupled to, a policy driven, strategically determined set of collection requirements. And it is accomplished by focused, clandestine operational activity.

The harsh reality is that the FBI is not engaged today in the business of intelligence collection. Both before and after 9/11, the FBI's focus on Law Enforcement to the exclusion of an intelligence approach was very clearly demonstrated by Director Freeh's response to a Congressional query on 2 October 2002 which asked whether the FBI was truly at war with al Qaida before 9/11. He responded that the Bureau was, in fact, at war and offered as support the fact that Usama Bin Ladin had already been indicted twice. Despite disclaimers by the FBI and others, conversations with colleagues across the board up until today, convince me and many other observers that real

progress in domestic intelligence collection has not, in fact, been made. Further, there is not sufficient evidence that the changes and reforms underway, despite the intense attention which Director Mueller has given this vital subject every single day since 9/11, will in fact deliver the promised result.

What is the Reality of Domestic Intelligence Collection Today?

At the request of several commissioners, I have attached a list of questions which I believe will help you determine the true course and progress toward establishment of a domestic intelligence collection regime in the FBI. If you pursue answers to them, I believe that you will be able to determine whether the assessments made below are, in fact, accurate. Those assessments are:

- Very little domestically collected intelligence has been made available to the newly established Terrorist Threat Integration Center (TTIC) for integration with foreign collected intelligence and used in analysis for policymakers.
- Several reviews since 9/11 show that domestically collected intelligence as contributed less than 1% of the information and analysis made available to the Executive Branch.
- FBI domestically collected intelligence reporting disseminated outside the FBI averages about 4 reports per day. While a 4x increase, it nonetheless falls well short of other producers of intelligences - DIA, NSA, CIA - each of whose daily output is more in the region 450 reports per day.
- Field Office investigative activities are heavily biased toward a law enforcement resolution of all terrorism-related leads.

US Attorneys offices have greater authority than heretofore in determining the course and direction of FBI field activity. AUSAs are present on each of the 56-plus Joint terrorism Task Forces throughout the country and are able to push intelligence leads into criminal investigations despite the longer term loss of domestic intelligence collection and the inevitable damage to our most valuable intelligence sources and methods such as FISA.

- There is no effective mechanism to resolve the conflict between a law enforcement path and an intelligence path on a day-to-day basis. Despite efforts of seniors on both sides and at the NSC to bring some order to this, the default position is most often "first there decides how to proceed."
- The DOJ Criminal Division now reviews all national security cases for criminal leads. What knowledge of international terrorism does the Criminal Division bring to the table? How can the FBI effectively establish domestic intelligence goals and develop long term penetrations of terrorist organizations and hostile intelligence services in the face of such strong law enforcement bias (and tradition)?
- While "number games" are an inherently imperfect way to approach qualitative judgments, the situation described above must be seen in relation to the real and potential resources being brought to bear on the problem. Specifically, the FBI has approximately:
 - 1600 Special Agents assigned to Counterterrorism
 - 1200 Special Agents assigned to Counterintelligence
 - 7500 employees total assigned to

these two essentially indivisible issues

Put another way, the Special Agents involved are all "intelligence collectors". But where is the domestic intelligence?

- Another way to attempt to gage the balance between resources available and intelligence produced, consider the following efforts which have been deployed by the FBI against this problem over the past year:
 - Several thousands of CT and CI "assets" who are tasked to provide secret information on the plans and intentions of terrorist and hostile intelligence organizations, obtained in 10s of thousands of meetings between Special Agents and these "assets" every year
 - 10s of thousands of physical surveillances of individuals believed to be associated with terrorist organizations and hostile foreign intelligence services each year
 - More than a million hours of court authorized electronic surveillance of individuals believed to be associated with terrorist organizations and hostile foreign intelligence services each year.

Put another way, a formidable array of appropriate and legal intelligence collection mechanisms is available, but where is the domestic intelligence?

