The Missing Piece: Why Intelligence Reform Failed After 9/11

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Abstract

On September 11, 2001, the U.S. government failed to prevent a terrorist attack against the U.S. homeland. The lack of a coordinated, strategic warning of the 9/11 terrorist attacks exposed serious systemic problems within the U.S. national security system. This event resulted in a rush to reform the U.S. intelligence community. In an effort to determine the causes of the failure a number of official investigations were conducted. While these investigations were successful in providing a wealth of extensive information that would have otherwise not been available to the public, the investigations' conclusions and recommendations failed to fix the underlying problems that caused the intelligence failures. In fact, in some ways, their recommendations may have made the situation worse.

One major reason that the 9/11 investigations failed is because they neglected to consider critical social science theories that are relevant to questions of government reform. For example, none of the investigations considered the insights from theories such as new institutionalism, normal accident theory or organizational culture theory.

In failing to seriously explain the theoretical insights from social science theory, these investigations neglected critical information that would have improved the reform efforts and made the U.S. safer.

This study applies theoretical insights from social science theory to critique the reforms and to propose a new reform agenda for the intelligence community. Importantly, this study focuses on three common criticisms of the intelligence community made by the investigations: (1) the lack of imagination on behalf of the U.S. government and, in particular, the CIA to anticipate the threat; (2) the lack of accountability within the intelligence community to hold individuals responsible for failures like 9/11; and (3) the lack of an effective intelligence collection capability within the United States. In examining these criticisms, this study applies the lessons from constructivism, new institutionalism and organizational theory and demonstrates how the 9/11 investigations failed to applied theoretical insights to properly diagnose the flaws within the intelligence community.

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Preface

On September 12, 2001, the American public woke up to a startling reality: our homeland was not secure from foreign threats. For those living in the United States, the terrorist attacks on 9/11 represented a threat to the very way they had come to expect. For me, 9/11 was the start of a journey to answer two seemingly simple but important: First, how could this have happened? And, second, what can America do to ensure nothing similar happens again? This study is a product of that journey that has spanned over seven years. In the search for answers my research efforts have moved from evaluating the bureaucratic institutions responsible for maintaining U.S. security to social science theories of academia and back to the public sector institutions of the U.S. national security system.

Fortunately, for those interested in knowing the facts about events leading up to 9/11, the official investigations into the attacks did a credible job of providing answers to the first question. The investigations, however, did not sufficiently address and answer the second question. For the most part, the reports that the investigations published were devoted to the first question and they did fair job of reporting the detailed history of the people, events and decisions that preceded 9/11 (with the except of one report the author takes issue with in Chapter 4). The reports described how the terrorists planned the attacks while evading detection by the U.S. government. In attempting to address the second question, the investigations provided a list of recommendations for change within the government. Some of those recommendations

are sound but many present problems. For example, *The 9/11 Commission Report* favors formal structural and procedural changes to government institutions over cultural changes. On the other hand, *The Joint Inquiry Report* and *The CIA's Inspector General Report* emphasize the need for personal responsibility and accountability within the institutions while giving little attention to the complex nature of the system and other cultural factors. The reports make recommendations but fail to provide adequate analysis of how the recommendations were derived from the facts. This critical flaw of the investigations resulted in some recommendations that were inadequate and others that were counterproductive to effective reform of the intelligence community.

The question of what can be done to improve U.S national security at home is not a normative question that seeks an ideal answer eliminating all surprise attacks with perfect intelligence. Rather, the question is a practical one that asks for possible, realistic changes to the U.S. government that decreases the likelihood of another attack on the homeland. In short, this study addresses what must be done to ensure a safer United States based upon what we now know about the attacks on 9/11? This study argues that the investigations into those attacks fell short of providing an adequate solution to this dilemma by failing to provide effective reform recommendations. This underscores the relevance of this study -- to provide alternative and effective recommendations for reform.

The focus of this study is an examination of the institutions within the U.S. national security system -- two in particular (the CIA and the FBI) -- and arriving at specific conclusions based on insights from social science theory about how best to

design these institutions to maximize their intelligence-gathering performance. As originally envisioned, the focus of this project is the U.S government institutions within the U.S. security system. And the original intent was only to provide some prescriptive conclusions for change within those institutions and not to address necessarily the reasons why the 9/11 investigation reports failed to provide adequate reform recommendations. In the course of this analysis, however, based upon a detailed review of the reports, interviews with a number of the investigators and secondary sources published about the investigations, useful information was collected about the research methods used by the investigators, providing crucial insight into how the investigations arrived at their specific recommendations and leading to a conclusion that provides one possible explanation for the investigations' failure. The investigations failed to consider social science in their research and neglected to draw upon relevant theory for reform. This study illustrates how specific theories within the social sciences can inform effective institutional reform efforts. Social science theory, this study argues, is the missing piece to the 9/11 investigations.

For years I have been fascinated by government organizations operating in the area of national security. Upon graduating law school I began work as an attorney at the Department of Justice (DOJ) and soon moved to the CIA's Office of General Counsel. Over the 15 years of my service in the public sector I have continued my interest in government institutions, both from the perspective of an attorney within those institutions and as someone having an oversight role over those institutions. In

the aftermath of 9/11 I became focused on the task of making sense of how and why the organizations I thought I knew so well appeared to have failed the American people.

After 9/11, inside and outside of the government there were those who pointed fingers at the people working in the government claiming they were the cause of the failure. At the time, I disagreed with this explanation. My position, back then, however, was only a gut sense based upon personal experiences working within the government and not based on any specific empirical evidence. Some of the individuals who were blamed I knew personally. For those who I did not know before 9/11, I became acquainted with them and their work while serving as a staff member of the Joint Inquiry staff after 9/11. I was familiar with the work ethic of these people and holding them responsible for the events of 9/11 did not make sense. In addition to being familiar with the people, over the years of working within the national security system, I was also familiar with the complexity of the government system within which these institutions and the members of the institutions operated. My instincts told me that these people could not have caused the system to fail on 9/11. The conclusions made by some that, "if only they did X instead of Z" 9/11 may have been prevented, were too simple and did not make sense to me based on my own personal experience. Instinct and personal experience, I concluded, would not be sufficient to support a convincing argument for reform. Empirical evidence, sound analysis based upon a strong methodology, and theory to guide this analysis were required. At the conclusion of this study, based upon evidence and analysis informed by theory, my conclusions based on experience and the instincts developed from those experiences were validated.

Individuals within the U.S. government were not responsible for the events of 9/11. This conclusion, while an important one, is only one of a number of conclusions of this study. This conclusion, however, illustrates the value of personal experience and insights gained from those experiences within the fields of research. If it had not been for the years that I worked within the U.S. government institutions that are the subject of this study, I would have lacked an important perspective about these institutions. That perspective served me well in helping to direct my research and ask the relevant questions.

In 2002, I resigned from the CIA to join the staff of the Joint Inquiry that had been established by the Congress to investigate the events of 9/11. Including myself, there were eighteen investigators hired and, together, we served as the first group of outsiders to investigate those terrorist attacks against the United States. The staff of the Joint Inquiry supported the efforts of the principals of the Joint Inquiry, all members of the U.S. Congress (Rep. Nancy Pelosi, Rep. Porter Goss, Senator Shelby and Senator Graham), in order to determine the facts leading up to 9/11, and more, specifically, the role of the intelligence community in the government's efforts to address terrorism prior to 9/11.

Working as a staff member of the Joint Inquiry gave me a broader perspective of how the CIA functioned as an institution within the broader national security system of the U.S. government. In my prior capacity as an attorney at the CIA, my perspective was limited, based on narrowly focused legal issues. As a member of the Inquiry staff, I was assigned to investigate the CIA; however, rather than examining specific legal

issues, I focused on the organizational structure and operations of the agency. For the first time, I was exposed to the operations of the internal mechanisms of the CIA, how employee tasks were defined and how the CIA employees carried out those tasks. Most of my time at the Joint Inquiry was dedicated to requesting, reviewing and analyzing operational records from the Directorate of Operations; interviewing members of the Counterterrorism Center; and assimilating the information collected into a chronological narrative or timetable that described how CIA officers had tracked some of the 9/11 hijackers overseas prior to 9/11. As the CIA provided thousands of documents and access to its employees, the pieces of the puzzle began to fall into place and tell the story of how the 9/11 hijackers prepared for and planned the terrorist attacks undetected by anyone.

While on the Joint Inquiry staff I personally reviewed over 4,000 documents and interviewed seventy-five individuals involved in the CIA's counterterrorism programs. These officials had worked at the CIA for some period between the Millennium celebrations and the 9/11 attacks. In the case of some of these individuals, I interviewed them multiple times to get more information or clarifications. The individuals interviewed were central to my ability to learn, analyze and draw conclusions about how the CIA functioned as an intelligence organization (i.e., the functional differentiation of job tasks, the hierarchy of decision-making authority, the specialization of functions, and the culture of the institution). These individuals were critical to my research into the "black box" of the government's institutions. On many occasions, I sat with the employees at their desks and observed what the average day for

a targeting officer, for example, would entail (there was nothing "average" about what I saw). With this exposure to members of the CIA during their workday, I was able to get a sense of the daily, seemingly mundane routines and practices within the organization as well as the formal and informal mechanisms by which work was accomplished within the organization. In a sense, a sociologist would probably describe what I was doing as similar to the field research work of an anthropologist or ethnographer.

In July 2002, I made a very difficult decision to resign from the Joint Inquiry staff. Because I have highlighted the impact my experience as part of the Inquiry staff had upon my perspective as a researcher, I believe I also have an obligation to disclose the circumstances surrounding my decision to resign from my position at the Inquiry staff. The decision to resign was a particularly difficult decision for me to make, mainly because I believed it was critically important to determine the causes of 9/11 (to understand how this could happen) in order to prevent it from happening again. It was also a difficult decision for me personally because it meant that I would have no job. When I took the job on the Joint Inquiry staff I resigned from the CIA in order to serve on the staff as part of the team investigating the CIA. At the time it made sense from a conflict-of-interest perspective to resign from the organization that I would be investigating. At the time, of course, I had not contemplated how short my tenure on the staff would be. In resigning from the Inquiry I understood that I would lose my government job, salary and security clearances. As part of the Inquiry, I was an employee of the U.S. Congress that had hired me, paid my salary, would hold my

clearances only for the duration of time that I served on the staff. In short, after handing in my resignation, I had no job, no salary, and no clearances. This was not a situation I had ever been in before. In fact, I had worked hard most of my life to avoid this situation.

Before leaving my position, at the request of Rep. Porter Goss, I met with him for a "private exit interview." He asked me why I was resigning. I explained to him the reasons I had for leaving. I explained that I did not feel comfortable being a part of an investigation that I thought was being manipulated by others outside of the investigation team. I provided specific examples of incidences of political influence directed at the day-to-operations of the investigation that I had witnessed over the last couple of months. I volunteered my opinion that I thought these influences were infecting the work of the staff, preventing the staff from doing its job. Carefully, with sensitivity for Rep. Goss' feelings, I relayed my concerns about how political vendettas by individuals were driving, not only the high level public rhetoric coming from the Hill but the day-to-day tasks of the Inquiry staff. I mentioned that this was not the first time I had expressed my concerns (I had notified the acting staff director for the Inquiry on previous occasions) and that I could no longer accept the situation as part of my job.

Surprisingly, Porter Goss acknowledged that he was, "unfortunately aware that this was going on." He then politely thanked me for sharing my reasons for resigning and stated, "I needed to hear it from you." At the conclusion of our meeting, I realized I had made the correct decision to resign. Any trepidation I had was gone after I understood that Porter Goss, one of the principals of this inquiry and a member of the

U.S. Congress, knew politics was negatively influencing the investigation and, arguably regrettably, could not stop it. Porter Goss thanked me for my dedication and wished me the "best of luck" as he shook my hand. The time I served on the Inquiry staff was the first step in my journey to answer questions about 9/11. Although a shorter step then I had expected, it was a valuable one that served as an early step towards an explanation for the events of 9/11.

In August 2002, I accepted a job at the White House working as General Counsel to the President's Foreign Intelligence Advisory Board (the Board). The Board, in existence since 1956 when President Eisenhower first established it, advises the President of the United States on matters related to the performance of the U.S. intelligence community. I served as Counsel to the Board from 2002-2006. In this capacity, I was exposed to a broad range of issues related to the activities of the intelligence community. Unlike other position in which I had served, being the Counsel to the Board provided me with a broad and deep understanding of how the "collection" of organizations (versus only one of the agencies) that comprise the U.S. intelligence community operated. Most of the work of the Board is classified and therefore cannot be discussed here in any detail. My time working for the Board, however, gave me unique access to the government institutions that comprise the U.S. intelligence agencies. It was an extraordinary opportunity to examine the smallest details of the complex facets of the internal operations, organizational structures, institutional members, and functions of the intelligence agencies.

The experiences I gained while working in the CIA's General Counsel's Office, serving on the Joint Inquiry staff and as Counsel to the President's Foreign Intelligence Advisory Board were invaluable to me in seeking to understand the circumstances which led to 9/11 and the role the organizations within the intelligence community played in implementing the U.S. government's counterterrorism strategy. The direct access I gained to the individuals working on the "front lines" of the CIA fighting terrorism provided me with indispensable knowledge about how the CIA functioned; its organizational structure, division of tasks among the work force, decision making authorities at different levels and the organizational cultures that exist within the organization. This type of first hand empirical evidence is unlikely to be gained through published studies or reports (although many of the facts that were released by the 9/11 investigations supported the data collected from first hand experiences of individuals from the intelligence community).

Because much of the work I did in the government was based on classified information, the records and information that I had access to during my service in government have not, and could not, be the basis for any part of this study. This is not to minimize, however, the value of the insights, general knowledge and sense of how the bureaucracy of the national security system of the United States works (both the organizations and the people within it) I gained while serving in the government. Working in the government allowed me to study government institutions, close-up and, at times, as they were created. This time in the government was vital to my current understanding of the political realities, difficulties and challenges that are involved in

creating new organizations and in the reorganizing of old organizations. My personal experiences working in the government have informed my research work over the past two years on this study of the institutional design of the U.S. national security system.

This academic portion of my search for answers has led me to a number of disciplines and theories within different fields of study. This written dissertation reflects the conclusion of this study. It is my firm belief that my fifteen years of work in the national security community enabled me to navigate the wealth of theoretical studies and provided a roadmap for identifying which theories may prove the most helpful in answering my second question: what can be done to make the U.S. national security system more effective in responding to threats against the United States.

This study does not seek to encompass every aspect of institutional reform nor does it seek to examine every organization within the U.S. national security system or, for that matter, every aspect of the intelligence business that could benefit from changes. Certainly, this analysis does not attempt to address every weakness within the U.S. national security system. To list a few issues this study does not address: (1) the function or performance of the Department of Homeland Security, the U.S. Congress, or the Defense Department intelligence or military organizations, (2) the general activities related to foreign intelligence collection overseas or signals intelligence collection domestically, or (3) the political difficulties or realities involved in reforming domestic bureaucratic organizations; (4) the non-organizational solutions to the terrorist problem. All of these issues are appropriate for future research and analysis. In fact, the theories that are applied in this study focus mainly on the FBI and the CIA and admittedly only

on limited aspects of intelligence activities. This study, however, may prove useful in analyzing these other aspects of intelligence reform and institutional design.

What I sought to do at the commencement of this study is provide a bridge between theory and practice in order to help solve a real problem – how best to prevent another terrorist attack against the homeland. How can insights from institutional and organization theory help to minimize the failure of the U.S. national security system as it relates to protecting the homeland? Can theory add value to the task of improving national security in the United States? In short, without rewriting the U.S. Constitution or moving away from the democratic values of this country, can the homeland be made safer through institutional reform and re-design? These are fundamental questions that this dissertation strives to answer.