- Despite the decision to elevate Counterterrorism and Counterintelligence to the highest priority of FBI tasks, the training provided to new special agent personnel at Quantico which is specifically tailored to these problems has not changed significantly from the traditional level of up to 4 weeks out of a 14-15

week total training program. It does not appear that training for more experienced Special Agents and other staff in counterterrorism and counterintelligence matters has increased either. Most importantly, relative to the task of recruiting human source penetration agents in terrorist and intelligence organizations, it does not appear that the tradecraft required to obtain these penetrations has received priority attention in the training curriculum

- In addition to training, the system of rewards in an organization usually tracks with that organization's true core values. The annual Presidential Rank awards announced last week by the FBI recognized no one for achievement in either counterterrorism or counterintelligence. The highest award went to the head of the Criminal Investigations Division. Does this mean that there was no outstanding performance of this magnitude in counterterrorism or counterintelligence or that the criminal prosecution focus of the FBI is still predominant?

How is Improvement Possible?

First, I do not believe that the oft-discussed MI-5 solution is either appropriate or necessary for America. While we must establish an effective process of domestic intelligence collection if we are to meet the increasing challenges we already face from hostile quarters, we do not need a British solution which was born of British history, British governance and unique British circumstances. On the other hand, we must not continue down the path of asserting that no changes are needed and that all will be well if we institute a few improvements. No, we must make significant changes. But we need an American solution, not a foreign one.

For a variety of compelling reasons rooted in our history, governance and unique circumstances, the clearly superior American solution would leave the responsibilities for counterterrorism and counterintelligence in the FBI. The task before the Commission, I believe, is to determine whether that is possible. Given the events of 9/11, however, it cannot remain there if we cannot be confident that effective changes have been implemented. The questions prepared for the Commission are intended to help you determine whether that is, in fact, the case.

If you agree that effective domestic intelligence collection is indeed at the heart of the matter and that it, not traditional law enforcement activity, is the only way to meet the challenges we face, then it is crucial that the Commission develop some metrics which will enable you and the President and the Congress and the American people to know whether we are going in the right direction. To this end, I have prepared a brief description of what a new domestic intelligence component within the FBI would look like. These ideas were drawn, first and foremost, from discussions over many years with counterterrorism and counterintelligence experts within the FBI. While it may no longer be politically correct for some to advocate the separation of law enforcement and national security activities which this model proposes, it nonetheless represents the best advice of scores of FBI personnel and would be welcomed as an effective partner by the rest of the intelligence community. Individually, each of the elements of the model requires discussion and none are unalterable. But any attempt to force them back into the traditional FBI law enforcement structures would certainly return us to status quo ante.

A New National Security Organization within the FBI?

Some will claim that establishing a new organization along the lines described below is either, on the one hand, unnecessary or, on the other, too disruptive to contemplate in the midst of our war on terrorism. Those are the arguments for status quo which will leave us exposed to the same risks and dangers we faced before 9/11. In addition to providing a roadmap and way ahead for real domestic intelligence collection, these 11 points are also clear mile posts for the FBI, the President, the Congress and the American people. Within the next 12 months, the FBI should make clear, measurable progress and:

- Establish a National Security entity within the FBI which is responsible for all domestic intelligence collection against individuals and organizations who threaten our core diplomatic, economic and national security interests, whether they be terrorist organizations, intelligence services or other foreign elements.
- Institute a process for promulgating and validating national security requirements for domestic intelligence collection that complements and synchronizes with the national foreign intelligence collection process involving the National Security Council, the Director of Central Intelligence and the Attorney General.
- Create a career category of FBI Special Agent and Support personnel who spend their entire career in this work, developing expertise and career skills which are not now found at the FBI.
- Designate as head of this element an experienced intelligence professional, nominated by the DCI with the concurrence of the AG and Director, FBI, appointed by the President and confirmed by the Congress for a 10 year term.

- Under authorities provided by Executive Order or Statute, establish new lines of reporting and accountability which, on the one hand, enable the DCI and NSC to insure for the first time that the FBI's domestic collection activities are responsive and appropriate to the country's most important national security threats and, at the same time, enable the AG and the Congress to have sufficient oversight to insure that Americans' concerns about privacy and other constitutional protections for U.S. persons are met.
- In recognition of the FBI's prioritization of Counterterrorism and Counterintelligence over traditional law enforcement responsibilities, assign 60% of FBI personnel and other resources to this entity,
- Significantly overhaul and expand the FBI's traditional Quantico new agent training program from its present duration of approximately 15 weeks (with less than one quarter devoted to counterterrorism and counterintelligence issues) to one which is centered on these issues as well as on the traditional law enforcement tasks, standards and procedures which will complement them in a reorganized/reoriented FBI.
- Select 40% of each new agent training class to be enrolled directly in a training program jointly developed with CIA, given at an Intelligence Community facility by FBI and Intelligence Community personnel.
- Designate the best of this contingent, and succeeding groups, as National Security career cadre.

- Implement a new domestic Field Office organizational structure which clearly differentiates intelligence collection function from the law enforcement function - separating where appropriate information and activities relative to intelligence and law enforcement matters and insuring that the direction and management of intelligence collection activities is clearly distinct from that employed for law enforcement.
- At both FBI Headquarters level and in the Field Office at the Assistant Director and Special Agent in Charge levels, the two separate functions must be integrated to ensure that the intelligence function supports prosecutions where appropriate and that law enforcement functions directly complement the national security/intelligence functions.

Conclusion

To summarize, I believe the intelligence failure of 9/11 was mainly caused by the lack of effective intelligence collection at home and abroad. In the domestic context, it is clear that the FBI needs to improve greatly its intelligence collection so that there are meaningful "dots" to connect and analyze. Some observers believe the FBI since 9/11 has made real progress in this direction. I and many others do not. I have attempted today to provide information and a construct for reaching an objective conclusion on this vital matter. The stakes are far too high to settle for anything short of absolute certainty that the FBI is on the right track and that the great gap in domestic intelligence collection has been closed before we are attacked again. I hope that the "mile posts" presented above will enable the Commission to judge the present reality against an observable, quantifiable end state. If you accept this end state, then the Commission should be able to determine by the

end of its term whether we are indeed on the road to achieving it. The Commission's report can make this clear to the President, the Congress and the American people.

If the FBI can make this truly significant change and no longer cling to the law enforcement centered traditions and approaches which served them and the country so well against another set of adversaries in another time, then we should all get firmly behind their reform efforts and bring the resources of our country to bear to insure that they succeed. If, however, the FBI cannot fully make this transition - and this will be clear to you as you approach the end of the Commission's deliberations, then, I believe, you will have no choice but to propose some even more radical solution which places these responsibilities for counterterrorism and counterintelligence in another, perhaps new, organization. The stakes are just too high, and the time too short, to do otherwise.

Distinguished Commissioners, you have by far the most difficult task. If my contribution is helpful in you efforts, I am grateful to be of assistance. If I can help in you further deliberations, I will be available.

Thank you for inviting me to appear before the Commission. I am pleased to answer any questions you may have.

Questions 9/11 Commission Might Pose to Better Understand Status of Domestic Intelligence Collection Today

- Examine a representative sampling actual reporting from field offices (where such information is collected and not statistical breakdowns) of Counterterrorism Reporting produced by FBI from domestic sources since 9/11. Does this reporting show real insight to terrorist plans and intentions in the United States? Does it

reflect focused operational activity by the FBI to penetrate terrorist organizations and collect specific information on them and on their plans?

- Has the FBI incentive-ized its new intelligence mission? How does it now reward employees in this new mission? What has FBI Inspection Division been provided for new metrics (and retraining) when evaluating an FBI program or FBI Field Office? Are inspections focused on #s of prosecutions and indictments? Or do they focus on intelligence reports produced and disseminated? Do they focus on actual penetration sources of hostile organizations (terrorist or intelligence) recruited? (The annual Presidential Rank awards announced this week by the FBI recognized no one for achievement in either counterterrorism or counterintelligence. Does that mean that there was none or that the traditional criminal prosecution focus of the FBI is still predominant?)
- What intelligence has the FBI produced and disseminated from the millions of hours of FISA coverage acquired each year (court authorized electronic surveillance of specific individuals and organizations in the United States believed to be operating against the core diplomatic, economic and security interests of the United States)? How does this compare with the intelligence (quality and quantity) that other elements of the intelligence community have produced and disseminated to our government from similar collection sources abroad? Does the FBI have a program for disseminating such FISA derived information to 'customers' other than itself?
- What information acquired by FBI

domestic collection operations (as opposed to government statistics, court records, etc.) has the FBI contributed this year to national data bases used by the rest of the counterterrorism and counterintelligence elements of our federal, state and local governments?