Chapter 1

Why Intelligence Reform Failed After 9/11

> [T]he U.S. government and its elaborate net of security and intelligence-gathering agencies had far too little real awareness of what the terrorists presence within the United States actually was . . . . . We had pitifully little information about who was in the country, plotting what sort of attacks on which cities.
>
> -John Ashcroft[1]

> We must not fool the American people into believing that reorganizing the structure of American intelligence has created an impenetrable shield. It has not.
>
> -George Tenet[2]

It was a bright sunny morning when nineteen men boarded four U.S. commercial airliners destined for California. All nineteen men were foreign born, gained entrance into the United States through lawful means and had one objective-- to do harm to America. Two of these men had been residing within the United States for almost two years without raising the suspicions of the United States government. On that morning, as these men took their seats abroad American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77, and United Airlines Flight 93, they knew they were taking their last act and would soon complete their objective. These men had penetrated America's defensive forces and had succeeded in defeating a

[1] John Ashcroft, *Never Again,: Securing America and Restoring Justice*, New York: Center Street (2006), p. 125.
[2] George Tenet (with Bill Harlow), *At the Center of the Storm*, Harper Collins (2007), p. 505.

superpower's early warning system. Within one hour after takeoff, these men would commandeer the four airliners, turn the airliners into their weapons, and attack the United States. By 10:00 AM that day, all nineteen men had achieved their objective. For three days all international civilian air traffic was banned from landing on U.S. soil. The New York Stock Exchange, the American Stock Exchange and the NASDAQ were shut down for six days. During those six days U.S. stocks lost $1.2 trillion dollars in value. Estimated economic loss to New York in the months following the attacks was put at $105 billion. The cost to clean up New York City alone amounted to $60 billion. Estimated loss to the airline industry for 2001was between $5-10 billion dollars. Overall US GDP fell by 1.3% in the 3rd quarter of 2001. Within a few months the world would know the harm these men had caused in the number of lives they took: more than 3000 deaths – over 2000 American born, over 550 foreign born. Even before the fourth plane had crashed in Pennsylvania, the United States government had identified two of the hijackers from the manifest of American Airlines Flight 77 that had crashed into the Pentagon earlier that morning. Before the hijackers had completed their horrific mission, the United States government had determined that the U.S. was under an attack by al-Qaeda. It would take several months, however, for the U.S. government to piece together the entire story of how these men planned and carried out a death sentence against so many on U.S. soil. Americans would soon be told that a number of these men had been living among them, moving freely within the United States, as they planned and prepared for the day they would attack. This is the story of 9/11.

Introduction

Since September 11, 2001 the United States government has taken numerous steps to reduce the perceived weaknesses in our national defense that contributed to the terrorist attacks against the U.S. on September 11, 2001 (9/11). For example, Congress passed legislation to redesign the intelligence community (IC), including the creation of a new Office of the Director of National Intelligence (ODNI) to coordinate the intelligence community and the position of the Director of National Intelligence (DNI); the president issued a number of executive orders and directives to protect the U.S. against terrorism; and the military and intelligence agencies responded to terrorist threats using force both internationally and domestically.

Today, policymakers and the public continue to scrutinize the efficacy of these counterterrorism measures, addressing issues like border control, intelligence collection and information sharing. Some commentators pose the question: "Are we safer now than we were pre-9/11?" Perhaps. The more pertinent question to ask, however, is, "Are we as safe as we could be?" This study attempts to answer this question by examining the U.S. national security system, specifically the intelligence community and the government institutions that comprise that community, as it has been redesigned post-9/11. This study addresses this question of U.S. security in the context of the intelligence community because the President and the Congress have wagered, in passing the Intelligence Reform and Terrorism Prevention Act of 2004, that a

reorganization of the intelligence community is critical to the prevention of future 9/11s.

In order to begin to assess whether "we are as safe as we could be," this study posits the following question: "Are the U.S. intelligence community agencies configured optimally to perform the intelligence mission necessary today to prevent another attack against the United States like 9/11?" In an effort to conceptualize safety, for purposes of this question, it is helpful to think of the concept of safety as existing on a continuum. At one end of that continuum there is complete and total safety, 100% security from another terrorist attack occurring in the homeland where the U.S. national security system never fails (zero accidents). At the other end of the continuum, there is zero safety, 100% insecurity in preventing another terrorist attack where the U.S. national security system consistently fails, providing no security to its public. This study examines the U.S. national security system as depicted on this continuum of safety with the assumption that a government and its public would seek to be at the end of the continuum with 100% security and the recognition that 100% security is likely to be unattainable within a democratic society.

No security system is 100% failure-proof. Some systems, however, fail more often than others and some systems, when they fail, have catastrophic effects while other system failures do not have such devastating results. Like many complex systems, the U.S. national security system, and the intelligence community as a subsystem of the U.S. national security system, will fail at times. As Richard Betts has

noted, "Even the best intelligence systems will have big failures."[3] And as Judge Richard Posner argues in his first book on intelligence reform after 9/11, surprises will sometimes occur even when the intelligence community is anticipating an attack from a particular enemy.[4] The question that still haunts many today and certainly did in the immediate aftermath of 9/11 is whether the failure that led to 9/11 was a failure that could have been avoided. In the aftermath of the failure to prevent 9/11 and the WMD fiasco in Iraq, five official reports were written about various aspects of the failures. Based upon the facts uncovered in these reports, there was a consensus among government officials and the public that these were failures of the U.S. national security system -- failures that, in part, could have been avoided if certain discrete pieces of information had been acted upon or identified as having significant intrinsic value. Based upon the facts as revealed by the investigations and drawing upon theoretical insights from the social sciences, this study attempts to answer the question whether future similar failures can be avoided and, in the process, provide sound recommendations for policymakers responsible for creating effective intelligence reforms and for theorists who seek to develop theories relevant to institution building and organizational design.

To examine the question of whether another 9/11 is avoidable, this study relies upon the details of the events leading up to 9/11 and actions of the U.S. government to prevent 9/11, as described in the reports published by those that conducted

[3] Richard Betts, "Fixing Intelligence," *Foreign Affairs*, Volume 81, January-February (2002), p. 44.
[4] Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*, Lantham, MD: Rowan and Littlefield, (2005).

investigations into 9/11 and the Iraq WMD intelligence. For these facts, this study relies primarily on five official government reports – the final report by the Joint Inquiry into the Terrorist Attacks of September 11, 2001 referred to as *The Joint Inquiry Report*,[5] the report by the National Commission on Terrorist Attacks upon the United States referred to as *The 9/11 Commission Report*,[6] the report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction referred to as *The WMD Commission Report*,[7] as well as the Central Intelligence Agency's Inspector General (IG) report on CIA accountability with respect to the 9/11 attacks referred to as *The CIA IG Report*[8] and the Department of Justice's IG report related to the attacks referred to as *The DOJ IG Report*.[9] These official studies are collectively referred to as "the 9/11 investigations" in this study. In addition to these studies done in the aftermath of 9/11 and Iraq, research for this study involved an exhaustive review of a number of other studies completed prior to 9/11 related to the U.S. intelligence community and terrorism.[10]

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[5] Steven Strasser, ed., *House-Senate Joint Inquiry Report on 9/11*, New York: Public Affairs (2004) [hereinafter *The Joint Inquiry Report*].
[6] The National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, Official Government Edition, Washington DC: U.S. Government Printing Office (2004) [hereinafter *The 9/11 Commission Report*].
[7] Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *A Report to the President of the United States*, Washington DC: US Government Printing Office (2005) [hereinafter *The WMD Commission Report*].
[8] Central Intelligence Agency, Office of the Inspector General, "OIG Report on CIA Accountability with Respect to the 9/11 Attacks," June 2005, publicly released August 27, 2007 [hereafter *The CIA IG Report*]. http://www.cia.gov/library/reports/Executive%20Summary_OIG%20Report.pdf.
[9] U.S. Department of Justice, Office of the Inspector General, "A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks," November 2004, publicly released June 2006 [hereinafter *The DOJ IG Report*].
[10] Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *First Annual Report to the President and the Congress: Assessing the Threat*, Washington DC: Government Printing Office, December 15, 1999 [Gilmore Commission]; Gilmore Commission,

In exploring the changes made after 9/11, this study applies insights from social science theories such as organizational theory and institutional theory to assess whether changes to the organizational design of the institutions within the U.S. national security system made prior to 9/11 could have reduced the likelihood of the system failure of 9/11 and whether the changes made after 9/11 have accomplished this. In doing this, this study reviews some of the organizational changes to the intelligence community, made by law and other means, since 9/11 to assess whether the institutional design of the U.S. security system today has improved our security at home. In analyzing this system, and the government institutions that are a part of that system, an institutional framework is adopted. In exploring the role that institutional design plays in the performance of institutions, this study applies a constructivist approach to the review of the institutions of intelligence community.

Second Annual Report to the President and the Congress: Toward a National Strategy for Combating Terrorism, December 15, 2000; Commission on the Roles and Capabilities of the United States intelligence Community, *Preparing for the 21st Century: An Appraisal of U.S. Intelligence*, Washington DC: Government Printing Office, 1996 [Aspin-Brown Commission]; Council on Foreign Relations, *Making Intelligence Smarter: The Future of U.S. Intelligence*, New York: Council on Foreign Relations, 1996; Intelligence Community Performance on the Indian Nuclear Test, June 2, 1998 [Jeremiah Report], unclassified news conference at http://www.fas.org/irp/congress/2002_hr/100302hill.html; National Commission on Terrorism, *Countering the Changing Threat of International Terrorism*, Washington DC: Government Printing Office, [Bremer Commission], 2000; National Defense Panel, Transforming *Defense National Security in the 21st Century*, http://www.fas.org/man/docs/ndp/toc.htm, December 1, 1997; National Performance Review, *National Performance Review Phase II Initiatives: An Intelligence Community Report*, Washington, DC: Government Printing Office, 1995; U.S. Commission on National Security/21st Century, *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom*, Phase III Report, [Hart-Rudman Commission], http://www.au.af.mil/au/awc/awcgate/nssg/phaseII.pdf, April 15, 2000; U.S. Government Accountability Office, *Combating Terrorism: Federal Agencies' Efforts to Implement National Policy and Strategy*, Report to Congressional Requesters, September 1997; U.S. House of Representatives, Permanent Select Committee on Intelligence, *IC21: The Intelligence Community in the 21st Century*, 104th Cong., 2nd sess., http://www.gpo.gov/congress/house/intel/ic21, 1996.

The investigations into 9/11 and Iraq WMD focused their reviews primarily on the intelligence community and specifically the institutions of the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). Similarly, this study, for the most part, focuses on these two public institutions within the intelligence community – the FBI and the CIA. The study reviews some of the changes made to the CIA and the FBI since 9/11 in an effort to assess whether those changes have improved the security of the United States and reduced the likelihood of another attack against the U.S. homeland.

At the outset it may be useful to review what is meant by the U.S. national security system and the intelligence community and to outline the parameters of what aspects of that system that this study addresses. For purposes of this study, the U.S. national security system is defined as all of the federal government entities that have some responsibility to protect the interests of the United States both domestically and abroad. In addition to the intelligence community, this security system includes the State Department, the Defense Department (including the armed services), the Department of Homeland Security, the Department of Transportation (and the FAA as part of that), the U.S. Congress, and the White House (specifically the National Security Council and the Homeland Security Council). This study is limited to a review of the intelligence community and does not address these other important elements of the system.

As for the intelligence community, it is a collection of agencies that today has grown to sixteen disparate agencies and functions. According to recent press reports,

the community numbers approximately 100,000 employees and reports to a Director of National Intelligence (DNI) created by the Intelligence Reform and Terrorism Prevention Act of 2004. It entails the human source intelligence collection agencies -- Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI) and the Defense Intelligence Agency (DIA); the technological intelligence agencies -- the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National Geospatial Intelligence Agency (NGA); the Department of State's Bureau of Intelligence and Research (INR); the Drug Enforcement Administration (DEA); the Department of Homeland Security's Office of Intelligence and Analysis and U.S. Coast Guard; the intelligence offices of the military departments (Army, Navy, Air Force and Marines); the Treasury Department's intelligence office; the Energy Department's intelligence office; and the Office of the Director of National Intelligence (ODNI). Although all of these government organizations are in some way involved in the pursuit of the terrorists and preventing another 9/11, this study is primarily interested in the review of the CIA and the FBI, the agencies with principal responsibility for human source intelligence and were the focus of the post-9/11 and Iraq studies.

The 9/11 Investigations

The intelligence failure of 9/11 was followed by a number of extensive investigations, unprecedented in U.S. history, which examined the events that led up to the attacks on 9/11, including the U.S. government's efforts to prevent such an attack from occurring. The large volume of information and data that was collected pursuant to these investigations produced a treasure trove of public research materials and data

for researchers. These materials included declassified documents, staff reports, transcripts of hearings and testimony by government officials and subject matter experts, and final reports and recommendations. This study relies primarily on the final reports written by five of these investigations - *The 9/11 Commission Report*, *The Joint Inquiry Report, The WMD Commission Report, The CIA IG Report* and *The DOJ IG Report*. One of the primary reasons for relying on these sources, aside from the fact that they provided the most comprehensive research data on the subject, is the fact that a significant portion of these reports' findings and recommendations, particularly *The 9/11 Commission Report*, were incorporated into the Intelligence Reform and Terrorism Prevention Act of 2004 that reorganized the intelligence community.[11] These reports are the most complete and reliable sources on the events to date.[12]

While these investigations focused on the U.S. government agencies and departments that constitute the U.S. national security system and their role in protecting the security of this country, they all did not cover the same ground. Each investigation had a slightly different focus and legal mandate and, therefore, it is not surprising that their findings and conclusions are not all the same. The Joint Inquiry was the first investigation to publish its report in December 2002 focusing on the NSA, the CIA and the FBI and the instances prior to 9/11 when, according to the Joint Inquiry, information

[11] *Intelligence Reform and Terrorism Prevention Act of 2004*, Public Law 108-458, 108th Cong., December 17, 2004.

[12] The Joint Inquiry, in its investigation held nine public hearings, thirteen closed hearings. In total, the Joint Inquiry staff conducted 300 interviews, reviewed over 500,000 pages of documents, and received briefings and participated in panel discussions with over 600 different individuals from government and non-government organizations. See *The Joint Inquiry Report*, p. 2. The 9/11 Commission reviewed over 2.5 million pages of documents, interviewed 1,200 individuals (including many senior officials from both the Clinton and Bush administrations), held 19 hearings with public testimony from 160 witnesses. See *The 9/11 Commission Report*, p. xv. ADD INFO on other reports.

sharing between these agencies did not take place as it should have. The 9/11 Commission published its report in the summer of 2004, focusing on the Federal Aviation Administration (FAA), the CIA and the FBI. It did not find any new information that had not been revealed through the Joint Inquiry and like the Joint Inquiry it recommended a director of national intelligence. The Silberman-Robb presidential commission (the WMD Commission) published its report in March 2005 and made numerous recommendations to improve intelligence analysis at the CIA, the FBI and elsewhere in the intelligence community. The two Inspector General reports focused exclusively on their own agencies (i.e., the CIA and FBI).

All the investigations uncovered facts related to the 9/11 attacks that previously were not available to researchers and the general public. Some of the recommendations made by the investigations have contributed to a general understanding of the necessary reforms to the intelligence community, and in some instances, the recommendations have been enacted into law. The studies, however, failed to consider in any detail the need to constantly review and assess the effectiveness of the organizational design of these institutions in light of the changing challenges that the agencies face from their environments. As the threats from terrorism emerged during the 1990s to seriously challenge the security of the United States, the design of these institutions remained unchanged. Further, all of the studies demonstrated a serious lack of cultural understanding in the context of institutional performance. While the studies cited to cultural impediments within the agencies, they all failed to analyze the cultural impact and, importantly, how cultural change might be achieved through their

recommendations. This study argues that such deficiencies within the studies are attributed to the investigations' failure to investigate social science theory. In failing to apply insights from theories from the social sciences, the investigations neglected to fully address aspects of the security agencies that called for improvement. This study considers the specific changes that were made (and some that were not) to the U.S. national security system based upon the recommendations of these investigations. It does so based upon theoretical insights from organizational theory, institutionalism and constructivism.

Three Critical Flaws of the U.S. National Security System

The 9/11 investigations identified three specific issues related to the national security institutions that, they argue, contributed to the failures of 9/11 and the intelligence on Iraq WMD: the lack of imagination within the intelligence community, the lack of accountability for the system failure, and the lack of a domestic intelligence collection capability. Each of the investigations into 9/11 exposed specific shortcomings of the U.S. national security system and raised doubts about the effectiveness of a number of institutions within that system, among them the Congress, the CIA and the FBI. After exhaustive investigations of the facts leading up to the 9/11 attacks the investigations concluded with a number of findings and recommendations. Within the official reports published by the investigations, there were a number of common findings followed by similar recommendations for change. This study looks at three of the elements of failure that the investigations attribute the events of 9/11 to: (1) Imagination, (2) Accountability, and (3) Domestic Intelligence Collection.

Although each of the 9/11 investigations had different charters and memberships, all five of the investigations, in their final reports, concluded that one or more of these issues contributed to the U.S.' failure to prevent the attacks on 9/11 -- the lack of "imagination" by the intelligence community to understand the gravity of the threat, the lack of accountability in the government bureaucracy to hold individuals accountable for mistakes, and the lack of an effective domestic intelligence collection capability within the U.S. government. These investigations concluded that there was an absence of these three elements -- imagination, accountability and domestic intelligence -- within the intelligence community and argued that this absence contributed to the U.S. government's failure to prevent 9/11.

Issue #1: The Lack of Imagination Led to 9/11

According to the 9/11 Commission, no one agency or administration was to blame for the 9/11 attacks against the United States. While numerous individuals testified before the Commission about the growing threat from al-Qaeda prior to 9/11, the Commission report concluded, "We do not believe they [the policymakers] fully understood just how many people al Qaeda might kill."[13] For the 9/11 Commission, the gravity of the threat was not made clear to the leaders of the United States by the intelligence community. The reason, the Commission argued, was because the intelligence community had not utilized imagination. Thomas Kean, co-chairman of the Commission, stated, "We were unprepared. We did not grasp the magnitude of a threat that had been gathering over a considerable period of time . . . . this was a failure of

[13] *The 9/11 Commission Report*, p. 342-343.

policy, management, capability and, above all, a failure of imagination."[14] The Commission ultimately concluded that the most important failure was "one of imagination."

The 9/11 Commission found that the intelligence community had suffered from a lack of institutional imagination prior to 9/11 which made it impossible for analysts and policymakers to gauge the terrorist threat. In its report, it faulted the CIA and the FBI with having failed to institutionalize imagination into their work in order to meet the new threats that had developed since the Cold War. These intelligence agencies, the Commission argued, failed to conduct analysis in innovative ways in order to address the new threats from terrorist. For instance, according to the Commission the CIA failed to be imaginative because CIA analysts had not produced any national estimates about the dangers from terrorists using airplanes to attack the United States; the CIA failed to conduct "red team" analysis.[15] The Commission argued that after the Cold War was over, the CIA continued to operate, organize and think about its work in the same ways it had during the Cold War balancing against the threats from the Soviet Union. According to *The 9/11 Commission Report* and *The Joint Inquiry Report*, if the CIA and the FBI had used new and creative means to recruit and run unilateral human sources within al Qaeda both abroad and at home, for example, the intelligence community may have been able to "acquire intelligence that could have been acted upon before the September 11 attacks."[16]

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[14] Thomas Kean, statement at news conference to release *The 9/11 Commission Report*, July 22, 2004.
[15] *The 9/11 Commission Report*, p. 346-347.
[16] *The Joint Inquiry Report*, p. 8

According to the 9/11 Commission, because the analysts and policymakers lacked imagination they were unable to anticipate the threat that was developing in order to produce warning intelligence.[17] Furthermore, the Commission concluded that more imagination by the intelligence community would have provided the basis for more aggressive counterterrorism policies against al-Qaeda by policymakers and more vigilant security at home. According to the 9/11 Commission, if CIA's threat reporting had been more widely shared this "might have brought much more attention to the need for permanent changes in domestic airport and airline security procedures."[18]

Although the 9/11 Commission emphasized that the lack of imagination was a main cause of 9/11, the Commission's report provided no direct link between this factor and any of its proposals for reform. For instance, no reform recommendation proposed by the Commission provided guidance on how to institutionalize imagination other than an implied suggestion in the Commission report to develop "red teams" for analysis; an approach that is controversial with likely negative effects depending on how far the teams are "routinized" into the system. Two of the Commission's final recommendations for reform, however, are indirectly linked to the issue of a lack of imagination -- the creation of National Intelligence Centers and the creation of the position of the Director of National Intelligence.

The 9/11 Commission investigation found that there was a lack of information sharing between the various agencies within the intelligence community. Based on this finding, the Commission concluded that by creating a National Counterterrorism Center

[17] *The 9/11 Commission Report*, pp. 339-348.
[18] Ibid. at 344.

(NCTC) and placing it above any one agency within the Office of the Director of National Intelligence it would serve as an effective fusion center for all terrorist threat information that existed throughout the intelligence community. In intent was that in having a true *national* center for the collection of terrorism information, all of the agencies within the intelligence community would share their threat information with the center allowing the analysts at the center to provide an accurate and complete picture of the threats the U.S. faced from terrorism. In 2004, the new reform legislation created two new national centers that would exist within the ODNI; NCTC and the National Counterproliferation Center (NCPC). The legislation also moved the existing national counterintelligence executive (NCIX) into the ODNI. The intent behind creating these national centers and placing them within the ODNI was to increase the amount of coordination and information sharing between the various intelligence agencies through this hierarchical centralization.

All of the 9/11 investigations, except for CIA's IG investigation, examined carefully the past performance of the Federal Bureau of Investigation. *The 9/11 Commission Report* found that the 56 field offices of the Bureau operated much like individual fiefdoms where the heads of the offices, the special agents in charge (SACs), possessed a great deal of independent decision making authority. For instance, each of the FBI field offices could determine what their priorities were based upon the demands of the local area that they operated in. The 9/11 investigations had concluded that some of the field offices had ignored FBI headquarters in 2000 when headquarters had informed all field offices that counterterrorism was a top priority of the FBI and instead

had continued to direct their resources and personnel on other matters that the individual offices had determined were a top priority.[19] Based upon the 9/11 Commission's recommendations, the FBI began to make internal changes within the Bureau. In 2005, after the President directed the creation of the National Security Branch (NSB) at FBI headquarters, the FBI continued to make changes in line with the recommendations of the investigations. Most of these changes, however, were moves to centralize authority at FBI headquarters in an effort to reign in the field offices. The thought by most people within the FBI and critics aside of the Bureau was that by centralizing authority at headquarters, FBI could reform itself and function more effectively as an intelligence organization.

While the Commission acknowledged in its report that "[I]magination is not a gift usually associated with bureaucracies,"[20] it surprisingly recommended the creation of national centers like the National Counterterrorism Center and the Office of the Director of National Intelligence, both new and additional bureaucracies that reside at a higher centralized level of the intelligence community then before 9/11. Ironically, when one applies the insights from theories such as organizational theory and institutional theory, as will be done in chapter 3, the conclusion is that the 9/11 Commission got it wrong with respect to its recommendations for a more centralized bureaucracy to improve imagination. While correctly highlighting the need for imagination and innovative within the intelligence community, the 9/11 Commission incorrectly recommended an organizational structure that, in fact, would stifle

[19] *The 9/11 Commission Report*, p. 232.
[20] *The 9/11 Commission Report*, p. 344.

innovative behavior. The Commission was correct in identifying structure as an important factor in facilitating effective imagination but in failing to draw upon relevant theory, the structural changes that the Commission recommended (centralization) actually tend to stifle creative and imaginative thinking and acting. Instead, theory indicates a more decentralized approach would be more supportive of imagination.

Issue #2: The Lack of Accountability Led to 9/11

The 9/11 Commission focused on centralizing responsibility and accountability for the intelligence community in a new leader of the intelligence community, the DNI. During their investigations, the 9/11 Commission and the Joint Inquiry found "missed opportunities" that were attributed to the fact that "responsibilities and accountability were *diffuse*" within the intelligence community.[21] In line with the recommendation of the Joint Inquiry and the 9/11 Commission, the Intelligence Reform and Terrorism Protection Act passed by the Congress in 2004 reorganized the intelligence community and created the position of the DNI separate from the CIA. The intent was that by putting someone in charge of the community who did not have the responsibility of running an agency, that individual could focus on coordinating the activities of the agencies across the community. With the creation of this position, separate from the position of the Director of CIA, the intent was to have one person at the top of the chain of command that could be held accountable if the system failed to function properly. With new authorities, this person would be responsible for the coordination of the

[21] *The 9/11 Commission Report*, p. 417.

agencies within the intelligence community and for ensuring that the policymakers received timely, accurate and useful intelligence.

In their reports, the Joint Inquiry and the 9/11 Commission suggested that if there had been one person in charge of the entire intelligence community, with complete budgetary authority, 9/11 may have been avoided. Because of the lack of accountability within the intelligence community, the investigations implied, the intelligence community had been able to operate in a very fragmented way that lead to a lack of information sharing and little coordinated effort across the community. The investigations assumed that this person would have been able to force cooperation and the sharing of critical terrorism information between and within agencies. One can concede that having a Director of National Intelligence (DNI) in charge of the intelligence community has some benefits. For example, having a DNI who has the authority and ability to task and control the Department of Defense's national intelligence assets such as the national satellites would be beneficial in supporting the national intelligence collection requirements of the intelligence community.

The 9/11 investigations, however, imply that if there were one person in charge that he or she would have been able to prevent the individual errors that the investigations identified in their reports that led to 9/11. The question remains as to how this individual at the top of a centralized bureaucracy would be able to prevent the occurrence of any of the "missed opportunities" that the investigations identified. Furthermore, the reports do not provide any assessment of what "opportunities" or successful intelligence events may be missed because of the creation of the DNI that did

take place prior to 9/11. For instance, how would a DNI have ensured that Khalid Mihdhar and Nawaf al Hamzi were placed on a watchlist prior to August 2001? How would a DNI have enabled the FBI to use proper investigative procedures in questioning an intelligence asset who was the landlord to Midhdar and Hamzi in San Diego in 2001? How would a DNI have facilitated the issuance of a Foreign Intelligence Surveillance Act warrant to search Zacarias Moussaoui's belongings before 9/11? Or, for that matter, avoid the misunderstandings that developed over time by FBI personnel about the meaning of the "wall" procedures that had been drafted by the Department of Justice? These examples are a few of "missed opportunities" cited by the 9/11 Commission in its report. The Commission, however, unfortunately, does not reveal how the recommendations for organizational reform that it proposes are related to or will prevent such missed opportunities from happening again.

In calling for accountability in the system, some of the investigations, specifically the Joint Inquiry and CIA's IG investigation, looked beyond mere structural changes and concluded that specific individuals ought be held accountable for the failings the investigations identified. According to the "Initial Scope" document of the Joint Inquiry drafted by the Congress, the purpose of the Joint Inquiry's investigation was "to lay the basis for assessing the accountability of institutions and officials of government" for the failings that lead the United States to be unprepared for 9/11.[22] In 2002, in testimony before the Joint Inquiry, Lee Hamilton, who would go on to co-chair the 9/11 Commission, insisted on the need for "someone at the head who has

[22] SSCI & HPSCI, "Initial Scope of Joint Inquiry, June 5, 2002, from the preamble.

responsibility and accountability."[23] A former Director of the National Security Agency and a retired General testified before the Joint Inquiry describing how the military handles failures, "when you screw things up, we relieve the commander."[24] Ultimately, the Joint Inquiry recommended that the agencies' Inspectors General:

> "review the factual findings and the record of this Inquiry and conduct investigations and reviews as necessary to determine whether and to what extent Intelligence Community personnel at all levels should be held accountable for any omission, commission, or failure to meet professional standards in regard to the identification, prevention, or disruption of terrorist attacks, including the events of September 11, 2001."[25]

There seemed to be a consensus among many that if individuals within the U.S. government were held accountable for mistakes related to 9/11, future failures could be avoided. One of the most outspoken advocates for identifying specific individuals to hold accountable for 9/11 was Senator Shelby. In his "Additional Statement" that was part of *The Joint Inquiry Report*, he criticized the Joint Inquiry for not holding certain leaders of the intelligence community accountable.[26] In addition, the public as well as the family members of the 9/11 victims, vocally criticized the 9/11 Commission for not "pointing fingers" at individuals that could be held responsible for the events that led to 9/11.[27]

The creation of the position of the Director of National Intelligence, however, cannot compensate for human error or mistakes. As *normal accident theory* teaches, a

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[23] *The Joint Inquiry Report*, p. 406.
[24] Ibid.
[25] *The Joint Inquiry Report*, p. 409.
[26] Richard Shelby, "Additional Statement," *The Joint Inquiry Report*.
[27] Thomas H. Kean and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission*, New York: Knopf (2006), p. 112.

system failure is not caused by human error but it is the nature of the design of the system which can lead to unanticipated interactions within the system that cascade to cause a system failure. The investigations completely ignored this theoretical insight and created the impression that by creating a centralized authority in the DNI – rather than fixing the system itself – accountability would be created and mistakes like those that led to 9/11 would be less likely to occur. In chapter 4 of this study, insights from normal accident theory are used to analyze *The CIA IG Report* related to CIA accountability for the events leading up to 9/11. That chapter critiques the approach of "finding blame" that was accepted by the CIA IG in conducting its investigation of the events leading up to 9/11. This chapter demonstrates that by focusing on personal accountability, the investigation missed an opportunity to address the true system failure that led to 9/11. In failing to consider system theory and instead focusing on finding blame, *The CIA IG Report* distorted the facts related to the events leading up to 9/11 and reached false conclusions. The focus on individual culpability in the attacks on 9/11 by investigators has resulted in misleading conclusions about the causes of the failures and ineffective reform recommendations.

Issue #3: The Lack of a Domestic Intelligence Capacity Led to 9/11

Each of the 9/11 investigations highlighted the fact that in the years leading up to 9/11, the U.S. government did not know the extent of the threat that existed within the United States from al-Qaeda. All of the 9/11 investigations found that the U.S. government counterterrorism efforts at home suffered from the lack of an effective domestic intelligence capability which contributed to the U.S. government's inability to

identify the threats that existed within this country before 9/11. The reports of the investigations detail how there was no U.S. government agency prior to 9/11 that had been effectively collecting and analyzing the threat information that would have warned of the enemies that were living within the U.S. planning the attacks.

Through their extensive investigations, spanning over a total of 5 years, the Joint Inquiry, the 9/11 Commission and the WMD Commission each documented how the FBI failed to carry out its mission as the lead counterintelligence and counterterrorism organization within the United States government. The Joint Inquiry concluded, "The FBI was unable to identify and monitor effectively the extent of activity by al-Qa'ida and other international terrorist groups operating in the United States."[28] In testimony before the Joint Inquiry, former National Coordinator for Counterterrorism Richard Clarke testified, "It was a failure on the part of the United States to not have a domestic intelligence collection capability."[29] With respect to FBI's ability to function as a domestic intelligence organization, the Joint Inquiry argued, "[T]he Bureau's organizational and institutional culture is terribly flawed, and indeed that the Bureau – as a law enforcement organization – is fundamentally incapable, in its present form, if providing Americans with the security they require against foreign terrorist and intelligence threats."[30]

The 9/11 Commission, as well as the WMD Commission, also concluded that the U.S. government's failure to develop and operate a domestic intelligence collection

[28] *The Joint Inquiry Report*, p. xv.
[29] Ibid. at 40.
[30] Ibid. at 10.

capability led to U.S. government's inability to identify and stop the terrorist threats that existed within the United States. Similar to the Joint Inquiry investigation, both of these investigations held the FBI accountable for not effectively conducting its counterintelligence and counterterrorism functions. The WMD Commission found that even after the FBI had created a new intelligence program within the Bureau in 2004, based upon the 9/11 Commission recommendations, the FBI still had not integrated its intelligence program in the field or within its headquarters. In addition, the WMD Commission found that even four years after 9/11, when *The WMD Commission Report* was published, the FBI was still unable to share information effectively with other agencies within the intelligence community like the CIA.[31]

Throughout their reports, these three investigations criticized the FBI's inability to foster an intelligence capability among the workforce of the Bureau. The investigations concluded that both cultural and structural impediments within the FBI prevented the Bureau from operating as an effective intelligence organization. The Department of Justice's own IG report in March 2005 concluded that the FBI as of 2005 still subordinated intelligence functions to its criminal investigative functions.[32] Surprisingly, although all of the investigations were highly critical of the FBI and its intelligence capability, all of the investigations unanimously recommended that the FBI should be given time and Congress' support (which it got) to build an effective intelligence capacity within the Bureau. Building upon the recommendations of the 9/11 Commission, the WMD Commission recommended creating a new National

[31] *The WMD Commission Report*, Chapter 10, pp. 430-451.
[32] *The DOJ IG Report*, p. 101.

Security Service within the FBI to include both the counterintelligence and counterterrorism divisions as well as the new Directorate of Intelligence. This recommendation was ultimately accepted by the President and Congress and the new National Security Branch was created within the Bureau.