- How have the hiring requirements for new FBI Support and Special Agent personnel changed since 9/11? Specifically, how have these changed requirements been communicated to the heads of the FBI's 56 Field Offices who are responsible for, and evaluated on the effectiveness of, the FBI's recruitment program? What are the actual requirements for non-traditional expertise and experience which have been given to the Field Offices?
- How has FBI training given at Quantico at the beginning of a Special Agent's career changed from that given before 9/11? This training has traditionally been of 14-15 weeks' duration and included approximately 1 week dedicated to national security specific issues such as counterterrorism and counterintelligence. What is the situation today? What new material has been added to the curriculum that is specifically relevant to the FBI intelligence collection responsibilities in counterterrorism and counterintelligence? What new training has been given this year to FBI Special Agents and Support personnel who have been on board for a number of years and who were originally trained under an earlier curriculum?
- Does FBI management have a commitment to develop a career cadre of Special Agent and Support personnel or does it intended to continue to move personnel in and out of National Security

and Criminal sides of the organization?

- Intelligence collection (domestic or foreign) is a focused activity which can only be done when guided by specific collection requirements. What requirements regime did the FBI have in place for Field Offices before 9/11 and what is the requirements process now in place? How is it communicated to Field Offices and how are they evaluated on the performance relative to these requirements? What is the process whereby FBI collection requirements levied on Field Offices are informed by the national level understanding of the most important gaps in our understanding of those individual and organizations worldwide that would do harm to us? Are these requirements based on the national intelligence taskings produced systematically by, and used throughout, the Intelligence Community?

Mr. MacGaffin has held positions of significant responsibility within the Central Intelligence Agency, the Federal Bureau of Investigation and as a Consultant to various government and private sector entities. He has been involved directly and substantively in matters of intelligence collection, law enforcement, counterterrorism, counterintelligence and security for nearly 40 years.

Mr. MacGaffin served as an officer with the CIA for 31 years, retiring as a member of the Senior Intelligence Service. His assignments include serving as Chief of Station for 5 overseas locations and responsibility for activities throughout the world. At the time of his retirement Mr. MacGaffin served as the Associate Deputy Director for Operations - the second ranking position in the nation's Clandestine Service.

After leaving the CIA, Mr. MacGaffin became the Senior Advisor to the Director and Deputy Director of the FBI, responsible for long range enhancement of CIA/FBI relationships and for the development of the FBI's Five Year Strategic Plan and its global deployments. Counterterrorism, Counterintelligence and Security were the central focus of his responsibilities in this position.

In 1998, Mr. MacGaffin chaired a commission on behalf of the Secretary of Defense, the Director of Central Intelligence and the Director of the FBI to restructure the national Counterintelligence System. That effort, known as CI-21, was established by Presidential Decision Directive 75 signed by President Clinton and implemented by the Bush Administration. The Commission evaluated security, counterintelligence and other threats to the US Government and private sector in the decade ahead.

Since the conclusion of the Commission, Mr. MacGaffin has served as a consultant to various government departments (DoD, CIA) and corporations (Conoco, Gray Hawk Systems, Niagara-Mohawk, General Dynamics, Veridian) providing advice and assistance in a range of areas including counterterrorism, counterintelligence and security throughout the world.

At present Mr. MacGaffin heads AKE LLC, a Washington-based firm specializing in integrated risk solutions for a wide range of clients from international media, non-governmental organizations and others in the private sector. Mr. MacGaffin is a member of the Center for Strategic and International Studies (CSIS) Global Organized Crime Project, chaired by Judge William H. Webster. He serves on the Defense Science Board (DSB) Taskforce on Homeland Security and in 2002 was a member of the DSB Taskforce on Intelligence in Support of the War on Terrorism sponsored by the

Secretary of Defense and the Director of Central Intelligence. He is a member of the CSIS Project on Transnational Threats and serves on the CSIS Private Sector Advisory Group which provides a forum for Fortune 500 corporate security executives and national security specialists jointly to develop public/private approaches to Homeland Security. He has also participated in a major public/private sector working group on the potential impact of terrorism on the Agriculture and Public Health communities sponsored by the ANSER Corporation.

National Commission on Terrorist Attacks Upon the United States
The Commission closed on August 21, 2004. This site is archived.