While each of these investigations carefully detailed the structural and cultural flaws within the FBI, none of the investigations recommended separating the law enforcement function of the FBI from its intelligence function by creating a separate, stand alone organization to serve as a domestic intelligence agency. Furthermore, none of the investigations addressed the cultural implication that would result from locating an intelligence organization within a law enforcement agency (FBI), as part of a criminal justice organization (the Department of Justice). There was no assessment provided within the reports concerning the affect that cultural factors could have on the effectiveness of an intelligence service operating within a criminal investigative organization. In making their recommendations to keep the domestic intelligence function within the FBI, all of the investigations failed to consider what organizational cultural theory and political science theories such as constructivism teach about the impact that culture and the clash of sub cultures within an organization has upon the performance of the organization. The investigations correctly had identified culture as an important factor that has played a role in the FBI's inability to conduct intelligence effectively. The investigations, however, failed to provide any analysis to support their recommendations to leave the intelligence function within the FBI. For example, there were no recommendations or suggestions in the investigations' reports concerning how

to develop within the FBI a culture which is supportive of an intelligence function. Nor was there any assessment provided concerning the difficulties or probabilities of effectively altering the strong law enforcement culture of the FBI to be able to accept and work with a culture that would support an intelligence mission of the FBI. In chapter 5, the insights from organizational theories are applied to the issue of domestic intelligence collection and the FBI to draw conclusions concerning what the institutional design is best suited for an effective domestic intelligence capability within the United States government. In assessing the optimal organizational design the impact of culture is specifically addressed.

An Assessment of the Post-9/11 Reforms

Assessing the 9/11 Investigations

This study makes three principal arguments about the 9/11 investigations. First, the theories of failure offered by the 9/11 investigations are underdeveloped within the final reports of the investigations. The investigations argue that the lack of imagination, accountability and domestic intelligence all contributed to 9/11. The reports, however, fail to provide sufficient evidence or analysis to support these theories of failure. Second, the reforms that were recommended based upon the findings of the investigation are largely unrelated to the suggested causes of failure that were revealed by the investigations. Third, the 9/11 investigations failed to consider or apply insights from social science theories that are discussed in this study. This study argues that these theoretical insights when applied to the 9/11 failure can assist in bridging the gap between the flaws in the system that the 9/11 investigations revealed and truly effective

reforms. The study concludes with specific theoretical and practical recommendations for intelligence reform and the study of intelligence failures.

This study begins by examining the three factors of imagination, accountability and domestic intelligence collection that the 9/11 investigations presented as the basis for different theories of intelligence failure. Relying on the facts as revealed by the investigations, this study demonstrates how the investigations' proposed reforms were not appropriately linked to the investigations theories of failures, specifically these three factors. In analyzing the findings and recommendations of the 9/11 investigations, this study draws upon a number of insights from the theoretical literature of various academic disciplines among them, political science, organizational theory, economics, and business management. The following theories are utilized in order to assess the role that imagination, accountability and domestic intelligence played in the intelligence failure of 9/11: organizational theory, normal accident theory, institutional theory and constructivism.

In relying on insights from these social science theories, this study attempts to gauge whether the reforms that were enacted after 9/11, by law and presidential directive, are likely to improve the performance of the intelligence community and the security of the United States. The study concludes that the post-9/11 reform measures are inadequate and offers an explanation for the investigations inability to provide more effective reform recommendations: in conducting their review of the government organizations involved in the events leading up to 9/11, the investigations failed to consider academic theories in their analysis of the problems that were identified. In

ignoring relevant insights from the social sciences, the investigations failed to take advantage of the value added to the discussion of institutional performance that could be gained from theories about organizational culture and institutional change. While some critics argue that it was political pressure on the investigations or the predisposition or "personal baggage" of some of the individual investigators that led to deficient recommendations, this study suggests that it was the failure to bring theory into the analysis of the problems that led to inadequate reform recommendations. In addition to assessing the reform measures, this study proposes additional changes to the design of the U.S. national security system in order to better preserve the security of the United States.

In examining the reforms measures that followed from the investigations, this study demonstrates how some of the structural changes made to the intelligence community since 9/11 are flawed, the result of insufficient analysis of the problems that created the flaws. While these changes are less then perfect, this study does not conclude, however, that they have been necessarily damaging to the ability of the United States to prevent another 9/11 attack. This study finds that in many ways they have improved that ability with one major exception; the decision by President Bush to allow the FBI to remain the lead organization in countering terrorism domestically. This decision was fundamentally flawed and misguided. This study argues that, if the investigations had applied the insights from organizational and political science theories (as this study does) to the subject matter of intelligence collection within the United States, the conclusions that would have followed about the role of FBI domestically

would have been different. This study concludes that having the FBI serve as the domestic intelligence organization responsible for counterterrorism and counterintelligence within the United States is a significant governmental design flaw which contributed to the government's inability to prevent 9/11 and remains today. While this study identifies other deficiencies within the overall organizational design of the system, it is the institutional design of the FBI that appears most troubling in the findings of this research.

Examining Institutional Design

In examining the events that led to 9/11, the theoretical basis of this study is concerned with institutional design. More specifically it is concerned with institutional *re*design. Most theoretical discussions about the design of organizations and institutions are really in practice about their redesign for more institutions and organizations are changed each year than are founded or created from scratch. Corporate businesses are reorganized, merged or acquired more frequently than a new company is started. Particularly with respect to government institutions, it is rare that a new government agency is created by legislation or presidential directive. More frequently, the government will reorganize particular public agencies in order to meet new needs and policy objectives or to respond to a crisis. In examining the design of the U.S. national security system, this study examines the redesign of the intelligence community after 9/11. With the passage of the Intelligence Reform and Terrorism Prevention Act in December 2004 and a number of presidential directives, the U.S. intelligence community was redesigned in a number of ways. Taking a system

approach, this study will extend and reframe theories like new institutionalism and normal accident theory in order to assess the redesign of the U.S. national security system in the aftermath of 9/11.

Defining the U.S. National Security System

The "U.S. national security system" can be defined broadly as those government entities created to protect the United States from its enemies. While this system is composed of a number of organizations to include many outside of the intelligence community, this study focuses on the intelligence community because the intelligence community was the focus of the 9/11 investigations. Since the passage of the Homeland Security Act of 2002,[33] which created the Department of Homeland Security by combining 22 different government agencies, bureaus and offices including the U.S. Immigration and Customs Enforcement, Coast Guard and Border Patrol, the new department is, arguably, a critical department within the U.S. national security system. The Department of Homeland Security, however, since it did not exist prior to 9/11, was not a subject of the 9/11 investigations and is not a subject of review of this study. The theoretical insights from this study, however, could be applied to the design of the Department of Homeland Security. The institutions within the intelligence community that were the focus of the 9/11 investigations are the main focus of this study -- the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI).

[33] The Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, November 25, 2002.

Focusing on the Intelligence Community & Domestic Security

In examining the intelligence community this study focuses on the work of the intelligence community that is directed towards protecting the U.S. homeland security. By examining the social system comprised of government institutions, the study aims to bring together the scattered and sometimes misunderstood literature on institutional design and develop hypotheses concerning the structural and cultural roots of intelligence failures. From these hypotheses this study provides some conditions under which the intelligence community could facilitate and improve upon the flow of intelligence information and operational capabilities as they pertain to domestic security. Although this analysis focuses on the national security function as it relates to protecting the homeland, the conclusions and recommendations that stem from it may be helpful in assessing aspects of the national security system that relate to foreign facets of U.S. national security as well—i.e., the work of the CIA and the FBI as it relates to countering foreign threats overseas against U.S. interests.

The questions about the feasibility and necessity of the design of institutions that are addressed within this study are highly relevant and critically important to be raised within the context of the U.S. national security system. After all, the power the federal government possesses to effect U.S. national security is the largest power the state exercises in practice, on a regular basis, over its citizens. National security policymakers and the government agencies and departments that make up this system are tasked with protecting society, i.e., keeping the United States and its citizens safe. This is a complex and challenging (some say impossible) task but one that is critically

important to accomplish. The question is whether a new institutional design of the U.S. national security system would benefit the performance of the system in carrying out that task. To most Americans after 9/11, the quick answer to that question was yes, a reorganization of the system was needed.

In examining the recent failure of the U.S. national security system to protect against the terrorist attacks on 9/11 and the changes made to the design of the system after the failure, this study argues that the answer to the failure lies within the institutional design of the system itself; institutional deficiencies within the system, deficiencies that still persist after the investigations into the attacks. In January 2001, the Hart-Rudman Commission predicted that the institutional deficiencies would leave the U.S. vulnerable to a catastrophic terrorist attack; they did.[34] This study argues that some of these same institutional deficiencies still persist today.

The Study of Institutions

In studying the institutions of the intelligence community, there are a few assumptions and expectations related to the building of government institutions, in general, which are important to outline. On the positive side, government institutions are expected to improve the process of public governance and policy-making. It is widely accepted that the functioning, structure and outcomes of policy systems are "shaped, mediated, and channeled by institutional arrangements."[35] One assumption is

[34] United States Commission on National Security/21st Century (Hart-Rudman Commission), "Phase III Report of the U.S. Commission on National Security/21st Century," *Road Map for National Security Imperative for Change* (February 15, 2001), p. x.
[35] Paul J. DiMaggio and Waltere W. Powell, "Introduction," in Waltere W. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, Chicago: University of Chicago Press, (1991),

that if politicians, public managers and policymakers could assert control over these institutional arrangements, the recipients of public administration, policy and the general public would benefit. There exists considerable doubt; however, among scholars of public governance with regard to what abilities and resources are needed to build such institutions and which designs are best suited to the particular task of the institution. Conventional wisdom in the fields of public administration and policy research suggests that large-scale, complex bureaucracies cannot be controlled or designed. Karl Popper reminded us all in his admonition, paraphrased here by Dryzek, that "the result of holistic planning is generally repression, but never anything remotely resembling the original blueprint."[36] The goal of designing government institutions that are effective and good is not an easy task.

This study focuses on the efforts of institution building within the U.S. national security system and documents the many problems that institutional leaders faced over the years during that process. The study also demonstrates the possibilities of institutional design. Individuals involved in designing the institutions that comprise the U.S. national security system can affect the functioning of the U.S. government in a way that can benefit society. But the same design can also fail to serve society. Before

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p. 2; James G. March and J.P. Olsen, "The New Institutionalism: Organizational Factors in Political Life," *American Political Science Review*, Volume 78, Number 3, September, (1984), pp. 734-749; D. Chisholm, "Problem Solving and Institutional Design," *Journal of Public Administration Research and Theory*, Volume 5, Number 4, (1995), pp. 451-492; P. A. Hall and R.C.R. Taylor, "Political Science and the Three Institutionalisms," in K. Soltan, E.M. Uslaner, and V. Haufler, eds., *Institutions and Social Order*, Ann Arbor: University of Michigan Press, (1998), pp. 15-43.

[36] J.S. Dryzek, "The Good Society versus the State: Freedom and Necessity in Political Innovation," *The Journal of Politics*, Volume 54, Number 2, (1992), pp. 518-540.

analyzing the different positions in the debate on institution building (and design), it is useful to clarify what is meant by the term "institution."

Defining Institutions

As used in this study, an institution, in a very general depiction, is nothing more than a "stable, valued, recurring pattern of behavior."[37] In the diverse fields of economics, political science, sociology and anthropology, the term institution is applied to very different events, processes, activities, structures and entities.[38] This study focuses on institutions at the organizational level; large-scale government organizations. Although new institutional themes have emerged recently in such different disciplinary contexts as organizational theory, transaction costs economics theory and agency theory the variations on new institutionalist themes are, for the most part, complementary. Recently there have been some positive theoretical efforts at integrating the many institutional approaches.[39] This study builds upon the developments in the theoretical literature related to institutionalism.

Institutions vs. Organizations

Within the theoretical literature on institutions, an important analytical distinction is drawn between the terms organization and institution.[40] An organization

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[37] S. P. Huntington, *Political Order in Changing Societies*, New Haven: Yale University Press, (1968), p. 12; R. E. Goodin, "Institutions and Their Design," in R.E. Goodin, ed., *The Theory of Institutional Design*, Cambridge: Cambridge University Press, (1996), p. 21; Shmuel N. Eisenstadt, Social Institutions: the concept, Volume 14, (1968), pp. 409-21, 409 in David L. Sills, ed., *International Encyclopedia of the Social Sciences*, New York: Macmillan.

[38] DiMaggio and Powell, 1991; W. R. Scott, *Institutions and Organizations*, Thousand Oaks, Calif.: Sage (1991).

[39] At the recent efforts see W. R. Scott, *Institutions and Organizations*, Thousand Oaks, CA: Sage (1995); R.E. Goodin, *Theory of Design*, Cambridge: Cambridge University Press (1996).

[40] Ibid.

is simply a formal association of individuals whose efforts are more or less purposefully related to the attainment of some formulated goal. Such an organization can be terminated as soon as the goal is accomplished or whenever powerholders feel the organization no longer is of use. The organization "refers to an expendable tool, a rational instrument engineered to do a job."[41] An institution, on the other hand, is an organization that over time has become more than an instrument in the hands of an owner, policy-makers or politician. It is an organization that has developed a certain identity, which, in turn, determines to a significant extent, the administrative behavior of its members; similar, in many ways, to how a person's actions are guided by his or her character.

Once an organization has developed such an identity it can be described as having a "culture" similar to the personality of a person.[42] In this sense, an institution is an instrument that "takes on a distinctive character or function, becomes a receptacle of vested interests, or is charged with meaning as a vehicle of personal satisfaction or aspiration."[43] Unlike a simple organization, an institution is no longer expendable, because its activities or functions have become valued outside the organization itself. In analyzing the U.S. national security system, many of the governmental organizations that comprise this system are institutions. For example, the FBI and CIA are considered

[41] Ibid. at 5.
[42] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Basic Books, (1989), p. 91.
[43] Philip Selznick, *Leadership in Administration: A Sociological Interpretation*, 2ed. (1984), Berkeley University of California Press, (1957), p. 5.

institutions under this definition. The Congress, although not part of this study, also is considered an institution.

There are several unique and central characteristics of an institution that set it apart from an organization. In an institution, a specific and consistent set of assumptions and beliefs defines, in a basic taken-for-granted fashion, an organization's view of itself, its primary goals, and its environment. Members of the institution, in other words, are strongly aware of the "organizational essence."[44] The organizational essence is reflected in the operational goals or critical tasks established for the institution.[45] These members act within the parameters set by the critical tasks and the established rules and routines. This combination of purpose and critical tasks forms the institution's mission.[46] The mission is "spontaneously protected" by the institutional members, because it works for them.[47] The mission also nurtures certain "like-mindedness" among members; institutional members share similar "decision premises."[48] The members of an institution value the institution itself. Their membership within the institution becomes a vessel for identification, self-esteem, and self-development. They see themselves acting or not acting in a certain way because they are members of that institution. In other words, the membership within the institution is part of their identity.

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[44] Morton H. Halperin, *Bureaucratic Politics and Foreign Policy*, Washington, D.C.: Brookings Institution, (1974), p. 28.
[45] James Q. Wilson, *The Investigators: Managing FBI and Narcotics Agents*, New York: Basic Books (1978).
[46] Wilson, *Bureacracy* (1989).
[47] Selznick, *Leadership*, p. 100.
[48] Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*, New York: Free Press, (1945), p. 123.

Furthermore, the institution holds value within its environment. It has a "distinctive competence," a consistent and effective way of operating that is recognized and valued by relevant actors in the environment of the institution. The institution itself is seen as legitimate. It is seen as "desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."[49] The institution is an essential element of society. These characteristics of an institution create a powerful relationship between its members and the institution. This relationship can be both constraining (the institution defines what is acceptable or unacceptable behavior by its members) and enabling (the institution helps to make sense of a situation and provides guidance in deciding between different courses of action). The mission of the institution will help align task perceptions and partially determine the way in which employees use their discretion.[50]

The Elements of an Institution

Several critical institutional features are important for any analysis concerning the functions of institutions as well as the impact institutions have on outcomes. As Selnick suggested, it may be that the most significant aspect of the institutionalization process is the infusion of the organization with purpose beyond the technical requirements of the task at hand.[51] And yet, value or the culture of the institution is not the only prevalent or important aspect of an institution. As Selnick also noted, "the

[49]M.C. Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review*, Volume 20, Number 3, (1995), pp. 571-610, 574.
[50] R. Rose, *Lesson-Drawing in Public Policy: A Guide to Learning Across Time and Space*, Chatham, N.J.: Chatham House (1993).
[51] Selznick, *Leadership in Administration*.

creation of a formal structure, the emergence of informal norms, selective recruiting, administrative rituals, and ideologies" are also characteristics of an institution.[52] A general understanding of institutions would posit that the fundamental characteristics of an institution are its structure, people, culture, rules and processes. This study will touch upon each of these features of an institution in examining the reorganization of the U.S. national security system since the 9/11 attacks.

Institutionalism

The process by which an organization takes on the characteristics of an institution is referred to as institutionalization. Put tersely, institutionalization is the "process by which organizations and procedures acquire value and stability."[53] From an unstable or loosely organized entity that may be focused on technical activities, a new entity can emerge though institutionalization that will be characterized by more orderly, stable, socially integrated set of patterns. In a setting that is institutionalized, behavior is more stable and predictable. This very stability and predictability is, to a large extent, why institutionalized patterns are valued the members of institutions. The stability characteristic of institutions is central to both new institutionalists in political science and economics. For economists, institutions reduce costs associated with uncertainty across time. The critical mechanism by which that is done is through a system of "nested rules," with rules at each successive level in the hierarchy being increasingly

[52] Philip Selznick, "Institutionalism 'Old' and 'New'," *Administrative Science Quarterly*, Volume 41, Number 2, June, pp. 270-277 (1996).
[53] Huntington, *Political Order in Changing Societies*, p. 12.

costly to change.[54] For the political scientist, much of the day-to-day political activity depends upon deeply nested, institutionalized rules that range from informal norms of congressional behavior and committee structures to the Constitution itself.[55] When policymakers, public administrators or organizational leaders play a role in the control or management of this process of institutionalization, as an organization becomes an institution, this is referred to as "institution-building" or, in this study, institutional design and redesign.

Applying the Theory of New Institutionalism

In examining government institutions, this study relies upon many of the insights from new institutionalism theory in order to draw relevant conclusions about the organizational design of the institutions within the intelligence community. This theory of new institutionalism is, at its root, a reminder of the various settings in which social action takes place. The theory reflects a strong sense of sociological sensibility and has brought a wealth of knowledge to the understanding of how institutions operate as social organizations. Since its development, this theory has generated fresh insights as well as interesting shifts of focus related to organizations, both public and private. Drawing from diverse disciplinary strands such as sociology, political science and organizational theory, new institutionalism serves to consolidate thoughts about how organizations like institutions function and raises questions about the effectiveness of

[54] Douglass C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press (1990).
[55] Geoffrey Brennan and James M. Buchanan, *The Reason of Rules: Constitutional Political Economy*, Cambridge: Cambridge University Press (1985).

those operations. This theory of new institutionalism in organizational theory and sociology comprises:

> a rejection of rational-actor models, an interest in institutions as independent variables, a turn toward cognitive and cultural explanations, and an interest in properties of supraindividual units of analysis that cannot be reduced to aggregations or direct consequences of individuals' attributes or motives.[56]

And while there may be some different perspectives or focus by the various disciplines and individual scholars of the social sciences analyzing institutions, generally, new institutionalism is the recognition of the need to blend both agency and structure for a plausible explanation of social outcomes.[57] The underlying continuities among the different disciplines are strong. They tend to have similar definitions of institutions and institutionalization.

Significantly, new institutionalism has served to bridge a divide within the academic world between those scholars who offer "structure" as the key explanatory variable in the shaping of social outcomes and those that see "agency" as central, and argue that a rich explanation of how agents act and interact can provide an account of social outcomes. While not rejecting the importance of the formal structure of the organization, new institutionalism argues that the formal structure of an organization cannot be understood as a rational system for coordinating activities; rather, the formal structure of an institution is institutionalized from without, as well as from within, and that structure reflects prevailing concepts of how work should be organized.

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[56] DiMaggio and Powell (1991), p. 8.
[57] Alexander E. Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization*, Volume 41, (1987), pp. 335-70.

For new institutionalists, formal structures of organizations "dramatically reflect the myths of their institutional environments as well as the demands of their work activities."[58] According to the theorists, "The more an organization's structure is derived from institutionalized myths, the more it maintains elaborate displays of confidence, satisfaction, and good faith, internally and externally."[59] Myths are complemented by an institution's routine procedures, such as "rationalized rituals of inspection and evaluation." Because such functions are threatening, "institutionalized organizations seek to minimize inspection and evaluation by both internal managers and external constituents." This theory, in part a tradition based in sociology, "emphasizes the interpretation of self and others, of institution and person, of culture and social structure."[60] It is a tradition that emphasizes the active construction of social life in interaction.

New institutionalism is a theory that is suitable for examining the social institutions that make up the U.S. national security system. This theory highlights the policy relevance of organizational and institutional theory. In doing so the theory underscores the point that a concern for policy is an important source of intellectual discipline. Applying insights from the theory underscores the point that scholars cannot be satisfied with a new paradigm, or a new way of thinking, it if fails to take account for contexts and variations. Because of the unique insights from new institutionalism

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[58] John W. Meyer and Brian Rowan, "Institutionalized organizations: formal structure as myth and ceremony," in Walter W. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, pp. 41-62, 41,Chicago: University of Chicago Press (1991).
[59] Ibid. at 54.
[60] Andrew Abbott, Review: An Old Institutionalist Reads the New Institutionalism, *Contemporary Sociology*, Volume 21, Number 6, November, (1992), p. 755.

regarding the internal and external constraints on institutions, the theory has the potential to contribute to one of the most important and genuine institutional and policy dilemma faced by U.S. policy makers; how to design government institutions that work effectively together within the U.S. national security system.

In sum, for new institutionalists, an institution is a central type of setting in which actions occur and within which actions are constrained, an organized pattern of socially constructed norms and rules, and socially prescribed behaviors expected of occupants of those roles, which are created and re-created over time.[61] At the organizational level, an institution serves both to constrain actors and to provide advantages to the individuals and groups as they pursue their particular objectives.[62] An institution is a particular type of organization. Institutions are organizations or administrative systems that are "infused with value" greater than would be necessary simply to achieve their formal purposes.[63] Thus, an institution is created when a formal structure has meaning for the members, and when those members begin to believe that the structure is something more than a means to an end. The institution is able to motivate the members – through its logic of appropriateness – to a greater extent than would a simple, mechanical organization.

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[61] Robert C. Eisenstadt, "Social Institutions: the Concept*," International Encyclopedia of the Social Sciences*, Volume 14, New York: Macmillan, (1968), pp. 409-21.
[62] The theme of advantages of institutions is central to many of the institutionalists in economics. John Commons (1931), p. 649.
[63] P. Selznick, *Leadership in Administration: A Sociological Interpretation*, 2ed. (1984), Berkeley University of California Press, (1957), p. 17.

The Elements of An Institution: People, Structure, Culture

The descriptions of institutions reviewed imply three characteristics that set institutions apart from other social entities: people, structure (formal and informal) and culture. These three characteristics are chosen in order to organize the discussion of institutions within this study for three basic reasons: (1) they are mentioned often in the academic and policy literature related to the creation of institutions; (2) they have practical implications (i.e., when pathologies of culture are not understood and controlled for, the performance of the institution is negatively affected); (3) each is a self contained set of research questions that relates to the other two and can be examined separately under different research projects (this study will spend more time examining the cultural characteristic). These three characteristics or elements of an institution serve as a rough guideline for inquiry into institutions in the sense that they suggest what institutions are, how they work and where they can fail. This listing is more like an observer's manual or a set of raw materials for disciplined imagination rather than a set of propositions to be refined and tested. The list might eventually serve the latter purpose, but that is not the intention of developing this list within this study. Instead, it is meant to put some boundaries around the phenomenon of institutions. The intention is to introduce ideas about institutions that will reappear in subsequent chapters.

This study focuses on the institutional form referred to at times as a large-scale formal organization, defined as a stable set of social relations that are "deliberately created, with the explicit intention of continuously accomplishing some specific goals

or purposes. These goals or purposes are generally performed for some larger structure."[64] Once a goal or multiple goals are set in place, the institution is created, or designed, in order to achieve that goal or goals. Within the institution there are both formal and informal aspects of its composition. The specific way in which the term institution is used in this study is to reflect both the formal and informal structure in which people are arranged to carry out activities, through processes, routines and culture. The component parts of the institution: structure, people, processes, routines and culture make up the design of the entire institution. This study focuses both on the formal or artificially created components of an institution (structures, rules and procedures) as well as those aspects of an institution that occur spontaneously or naturally (the people and the culture).

1. *The People Operating Within the Institution*

The subject of review for this study is the institution; a collection of *people* operating within an array of institutional features. These institutional features can be categorized as architecture, routines and processes, and culture. The architecture of the institution is made up of the formal structure of the organization and the people of the organization. First, the *people*: the set of individuals who make up the institution. They are the ones responsible for carrying out the activities that will either help implement the strategy of the decision makers or act to impend that strategy. Important questions about these people are: What are the skills and talents of these people? What are their beliefs and objectives? How hard are they prepared to work and for what ends? What

[64] Arthur L. Stinchcombe, "Social Structure and Organizations," in James G. March, ed. *Handbook of Organizations*, Chicago: Rand-McNally (1965).

motivates them to work hard? What sorts of risks will they accept and what sorts of rewards do they value? How are they connected to the institution?

In discussing the pre-WWII state of intelligence organization in Britain, Pforzheimer stated that, "you must get down to the fundamental problem that intelligence is people and personalities."[65] He went on to suggest that, "in the end it had to be people, and you have to rely on people, whether they are in this box or that box, to produce what is ultimately needed in the future."[66] From the body of literature that often addresses military failures referred to as "command, control, communications and intelligence," or C3I we are reminded that "fallible and resolutely imperfect people are part of command and control systems."[67] While recognizing that people play an important part in the make up of an institution they are too often the easy victims to blame for the failures of the institutions of which they are a part. "Operator errors" are most commonly sited as the cause for system failures in internal investigation reports and studies. It is often simply easier, as organizational theorist Charles Perrow notes, to "blame the victim" rather than the leaders of the organization and the structures and procedures of the organization.[68]

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[65] Walter Pforzheimer, "Discussion," in Roy Godson. ed., *Intelligence Requirements for the 1980's: Analysis and Estimates*, Washington DC: National Strategy Information Center, (1980), pp.40-42.
[66] Ibid.
[67] Anthony Oettinger, "Whence and Whither Intelligence, Command and Control? The Certainty of Uncertainty," p. 5, http://pirp.harvard.edu/pubs.edu; K. C. Allard, *Command, Control and the Common Defense*, New Haven: Yale University Press (1990); K. C. Allard, *Somalia Operations: Lessons Learned*, Washington DC: National Defense University Press (1995).
[68]Perrow, *Normal Accidents: Living with High-Risk Technologies*, Princeton, NJ: Princeton University Press (1999); Perrow, "The Organizational Context of Human Factors Engineering," *Administrative Science Quarterly*, Volume 28, Number 4, December 1983, pp. 521-541.

In his review of dangerous accidents in mines, sociologist Charles Perrow states, "'Operator error' is an easy classification to make . . . . What really is at stake is an inherently dangerous working station where production must keep moving and risk taking is the price of continued employment."[69] Perrow's argument is not to ignore the fact that human mistakes are made by operators working within systems. Rather, Perrow argues that individual mistakes should not be the focus of efforts to prevent "system failures" like nuclear power plant failures or intelligence failures like 9/11 for, according to Perrow's "normal accident theory," individuals errors cannot be the cause of system failures. In focusing on individual mistakes, and failing to understand the essential problem that caused the failure, leaders and reformers will indulge in policies or reforms that are premised on a false conclusion. These reforms will likely lead to a false sense among members of the system and outsiders that the disease has been cured when it in fact has not. This is not to argue that there ought to be an acceptance policy of the individuals' mistakes; rather this study argues that the operators are one part of the institution and that any considerations for reform of the system after a failure will need to address aspects of the "people" characteristic of the institution but not to the exclusion of the structural, procedural and cultural aspects of the institution. As Perrow's normal accident theory demonstrates, investigations in human errors must only be the starting point to any serious attempt to reform systems in order to minimize the likelihood of their failure.

[69] Perrow, *Normal Accidents*, p. 249; E.L. Warren, "Mid-air Collisions: The Accidents, the Systems and the Realpolitik" in Ronald Hurst and Leslie R. Hurst, *Pilot Error: The Human Factors*, New York: Jason Aronson, (1982), pp. 101-118.

In redesigning an organization or institution, the people are the feature of the organization that is most difficult to alter for human operators are not man made and they come to the institution with physical and mental capacities and limitations that have already been formed. There will be limitations to the learning capabilities of individuals just as there are factors that can limit the learning potential of organizations. However, even if there is no ability to design human operators, institutional designers can decide which people are chosen to be part of the institution and how they are organized. These decisions are a matter of choice. In contrast to the human operators' make up, institutions like FBI and the CIA are entirely man-made. The designers of the system can make choices in light of the trade-offs involved about the specifics of how the system will be designed including decisions about the people of the institution. Who gets hired, who is fired, who get promoted, what training do particular individuals receive, who works *for* whom and who works *with* whom? These decisions affect the performance of the institution. It is an error for anyone involved in the organizational design of any systems to neglect and ignore the human element, "for the human operator's capacities as an information system, in the end, will decide the success or failure of the system."[70] The organization of the people must be analyzed in light of the other features of the institution. The institution (with all of its elements) and the system in which the institution operates must be the focus of analysis for institutional performance and design and not the isolated, abstracted people operating within the institutions.

[70] J. F. Jacobs, *Design Approach for Command and Control,* Bedford, MA: MITRE Corporation, SR-102, January 1964, as quoted in Anthony Oettinger, "Whence," p. 12.

2. *The Structure of the Institution*

The next element of an institution is the architecture of the institution. This is the *structure* of the institution which can be formal and informal. In one sense, the structure of an institution is the part of the institution which is mostly visible on the organizational chart of an institution. It makes up the vertical and horizontal boundaries of the institution. It determines the location of the decision making authority. The structure is what determines the location of power and authority within the institution. It is the "interrelationship, the arrangements that permit control and coordination of work."[71]

Early work in organizational science focused on the need for an appropriate alignment or fit between an organization's structure and its environment. This idea was called contingency theory – the appropriate structure is contingent on the environment. This theory was gathering strength and clarity in the early 1960s and had made great strides by 1967 with three similar formulations by James Thompson, Paul Lawrence and Jay Lorsch and Charles Perrow.[72] These stimulated a wave of theorizing and research about the structure of institutions that has continued till today. Specific research discussions developed around the benefits that certain structural arrangements provided to the institution in light of the environment. For example, scholars

[71] Charles Perrow, "A Framework for the Comparative Analysis of Organizations," *American Sociological Review*, Volume 32, (1967), p. 195; Perrow, "Technology and Organizational Structure," in G.G. Somers, ed., *Proceedings of the Nineteenth Annual Winter Meeting, Industrial Relations Research Association*, Madison (1967), p. 156.
[72] James Thompson, *Organizations in Action*, New York: McGraw-Hill (1967); Paul R. Lawrence and Jay W. Lorsch, *Organization and Environment*, Cambridge, MA: Harvard University Press (1967); Charles Perrow, "A Framework for Comparative Organizational Analysis," *American Sociological Review*, Volume 32, Number 2, April 1967, pp. 194-208.

demonstrated how organizations with low levels of centralization and formalization are more effective in turbulent environments, whereas organizations with high levels of centralization and formalizations are more effective in placid environments.[73] As organizational scientists continued investigating the relationship between other features of organizations it became clear that performance was related to the match between particular pairings of organizational features such as strategy, structure, technology, culture, processes and the environment. It also became clear, through a systems approach, that a fit among all organizational characteristics as well as the organization's environment is important for the performance of the organization.

Centralized Structure vs. Decentralized Structure

For purposes of thinking about the design of the institution there are important questions to address regarding the institution's structure: What should be the vertical distribution of decision-making power and authority? This question is discussed in the context of the centralization or decentralization of institution's structure. What should be the horizontal distribution of power? This is when the decision makers shift power to the department or departments dealing with mission-critical issues. In dealing with more non-traditional threats like terrorism and non-state actors, the members of the institution that are in the field operating close to the threats may have more knowledge about specific threats then policymakers back in Washington DC and therefore more capable of resolving what ever challenges arise. These circumstances may call for those individuals with these functions in the field to be given increased decision-making

[73] Ibid.

power. Under such circumstances, an institutional structure of decentralized authority would serve this purpose.[74]

In designing the structure of an institution that will best implement a strategy, the designers as well as the leaders of the institution must continuously weigh the environmental situation and the changes that have occurred in that environment in order to be prepared to alter the balance of the decision making power when such change would be appropriate. This has become a critical point in the debate related to the reorganization of the intelligence community. When the intelligence community was created in 1947 even then most observers recognized that the intelligence community was really not a "community" in the true sense of the word. In fact, over the years after its creation it was often referred to as a fragmented collection of agencies. While this structure may have been satisfactory during the Cold War to deal with the Soviet threat, many critics after 9/11 argued that a more centralized structure with a more hierarchical decision making change of command was needed in order to be able to meet the challenges from terrorism in the post 9/11 environment. The calls for a more centralized structure were acted upon by Congress and the agencies within the intelligence community. Congress created the Office of the Director of Intelligence that includes the national centers. The FBI began to centralize control and decision making authority at headquarters and to reign in the field offices. Based upon the insights that organizational theories have to offer, it is questionable as to whether a move towards more centralization and consolidated decision making power at the top is the structure

[74] Richard A. Posner describes the benefits of such a decentralized structure when dealing with intelligence officers in the field. See Richard A. Posner, *Countering Terrorism*, chapter 3.

that would best address the errors made pre 9/11 that were revealed by the investigations. Nor is it clear that this change in structure is one that is best suited to the new terrorist threats that have emerged.

Different Structures for Different Tasks

Depending on the type of work or tasks that an institution is to perform, the optimal structure of the institution should vary. An institution's tasks that it was created to perform will dictate the appropriate structure of the institution. The types of tasks that an institution performs can be divided into routine or non-routine.[75] Routine tasks are those that are well understood, predictable and repetitive. For these routine tasks not much imagination needs to be left up to the individuals carrying out the tasks. Therefore, the institution can limit the behaviors of those carrying out these tasks by breaking them down into specialized activities that are controlled by formal rules and procedures. This bureaucratic type of structure represents the most efficient means of organizing routine tasks.[76] However, as a result of designing the structure in this bureaucratic fashion with specialized activities and formal rules and procedures the people within the institution performing these routine tasks lose a varying amount of control or flexibility over how they carry the tasks out and how they will utilize various resources.[77] For the goal of carrying out routine tasks this usually does not cause a problem since the employees will not, for the most part, need to make any independent

[75] Perrow, *Organizational Analysis*, 1970, p. 91; Perrow, *Complex Organizations*, 1986, p. 14.
[76] Charles Perrow, "The Effect of Technological Change on the Structure of Business Firms," in *Industrial Relations: Contemporary Issues*, ed. by B.C. Roberts, London: Macmillian, pp 205-219 (1968); Charles Perrow, *Complex Organizations*, 1986, p. 142.
[77] Charles Perrow, "A Framework for Comparative Organizational Analysis," *American Sociological Review*, Volume 32, Number 2, April, pp. 198-199 (1967).

decisions to carry out the routine tasks but rather merely follow the operating guidelines and instructions for each task.

Non-routine tasks, in contrast, are those in which the situation is unique, ever-changing, or poorly understood.[78] For institutions or for those parts of the institution that carry out non-routine tasks there is little use for a structure that is bureaucratic, with specialization and formal rules and procedures. Due to the tasks' uniqueness and variability, one can only formulate informal rules and procedures and reinforce appropriate behaviors for workers. Formal blueprints or guidelines will likely be of little use by workers who have to make decisions in the field in an environment that is constantly changing or is highly uncertain. The appropriate behaviors of workers carrying out non-routine tasks will be largely based on their training and previous experiences.[79] While some of the training may be formal educational training in highly uncertain environments, most of the critical training will need to come from on-the-job training from other fellow workers. In order to reinforce acceptable behavior of workers carrying out such non-routine tasks, consistent review of performance reviews is critical as well as an institutional culture which supports experimentation and learning within its work force. When an organization is performing non-routine tasks it makes sense to institute a bureaucratic structure with respect to the means for reporting performance, recruiting and hiring those individuals who appear to have applicable training and experience and supporting a culture of experimentation.

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[78] Perrow, *Organizational Analysis*, 1970, pp. 60-61, 76-77; Perrow, *Complex Organizations*, (1986), p. 142.

[79] Perrow argues that workers have informal rules and procedures embedded within them. Ibid.

The type of structure that is designed for an institution should vary depending upon the type of tasks that the institution will be performing. One design structure does not fit all tasks. It is not so much that a bureaucratic centralized structure is always bad or a less bureaucratic decentralized organization is always good. Rather, both structural forms have merit because each represents the most efficient and effective way to organize a different type of task.[80] One danger, though, that exists regarding the types of tasks is that managers will attempt to routinize all the tasks over which they have authority and responsibility because routinization enhances predictability and centralizes control. However, if bureaucratic structures are imposed upon parts of the institution that performs mostly non-routine tasks the result will be a drop in operational efficiency and employee dissatisfaction.[81] According to a detailed study, the attempted bureaucratization of DuPont failed because conducting basic research remained a non-routine function. The bureaucratic structure that was forced upon DuPont was not the correct fit with one of the main tasks that DuPont still needed to perform.[82]

Another danger is that when the decision is made that an organization will take on additional tasks no one will carefully consider whether the structure of the organization will support the task especially if the new task is different than the prior tasks the organization existed for. One strategy used by those who want a desired change in an organization is to induce the organization to recruit, hire a professional

[80] Perrow, "The Effect of Technology," 1968, p. 216.
[81] Perrow, "The Effect of Technology," 1968, pp. 213, 218; *Organizational Analysis*, 1970, pp. 66-67; *Complex Organizations*, 1986, pp. 36-42.
[82] David A. Hounshell and John Kenly Smith Jr., *Science and Corporate Strategy: DuPont & R&D, 1902-1980*, New York (1988).

cadre whose values are in line with the desired changes. Even long established organizations with strong traditions can be changed by inserting a new profession. James Q. Wilson, in his review of the Forest Service demonstrated how the Service underwent major changes in how it performed its work once it was required to hire a large new cadre of people who identified with the emerging environmental profession during the 1980s. As in the Forest Service case, the influx of new professional hires can bring change even to an old bureaucracy by institutionalizing new values into the organization. The benefit of bringing attention to new and different values within an old organization may also come with great cost. In the Forest Service case it did. The Forest Service, created in 1905, had a strong sense of mission and purpose and was dedicated to "develop and be guided by a doctrine of professional forestry." When the Forest Service was required to hire the new workers focused on environmental issues, "the rival professions weakened the ability of the agency to develop and maintain a shared a sense of mission."[83]

Similar to the Forest Service, the FBI has been asked to focus attention and efforts on the task of intelligence. In an effort to do that, the Bureau has hired thousands of new intelligence analysts. As the Department of Justice Inspector General has reported, however, there remains a critical rift between the intelligence analysts and the agents within the Bureau. This rivalry between the professions has raised serious concerns as to whether the FBI can carry out both its law enforcement function as well as the intelligence function. Like the Forest Service, the FBI is being divided up by

[83] James Q. Wilson, *Bureaucracy*, p. 65.

different professional cultures. Since its creation in 1908, the FBI has been dominated by a single professional culture of the criminal investigative agents. Today, the FBI agents have to contend with analysts and intelligence professionals. The agents dislike the tendency of analysts directing their operations. They also dislike the fact that intelligence investigations are being given more priority over the traditional criminal investigations done by the agents. This is a topic that will be revisited in chapter 5.

The agencies that make up the U.S. intelligence community are beset with a number of different tasks that have been laid out for them by the U.S. policymakers. Recently, political scientist Thomas H. Hammond identifies six different tasks that the intelligence community is responsible for carrying out.[84] They are:

- Determining the intentions and monitoring the capabilities of the former Soviet Union, China, North Korea, Iran, etc.
- Monitoring the nuclear proliferation technologies, capabilities and intentions of foreign state and non-state organizations
- Counteracting terrorism at home and abroad
- Providing intelligence support for anti-drug campaigns
- Providing intelligence support for US government policy in Iraq
- Supporting U.S. combat operations

Hammond argues that there will be complications and fault lines in any structural design of an organization particularly when it has multiple and different

[84] Thomas Hammond, "Why is the intelligence community so difficult to redesign?" Paper presented at the annual meeting of the The Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, April 7, 2005.

functions and tasks. The intelligence community collects information, analyzes information and disseminates it. In addition, the community is responsible for conducting covert actions. A structural design that is good for collection may be poor for integration and dissemination and vice versa. Furthermore, a design that favors rapidly acting on intelligence in any situation short of an imminent attack has costs. If one acts immediately on threat information by "detaining" or "arresting" the source of that information then one may have permanently caused the loss of future valuable intelligence information gained from surveillance of that source. This is a constant tension between the law enforcement mission of arresting suspected criminals and the intelligence community's mission to collect intelligence.

Different Structures for Different Threats

Additionally, a design of the intelligence community that is appropriate for dealing with one kind of threat will not be appropriate for another kind of threat. For example, during the Cold War the intelligence community was structured to counter the threat of the Soviet Union. This structure, however, is not suited to address the threats from non-state actors and terrorists like al-Qaeda that possess weapons of mass destruction and who have the ability to hide within the United States and go undetected. Clearly there are trade-offs involved in every structural design chosen. As Betts stated, "Organizational solutions to intelligence failure are hampered by three basic problems," the first of which is that "most procedural reforms that address specific pathologies

introduce or accent other pathologies."[85] Hammond concludes that because of these difficult tradeoffs, policymakers have taken on a "structural conservativism" in the structural reforms that they have imposed upon the intelligence community.[86] Because there is no easy answer to the best design and no alternative structure that appears clearly superior, the status quo is for the most part left to persist. As the executive director of the 9/11 Commission, Philip Zelikow stated, "left to their own, organizations will maintain status quo."[87] Additionally, there are those costs of tearing down an already existing organization and all of the political fights that would cause as well as the many careers that would be disturbed.

The Rules of an Institution

Rules of institutions are one aspect of the structure of the institution and they, arguably, form the heart of the institution. Rules are a part of the control of behavior within institutions. Max Weber described one of the great virtues of bureaucracy as its ability to institutionalize methods for taking general rules and applying them to specific cases.[88] These rules make government organizations' actions fair and predictable. There are "constitutive" rules which provide a means of structuring macro-level behavior of political systems. There are also "regulatory" rules, these rules dictate and tell actors within the system what behavior is acceptable or not. Rules also serve as the

[85] Betts, "Analysis," pp. 84-85.
[86] Hammond, p. 25.
[87] Philip Zelikow, statement, "9/11 Commission Eighth Public Hearing: Counterterrorism Policy," http://www.9-11commission.gov/archive/hearings8/9-11Commission_Hearing_2004-03-23.pdf and http://www.9-11commission.gov/archive/hearings8/9-11Commission_Hearing_2004-03-24.pdf, March 23-24, 2004.
[88] Max Weber, *Economy and Society*, Volume 3, ed. Guenther Roth and Claus Wittich, New York: Bedminster Press, (1968), pp. 958, 973-75, 979.

formalizations of 'logics of appropriateness'.[89] In other words, they create a normative standard of legitimate behavior. They serve as guides for newcomers to an organization and attempt to create more uniform understandings of what those logics are. Even then, as noted by theorists, the rules will be interpreted differently and hence acted upon differently at times by the actors within an institution.[90] For the intelligence community the constitutive rules are those that are codified within statutes like the National Security Act of 1947. This act sets out the authorities and responsibilities of the various institutions that operate within the community. The Attorney General guidelines would be an example of the regulatory rules that dictate issues such as what type of collection techniques can be used by the FBI against certain targets of investigation and what level of authorization within the Bureau is needed depending upon the technique.

The Routines and Processes of an Institution

The *routines and processes* of an institution refer to all of the managerial policies and procedures that shape how information is gathered and transmitted, how decisions are made, how resources are allocated, how performance is monitored and activities controlled and rewarded. These routines and processes include both official and unofficial policies and procedures. There are a number of critical vertical processes within an institution: the allocation of decision making authority within the institution – what decisions are made by which people at what levels, with what oversight and review and the allocation of scarce resources and talents. There are also important lateral processes which are designed around the work flow. Lateral processes can be

[89] March and Olsen (1996), pp. 21-5.
[90] Ibid.

carried out in a range of ways, from voluntary contacts between members to complex and formally supervised teams. Whether formal or informal, these routines and processes involve shared understandings about how things are to be done. As Rich Haver, the then-Assistant to the Secretary of Defense for Intelligence Policy, noted, "as important as the [organizational] boxes are . . . what really makes this system work is the process. The lines that connect the boxes are as important to getting the job of intelligence to the consumer as the boxes themselves."[91]

A key element of an institution's routines and processes is the reward system that is in place to align the goals of the individual employee with the goals of the organization. It provides motivation and incentive for the completion of the strategic direction. This reward system defines policies regulating salaries, promotions and bonuses. As with other aspects of the institutional design, the reward system must be congruent with the structure and processes of the institution to influence it's strategic direction. Reward systems are effective only when they form a consistent package in combination with the other design choices.

The general term "routines" refer to the more formal aspect of an institution that is in the form of rules, procedures, conventions, strategies and technologies around which an institution or organization is constructed and through which they operate. But it also includes the structure of beliefs, frameworks, paradigms, codes, cultures, and knowledge that buttress, elaborate and contradict the formal routines. Routines are independent of the individual actors who execute them and are capable of surviving

[91] Incidental Paper, "The Process of Reorganization Within the US Intelligence Community," by Richard L. Haver, Guest Presentation, Spring 1992, p. 105, available at http://pirp.harvard.edu/pubs.edu

considerable turnover in individual actors. These routines can also change as a result of experience within a community of institutions. These changes depend on interpretations of history, particularly on the evaluation of outcomes in terms of targets.[92] Routines are assumed to make the behavior of an organization more predictable and more rational.[93]

3. *The Culture of an Institution*

The final organizational feature of institutions is the *culture* of the institution. The study of culture and institutions suffers from both poverty and riches: it is cursed with many data and fragments of theory but little agreement on concepts and paradigms. The lack of any attention given to the topic of culture in both the 9/11 Commission and the WMD Commission reflects this lack of agreement of the concept of culture and the role it plays in the performance of institutions in the theoretical literature. One of the goals of this study is to describe and analyze the impact of culture on institutions and more specifically on institutions like the FBI and the CIA that operate within the U.S. national security system.

For organization theory scholars, culture is seen as an independent variable in the study of institutional effectiveness. But for this to have any meaning in practice one must have a conceptualization of culture. The conceptualization and operationalization of culture is important to the goal of this study in seeking to understand the relevance of culture for the operation of national security institutions. In this study culture is used as

[92] B. Levitt and James G. March, "Organizational Learning," *Annual Review of Sociology*, Volume 14, (1975), pp. 319-40.
[93] James G. March and Herbert A. Simon, *Organizations*, New York: John Wiley & Sons (1957).

a lens through which to interpret and understand different organizations that are part of the U.S. national security system, i.e., the FBI and the CIA and the working relationships between the different entities. In examining the role of culture on the performance of institutions within the system the study will be able to assess how well the reforms have made effective changes in the system in light of what we have learned about the effect that culture has on the institutions.

Designing Institutions

A basic premise of this study is that institutions do indeed affect outcomes. Based on this supposition, this study raises an academically less-explored, but no less significant, question: How does the choice of institutional *design* influence the effectiveness of institutions in solving national security problems such as terrorism? While recognizing that institutions are composed of individuals and that personalities matter, institutions and organizations exert an independent influence on outcomes. In line with new institutionalism theory, this study does not focus on the individual level of analysis, although some useful work has been done concerning the effect that leadership has on the process of institutionalization and organizational performance in general.[94] In other words, the focus is not on how individuals in the system as actors affect outcome, but rather on how the institutions themselves affect outcomes.

[94] Philip Selznick, "Dilemmas of Leadership and Doctrine in Democratic Planning," in A.W. Gouldner, ed., *Studies in Leadership: Leadership and Democratic Action*, New York: Harper, (1950), pp. 560-591; K. J. Meier, "Bureaucratic Leadership in Public Organizations," in B.D. Jones, ed., *Leadership and Politics: New Perspectives in Political Science*, Lawrence University Press of Kansas, (1989), pp. 267-286.

This chapter has concentrated on the word "institution" at the expense of the other word in the title, "design." The reason is that the word "design" while often stated in the context of institutions, is given very short analytical shrift in the social science literature. Neither the definition of the term design itself nor the possible principles that might guide designing of institutions is given much consideration. The dearth of available analysis in social science literature related to the study of social institutions makes it necessary to move further afield for guidance where lessons learned can be transferred to the study of social institutions in the U.S. national security system.

Recently, there has emerged some useful discussion and analysis of design problems concerning whole systems. Within the literature of complex systems has come recognition that the intentional design of institutions is only part of the story. Institutions come about or evolve as a result of a failure or in accordance with a logic of their own, in ways unrelated to the intentions of the human designers. Even where direct design has its limits, though, there are indirect ways to design an institution. Although failures of systems happen, the frequency and direction of accidents can be significantly shaped by intentional interventions of social planners.[95] These discussions of the design of whole systems analyze the "fit" between desired objectives and the wider context of the system itself. Charles Perrow, a leading scholar in the area of analyzing whole systems in their effectiveness in achieving their objectives, has devoted much effort and attention to this idea of designing systems in ways to minimize the likelihood of them failing. Through these discussions between the related social science

[95] Charles Perrow, *Normal Accidents: Living with High-Risk Technologies*, New York: Basic Books (1984).

disciplines of organizational theory, scholars like Perrow have provided the means by which a thoughtful analysis of design in the context of institutional theory can occur.

This study leverages lessons from different disciplines within the social sciences such as institutional theory and organizational theory. Although it would be less difficult to rely on one model or theory to further the understanding of the effectiveness of the national security design, unfortunately that proves to be an unrealistic goal. It is sometimes the case that not one theory or model is well suited to all organizations and institutions at all times. Propositions and hypotheses found in different theories and models have proven useful in examining the creation, evolution and performance of a national security system. This of course calls for a much more complex exercise to create a common framework --building up these key concepts from the different theories from which the organizational design of the national security institution can be assessed. Then again, the nature of the real world is often complex and not easily reduced to one lens through which everything can be logically explained or fully understood.

Why *This* Study

Since the end of the Cold War, numerous blue ribbon commissions, think tank studies and government initiatives and investigations have recommended reforms within the intelligence community and the U.S. national security system. From these studies there have been as many as 340 reforms recommended, including the persistent

emphasis on the need to appoint a national intelligence director.[96] For the most part, the recommendations that have come out of these studies have been ignored or implemented in a weak fashion rendering effectively useless.[97] One explanation for why so many studies on intelligence reform have passed into history with few real effects on the U.S. national security system is because these studies were usually done on an ad hoc basis without systematic planning and in reaction to various failures, crises or scandals.[98] These studies themselves have pointed out that government organizations in particular are reluctant to change, burdened by inertia, confronted with internal resistance, caught in tradition and habit, and lacking incentives, resources, and freedom of choice.[99]

One might then ask why embark on an assessment of national security reform when several earlier studies appear to have attempted this already. In other words, of what value is this study when the Intelligence Reform and Terrorism Prevention Act has

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[96] Amy Zegart, "September 11 and the Adaptation Failure of U.S. Intelligence Agencies," *International Security*, Volume 29, Number 4, Spring, (2005), pp. 84-85.

[97] There were a few studies that led to significant changes to the national security system. For example, based upon the recommendations from the Dulles Report, written in 1949, the Board of National Estimates was created to coordinate and produce the National Intelligence Estimates that would serve as the highest, comprehensive intelligence analysis on particular subjects from the intelligence community. The Schlesinger Report, written in 1971, recommended the creation of a "Director of National Intelligence" who would have responsibility for the budget of the intelligence community. This ultimately lead to the creation of the office of "community management" under the DCI to help manage the entire intelligence community. And the 9/11 Commission report, written in 2004, lead the passage of the Intelligence Reform and Terrorism Prevention Act, which created the position of the Director of National Intelligence and split that position from the position of the Director of CIA. Michael Warner and J. Kenneth McDonald, April 2005, "US Intelligence Community Reform Studies Since 1947," *Center for the Study of Intelligence*. There was also the Goldwater Nichols Act which reorganized the Department of Defense, creating a more centralized structure and granting more authority to the Secretary of Defense and the CINCs versus the individual services. James R. Locher, *Victory on the Potomac: The Goldwater-Nichols Act Unifies the Pentagon*, Texas A & M University Press (2004).

[98] Warner and McDonald.

[99] Zegart, "September 11 and the Adaptation Failure of U.S. Intelligence Agencies," p. 95.

already created significant change based upon the 9/11 investigations' recommendations? Haven't the problems in the U.S. national security system that led up the September 11th attacks been resolved and fixed through this legislation? So why conduct this study?

Former Studies Focus on Individuals & Leave Gaps in Analysis

The practical lessons from the 9/11 attacks against the United States carry warnings about the dangers of living in a world where our enemies will use whatever means available to harm the United States. Americans learned that harmful outcomes can occur when institutions failure, even those institutions that were built to protect us. In contrast to conventional interpretations of the 9/11 attacks that focus on managerial wrongdoing (i.e., the *CIA IG Report*) this study reveals a more complex picture that shifts the focus from individual explanations to institutional factors that contributed to the failure of the system. These factors have been difficult to identify and untangle, however, "Our ability to tackle the national security challenges of this decade is central to our survival and should trump any hesitation to confront this issue head-on," even if it means bringing into question the adequacy and appropriateness of some reforms enacted into law.[100] Even in light of the fact that the law has already dictated certain changes be made to the intelligence community that may not be the end of the story. What if the recommendations were wrong and the law failed to address the real causes of the 9/11 failure?

[100] Jack Devine, "An Intelligence Reform Reality Check," *Washington Post*, February 18, 2008, p. A17.

Given that so many prior studies related to reforming the national security system have been undertaken, why would this assessment be any different from the others? Unlike the other studies, this study attempts to make theory more relevant and comprehensible to policymakers. It is not clear why the academic world has exerted so little influence on the national security policy process and its substantive functions and design. The fact is, however, that academics have avoided the subject of national security and intelligence in particular. Critical of the dearth of academic endeavors into practical matters of foreign policy in general one scholar argued, "Challenges to conventional wisdom and provocative explorations of . . . issues not possible in the political world should be and are part of the domain of the scholar and teacher."[101]

On the one hand, it seems as if academics are increasingly "withdrawing . . . behind a curtain of theory and models" that only other scholars and insiders can penetrate.[102] And on the other hand, it seems that government officials are rarely inclined to give attention to social science research."[103] James Q. Wilson, who served as a member of the President's Foreign Intelligence Advisory Board at the White House stated, "I have only rarely observed serious social science being presented to governmental agencies."[104] According to Wilson, "there just doesn't seem to be a place

[101] Quoted in David D. Newsom, *The Public Dimension of Foreign Policy*, Bloomington: Indiana University Press, (1996), pp. 121.
[102] David D. Newsom, *The Public Dimension of Foreign Policy*, Bloomington: Indiana University Press (1996), p.138.
[103] James Q. Wilson, "Social Science and Public Policy: A Personal Note," in Laurence E. Lynn,Jr. ed., *Knowledge and Policy: The Uncertain Connection*, Washington, D.C. :National Academy of Sciences, (1978), pp. 82-83.
[104] James Q. Wilson, "Social Science and Public Policy: A Personal Note," in Laurence E. Lynn,Jr. ed., *Knowledge and Policy: The Uncertain Connection*, Washington, D.C. :National Academy of Sciences, (1978), pp. 82-83.

for theories in the day-to-day considerations and decisions that need to be made by policymakers."[105] As Joseph Nye, former chairman of the National Intelligence Council and a Harvard academic once described the limited time that policymakers have to read and reflect upon decisions, he noted, "The pace did not permit wide reading or detailed contemplation. . . It was all I could do to get through the parts of the intelligence briefings and government papers that my various special assistants underlined . . ."[106]

One result of this gap that exists between theory and the insights of policymakers is that those in office will make decisions based on whatever knowledge they have accumulated before taking office or based on what they have developed while on the job. This is not to say that prior experience based knowledge or on-the-job training is necessarily wrong but rather that it may be inadequate to arriving at the best possible solution to the immediate problem. Depending upon the circumstances, when past experience or on the job training is either lacking or inadequate, good, relevant theory could help shape the questions that the policymakers ask and assist in diagnosing the problem and evaluating the likely consequences of a given course of action.

In the context of the intelligence reforms, this study argues that this gap between theory and policymakers resulted in the investigations' failure to use the insights from theory in their examination of institutional deficiencies within the U.S. national security system. Similar to investigations into other intelligence failures, the investigations'

[105] Interview with James Q. Wilson, December 4, 2007, by phone from Georgetown University.
[106] Joseph S. Nye, Jr., "Studying World Politics," in Joseph Kruzel and James N. Rosenau, eds. *Journeys Through World Politics*, Lexington, MA: Lexington Books (1989), p. 206.

failure to apply theoretical insights to their reform measures resulted in a weak and inadequate analysis of 9/11.[107] On specific negative result of this failure (examined in Chapter 4) was that the investigations, for the most part, focused on the role of individuals, both leaders and employees, in the events leading up the 9/11. Rather than analyzing the broader, although more complex and difficult to grasp, deficiencies within the national security system the investigations sought to hold individuals and institutions, in general, accountable for intelligence failures. Highlighting only the role of individuals and individual institutions, however, is dangerous, misleading and incomplete. Doing so resulted in drawing attention any from the actual causes of institutional behavior within the intelligence community (and ultimately the 9/11 failure) and inaccurate recommendations for reform.

Theory and Practice: The Disconnect

John Dewey argued in 1938 in *Logic: The Theory of Inquiry*[108] that social science should be guided by problems of life and practice rather than by intellectually self-generated conceptions and methods. In order to be truly scientific, he noted, the problems of social inquiry must "grow out of actual social tensions, needs, and 'troubles'." Dewey argued that the academic's work must be disciplined by the requirements of diagnosis, problem-solving and reconstruction. In short, rather than focus on the search for new paradigms and developing new theories, science should be focused on solving real "social" or "human" problems.

[107] Amy B. Zegart, "Cloaks, Daggers, and Ivory Towers: Why Academics Don't Study U.S. Intelligence," *Strategic Intelligence*, ed. Loch K. Johnson, Westport, CT: Praeger (2006).
[108] John Dewey, *Logic: The Theory of Inquiry*, New York: Irvington Publishers (1980).

Academics & Policymakers: The Gap Between the Two

After the 9/11 terrorist attacks on U.S. soil and the poor assessment of Iraq's WMD capacity, few problems would seem more serious than the organizations and the capabilities of the U.S. intelligence agencies within the U.S. national security system. Yet, generally, very little attention is given by academics to intelligence agencies, their functions and organization.[109] On the subject of the 9/11 attacks and counterterrorism generally, over the last few years there have been plenty of published works by policymakers,[110] as well as journalists[111] and the investigative commissions that were specifically created to examine these agencies in the context of the attacks.[112] Even the

[109] Amy B. Zegart, *Flawed By Design*; Zegart, *Spying Blind*; Interview with James Q. Wilson.
[110] Richard A. Clarke, *Against All Enemies: Inside America's War on Terror*, New York: Free Press (2004); Bob Graham and Jeff Nussbaum, *Intelligence Matters: The CIA, the FBI*, Saudi Arabia, and the Failure of America's War on Terror, New York: Random House (2004); Louis J. Freeh, *My FBI Bringing Down the Mafia, Investigating Bill Clinton, and Fighting the War on Terror*, New York: St. Martin's (2005); George Tenet, *At the Center of the Storm: My Years at the CIA*, New York: HarperCollins Publishers (2007); Clark Kent Ervin, *Open Target: Where America Is Vulnerable to Attack*, New York: Palgrave Macmillan (2006); John Ashcoft, *Never Again: Securing America and Restoring Justice*, New York: Center Street (2006); Michael Scheuer, *Imperial Hubris: Why the West Is Losing the War on Terror*, Dulles, VA: Brassey's (2004); Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*, Stanford, CA: Hoover Institution Press (2005); Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps*, Rowman & Littlefield Publishers, Inc. (2007); Jennifer Sims and Burton Gerber, eds., *Transforming U.S. Intelligence*, Washington, DC: Georgetown University Press (2005); Gregory F. Treverton, *Reshaping National Intelligence for an Age of Information*, New York: Cambridge University Press (2003); Arthur S. Hulnick, *Keeping Us Safe: Secret Intelligence and Homeland Security*, Westport, CT: Praeger (2004); Bruce Berkowitz, *The New Face of War: How War Will Be Fought in the 21st Century*, New York: Free Press (2003).
[111] James Risen, *State of War: The Secret History of the CIA and the Bush Administration*, New York: Free Press (2006); Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan , and Bin Laden, from the Soviet Invasion to September 10, 2001*, New York: Penguin (2004); Bob Woodward, *Plan of Attack*, New York: Simon & Schuster (2004); Bob Woodward, *Bush at War*, New York: Simon & Schuster (2002); Bill Gertz, *Breakdown: How America's Intelligence Failures Led to September 11*, Washington, DC: Regnery (2002); John Miller and Michael Stone, with Chris Mitchell, *The Cell: Inside the 9/11 Plot, and Why the FBI and CIA Failed to Stop It*, New York: Hyperion (2002); Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack*, New York: Crown Forum (2007); Lawrence Wright, *Looming Tower: Al-Qaeda and the Road to 9/11*, New York: Knopf Publishers (2006); Daniel Benjamin and Steven Simon, *The Next Attack: The Failure of the War on Terror and a Strategy for Getting it Right*, New York: Times Books.
[112] *The Joint Inquiry Report*; *The 9/11 Commission Report*; *The WMD Commission Report*.

individual security agencies have published their own reports about those attacks.[113] Very little work, however, has been done by academics (especially the theoretical academics) on 9/11 and combating terrorism.[114]

This study does not claim to offer a definitive answer concerning whether the social sciences have met Dewey's standard of seeking to solve real human problems. Rather, it seeks to demonstrate how certain theoretical insights from the social sciences are relevant to the real organizational problems related to the U.S. national security system. This study examines how the practitioners involved in investigating and reforming the U.S. intelligence organizations after 9/11 failed to identify the value of these insights. By not applying these to the most recent comprehensive restructuring of the intelligence community they missed an opportunity to design a more effective security system.

Whether the fault for this failure lies with theorists or practitioners is not certain; nor is it the main concern of this study on intelligence reform. Rather, the important issue to examine within this study which has both theoretical and policy implications is why valuable theoretical insights were not applied after 9/11 to the organizational redesign of the system, arguably, the most important current issue for the security of the United States. Based upon the facts uncovered in their investigations, the 9/11 investigators made specific recommendations for organizational changes to the U.S.

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[113] *The DOJ IG Report*; *The CIA IG Report*.
[114] Some notable exceptions are Richard Betts, *The Enemy of Intelligence*; Amy Zegart, *Flawed By Design*; Amy Zegart, *Spying Blind*; Loch K. Johnson, *Bombs, Bugs, Drugs, and Thugs: Intelligence and America's Search for Security*, New York: New York University Press (2002); Loch K. Johnson and James J. Wirtz, eds., *Strategic Intelligence: Windows Into A Secret World*, Los Angeles: Roxbury Press (2004).

national security system that were implied by law and presidential directive. These investigators, in conducting an analysis of the facts, however, failed to apply social science insights in that analysis. In making this point, however, it is not to place the blame on the individual reformers or investigators. In fact, the scholars themselves who develop and test the relevant theories have failed to consider the theories in the context of the security agencies as well. The theories, as applied in this study, that help to explain the behavior and performance of intelligence agencies and the post-9/11 reform measures have been ignored by the policymakers and practitioners involved in the day-to-day operations of these agencies as well as those involved in reforming those agencies. Neither have the theories been applied by the scholars to the study of these agencies. While practitioners ignore the theory the scholars ignore the national security organizations. In other words, with very few exceptions, [115] theorists themselves never assert the relevance of their own theories to the national security system.

The second important point about the theoretical importance of this study is that the application of the theoretical insights to the redesign of the national security system makes a significant difference in the quality of the reform recommendations and therefore the performance of the national security agencies. In applying these theoretical insights, the objective of the study is to assess whether the reforms implemented were appropriate, whether they made the system more effective. And, if not, what possible changes based upon the theories could lead to the improvement in the performance of the system today. In sum, in what ways can academic theories add real

[115] Ibid.

value to the problem of protecting U.S. national security by improving the effectiveness of the institutions of the U.S. national security system? If, as this study argues, these theories are useful in improving the effectiveness of national security agencies and therefore the work that policymakers are involved in every day, then efforts to increase the policymakers use of, and access to, scholarly guidance is worthwhile.

Explaining the Gap

The first objective of this study is to improve the performance of the U.S. national security system and made the U.S. safer. A second objective is to provide a bridge between theory and the work of policymakers and, in the process, hopefully contribute in the development of good theory and the thinking of policymakers in general and in the context of national security in particular. In line with the second objective, it is helpful to outline some possible reasons for the gap that exists between theory and the work of policymakers in general in order to hopefully bridge the gap between the two groups on matters beyond national security.

The Nature of the Work of Practitioners vs. The Work of Academics

A former acting dean of Georgetown's School of Foreign Service, David Newsom, criticized the lack of policy relevant scholarly work within academia, noting that much of existing academic scholarship was either irrelevant to the policymakers' work or inaccessible to them. . . . "locked within the circle of esoteric scholarly discussion.[116] Many scholars no longer appear even to try to reach beyond the theoretical debates within academia to the policy relevant issues and topics. And

[116] Newsom, p.138.

practitioners seem increasingly content to ignore those academic theories that may reach their desk. In their quest to build good theory scholars focus on issues that are of very little concern to policymakers. Academic incentive structures and a culture based on the idea that the development of knowledge is important "for the sake of knowledge itself" rather than to achieve a particular policy objective encourage the development of scholarship on general, broad concepts with no connection to the real dilemmas that the policymakers are trying to resolve. Greater value is placed on general theory versus some narrow method that may solve one policy-related problem.

Although there are no systemic empirical studies on the sources for policymakers' decisions with respect to intelligence reform and reorganization, it is generally agreed that, on the whole, theories from the social and organizational sciences provide only a modest, if any, impact on the final decisions on institutional design of public sector agencies.[117] Based upon the published reports of the 9/11 investigations, interviews conducted of members and staff of the investigations, and hearings held by the investigations and other lawmakers, it is apparent that the policymakers and lawmakers that were involved in the post-9/11 reforms opted not to rely on theories as they developed their recommendations for the redesign of the intelligence community.

As the Joint Inquiry investigation conducted its research and drafted it final report including recommendations for changes within the intelligence community it was not apparent that any time was dedicated to considering implications for the recommendations based on theory. No references to theoretical insights or concepts

[117] Interview with Lee Hamilton, January 2007, Wilson Center, Ronald Reagan Building.

based on theory that could be applied to the investigations was ever mentioned at a staff meeting or part of any collective Joint Inquiry effort as it analyzed the facts it had uncovered in order to provide recommendations within it final report.[118] Under a strict deadline of 18 months in which to conclude its investigation, hold hearings and write its report, the Inquiry barely had enough time to absorb the information gathered from the thousands of documents reviewed and hundreds of interviews conducted.

Even if any of the Joint Inquiry staff was open minded about the potential relevance that theory might have for their work, it would have been highly unlikely that anyone could have invested the time to thoroughly consider theoretical implications. Nothing indicates that anyone on the Joint Inquiry made any notable effort to do this. In fact, there is no evidence that any of the official investigations into 9/11 considered the possible applicability of theory to the problem of organizational reform of the intelligence community.[119] This reality is not surprising considering the gap that has existed between scholars and practitioners in general. The 9/11 investigators, like policymakers, and maybe even more so, had little time to consider theory especially when they were not conversant in the theoretical language and the applicability of the theories to the immediate task before them seemed unlikely.

[118] Interview with Dan Byman from the Joint Inquiry staff; personal experience of the author who served on the Joint Inquiry staff in 2002.
[119] Interview with Dan Byman and Gordon Lederman of the 9/11 Commission staff; Interview with Robert Morean of the WMD Commission staff.

The academic world and the world of the foreign policy makers appear to be largely divorced from conversation.[120] Scholars spend time on the technical refinements involved in developing or proving theories and fighting turf battles among contending theoretical approaches within a particular academic field.[121] This leaves little time for academics to broker relations with policymakers, reaching out to the policy world and offering guidance. The reality of this gap evolves in the form of a vicious cycle where as academics concentrate on more narrowly defined issues, practitioners find it easy to ignore them, concluding that their work is irrelevant thereby increasing the distance between the two groups. As for policymakers, the daily grind of "emptying the in-box" assures that they have little time to seek outsiders' advice. For those practitioners in the national security system, there exists both a prejudice against outsider advice based on a "not invested here" attitude and a legitimate concern for protecting classified information.[122] The added issues of security clearances and classification levels in dealing with national security issues only compound the difficulties that exist in communication between academics and practitioners.

Academic Theories Tend to Be Imprecise/Policymakers Problems Tend to be Specific

This communication gap between academics and practitioners may arise partly because of the different nature of work done by academics and theorists. In the context of institutional and organizational theories, for example, the theories are often not very precise when applied to a specific case that is under examination. Social scientists, in

[120] Joseph Lepgold and Miroslav Nincic, *Beyond the Ivory Tower: International Relations Theory and the Issue of Policy Relevance*, New York: Columbia University Press (2001), p. 49-54.
[121] Ibid.
[122] Interview with John Rizzo, Acting General Counsel, CIA, DATE, Georgetown University.

general, seek to develop theories that are very general, imprecise, and can be applied to a number of different situations instead of just one particular case study or incident. The scientists that focus on the development of these generalized theories are greatly rewarded by the academic community with promotions and accolades.

These general theories, however, usually have less value in the policy world where answers are needed for specific crises or events and policymakers are rewarded based upon the most efficient resolution of the crises. As universities reward and emphasize the development of and the building upon general theories, new academics will follow this trend and shy away from focusing on more specific issues that may or may not be applicable generally. Yet, the policymaker who faces a specific dilemma could best be served by a specific application of a theoretical insight rather then a general theory with imprecise implications for the immediate crisis.

Academic Theories Focus on Typical Cases/Policymakers Focus on Atypical Cases

Moreover, most theories are developed to explain typical cases rather then atypical cases. In fact, atypical cases by definition have unique properties that may render general theories invalid. Often, however, atypical cases are the more important cases for the policymakers to understand. For instance, while academics are more likely to develop and apply a theory that explains how a bureaucratic institution like the FBI generally functions well, they spend little time, if any, explaining the circumstances under which that same institution may fail to function having negative outcomes. A policymaker, in addressing a current crisis where the facts indicate that the FBI failed to function properly is less inclined to find help in a general theory about typical cases.

Rather, it is the atypical case of a failure of an otherwise functioning institution that the policymaker seeks an explanation for in order to prevent another similar crisis.

To use an example in the context of international relations theory, realist theories argue that U.S. agencies that formulate and implement foreign policy are rationally suited to promoting the national interest.[123] Structural realists assume domestic- level agencies do their jobs well and therefore they can ignore them and treat states as unitary rational actors when seeking to explain international relations.[124] Policymakers, however, are less interested in understanding why government institutions generally work well and the theories that explain why but are interested in understanding what would cause an institution that usually performs well to unexpectedly fail. These are the atypical cases for which policymakers need answers. Fortunately, in the academic world, some scholars have called for closer examination of these atypical cases.[125] These scholars like Charles Perrow, Scott Sagan and Diane Vaughan argue for closer academic review of organizations that do not normally fail but when they do fail cause catastrophic consequences.[126] Whether technical systems like Perrow's nuclear power plants or a social system like the U.S. national security system, these are the cases that policymakers are most concerned confronted with in their work. These are the atypical cases of system failures -- system that failure infrequently but

[123] Stephen Krasner, *Defending the National Interest*, Princeton: Princeton University Press (1978).
[124] Robert Gilpin, *War and Change in World Politics*, New York: Cambridge University Press (1981); Kenneth N. Waltz, *Theory of International Politics*, New York: Random House (1979).
[125] J.W. Roberts, "Work, Education and Public Safety: A Brief History of Federal Prison Industries," in A. Stephens, ed., *Factories with Fences: The History of Federal Prison Industries*, Washington, D.C.: Federal Prison Industries (1996).
[126] Charles Perrow, *Normal Accidents*; Scott D. Sagan, *The Limits of Safety*, Princeton, NJ: Princeton University Press (1995); Diane Vaughan, *The Challenger Launch Decision: Risky Technology, Culture and Deviance at NASA*, Chicago: University of Chicago Press (1997).

when they do fail, can cause catastrophic damage.[127] Fortunately, social scientists like Charles Perrow and others have begun to develop new theories or extend older ones in order to better understand these atypical institutions.

Academic Theories Focus on Different Issues

In the context of the conduct of intelligence activities, policymakers and intelligence practitioners focus on the issues related to the performance and effective operations of the institutions and government organizations that are part of the U.S. national security system. On the other hand academic theories, particularly those in the social sciences, play little attention to these domestic institutions rather the theories focus mainly on international aspects of U.S. national security. Within the political science discipline, for instance, international relations theorists concentrate on what goes on between states and not necessarily what happens within the states.[128] With regard to American government theorists, while addressing domestic level institutions, "the field pays almost no attention to foreign policy."[129]

Even with the useful contributions recently developed from theories of "new institutionalism," the theories within the "new institutionalism" approach have for the most part been limited to focusing on domestic regulatory agencies like the Federal

[127] Charles Perrow, *Normal Accidents*

[128] There are some international relations scholars that do study variables within the state but they are the minority of IR theorists. For some examples, Graham Allison, *Essence of Decision: Explaining the Cuban Missile Crisis*, Boston: Little, Brown (1971); Morton H. Halperin, *Bureaucratic Politics and Foreign Policy*, Washington, DC: Brookings Institution Press (1974); James D. Fearon, "Domestic Political Audiences and the Escalation of International Disputes," *American Political Science Review*, Volume 88, Number 3, September 1994, pp. 557-992; Kenneth A. Schultz, "Domestic Opposition and Signaling in International Crisis," *American Political Science Review*, Volume 92, (1988), pp. 829-44.

[129] Amy B. Zegart, *Flawed By Design: The Evolution of the CIA, JCS, and NSC*, Stanford: Stanford University Press (1999), p.5.

Trade Commission, the Interstate Commerce Commission and the Environmental Protection Agency and not on the national security bureaucracies.[130] This approach, rooted in transaction cost economics, argues, "American public bureaucracy is not designed to be effective."[131] According to this approach, because the Congress drives the initial design of the agencies, these agencies ultimately will reflect the conflict between contending interest groups and their legislative champions. While scholars may be interested in developing or applying a theory to demonstrate that public sector agencies are not designed to be efficient, policymakers interested in the performance of the intelligence agencies want to understand how institutions like the FBI and the CIA seemed to have failed to carry out the very task that they were designed to accomplish – protect the homeland.

Recently there has been some effort by scholars to extend new institutionalism to the national security agencies making the theory applicable in the foreign policy realm. One notable example has been the recent work of Amy Zegart who applied some of the theoretical insights from "new institutionalism" to three national security organizations: the Joint Chiefs of Staff, the CIA and the National Security Council.[132] In her first book, *Flawed By Design*, Zegart set out to "translate and transform new

[130] Barry R. Weingast and Mark Moran, "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission*," Journal of Political Economy*, Volume 91, (1983), pp. 475-520; Thomas Gilligan, William J. Marshall and Barry R. Weingast, "Regulation and the Theory of Legislative Choice: The Interstate Commerce Act of 1887," *Journal of Law and Economics*, Volume 32, April 1989, p. 35-61; Terry M. Moe, "Politics of Bureaucratic Structure" in *Can the Government Govern?* ed. by John E.Chubb and Paul E. Peterson, Washington: Brookings (1989).
[131] Ibid. Moe at. 267.
[132] Amy Zegart, *Flawed By Design*.

institutionalism to work in the foreign policy realm."[133] In her book, Zegart concludes that while new institutionalism addresses certain domestic regulatory agencies, it is insufficient alone to explain the behavior of U.S. national security institutions. According to Zegart, "national security agencies arise and evolve in fundamentally different ways than their domestic policy counterparts traditionally studied in American politics."[134] Zegart, however, takes from new institutionalism the negative perspective on institutional design, arguing that "national security organizations are not rationally designed to serve the national interest."[135] She argues that because of conflicts between different interest groups at the time of the creation of the agencies the results are agencies that are designed in a way that do not serve the public interest. Zegart's work deserves recognition for its contribution as the first serious attempt to examine national security agencies, applying theoretical insights, and drawing conclusions about the factors that lead national security agencies to fail.

Beyond the work done by Zegart, examining failures in U.S. national security, and specifically in intelligence, there has been little scholarly attention devoted to the subject. Political scientists and organizational theories have avoided the subject. There are, however, a few analytical books by military and governmental intelligence experts. These books, however, are not written by theorists but rather practitioners who happen to be trained in history and political science.[136] In addition, there are a few accounts of

[133] Zegart at p. 6.
[134] Ibid.
[135] Zegart at 8.
[136] Roger Hilsman, *Strategic Intelligence and National Defense*, Glencoe: The Free Press (1956); Sherman Kent, *Strategic Intelligence*, Princeton: Princeton University Press (1949).

the failures and successes of intelligence in national crises, but these accounts mainly fall within the context of the presidency and military campaigns and not institutional design.[137] Surprisingly, the obvious importance of the national security function, specifically the intelligence function, has not resulted in the production of a significant number of theoretical works that would be typical of other areas of organizational theory or political science. Even for those theorists who do place the organization at the center of analysis, they often do not give sufficient weight to the structural and cultural constraints on organization.

Theorists Have Different Jobs Then Policymakers

The explanation for why policymakers and academics arrive at different explanations and solutions without a bridge between the two may steam from the very fact that their jobs are not alike. Because their jobs are different, they tend to rely on different tools to assist them in solving problems. They also operate under disparate time frames in which they must analyze the problems and drive explanations and solutions. For policymakers, deadlines for decisions are extremely short; individuals do matter, and success hinges on the specifics of the issue being addressed, whether they be the details of the memorandum of agreement between two intelligence agencies, the intricacies of political relationship with foreign liaison services or the nuances of a clandestine operational mission. As a result, policymakers tend to exaggerate the role of individual leaders in specific circumstances in assessing past failures. They rely on anecdotal evidence that can be collected quickly from those involved in the issue at the

[137] Richard Neustadt, *Presidential Power*; Schlesinger, *A Thousand Days*; Barbara Tuchman, *The Guns of August.*

time instead of studying a single problem in systemic detail over several years. Their conclusions and recommendations are usually reforms that address specific failings of the past. The work of the academic, in contrast, involves searching for general cause-and-effect relationships. In search of these relationships, academics gather comprehensive evidence to test, support or refute hypotheses. Their conclusions then tend to propose reforms that address general problems that they find. General problems, however, are not what policymakers face. Consequently, the conclusions of academics are usually considered irrelevant to issues policymakers must resolve. Even when policymakers and academics examine the same problem, they tend to focus on different pieces of the puzzle, drawing upon different kinds of evidence, offering different explanations and suggesting different implications from their analyses.

Characteristics of Policymakers May Make Theory Less Acceptable to Them

Another reason that scientific theories seem to have had little impact on policymakers stems not from the any failure of scholars or the nature of their work but rather from characteristics of policymakers. Some practitioners having broad firsthand experience with running institutions and government organizations seem to know the essence of a theory's conclusions before the academics articulate it. Although theories can identify subtleties that policymakers and practitioners may not have had the opportunity to grasp, such subtleties are often so situation-specific that they do not apply to the circumstances in which the practitioners find themselves. "Iif practitioners generally know the conclusions of theories from practical experience, what is the value

of time spent of the nuances and subtleties in the development of the theories?"[138] In other words, why not just follow common sense based upon experience to resolve the questions?

How Theory Helps Policymakers

Even when policymakers have extensive experience and plenty of common sense related to how to best design the U.S. national security agencies, there are benefits to them in considering the insights of prescriptive institutional design theory. First, even if the practitioners already believe they have the correct design solution to the problem, understanding theory and using theory to support your design position is very powerful. The results of the application of the theory to a particular design can be used to either validate the practical experience of the practitioners or provide a counterintuitive result that would merit further examination. In the case of reforming the national security system, being able to illustrate how theories support specific reform recommendations could be the factor that carries weight when it comes time for Congress to make a decision between reform choices. The position taken then is based not only on the practical experience of the policymaker but also on the theoretical insights that have been tested by objective scientists. It is also the case that the subtle nuances learned from a theory may highlight useful alternative designs that an experienced practitioner may not have thought of or experienced. Although some of the recommendations this study suggests have been discussed and supported by some

[138] Interview with Judge Richard Posner, January 2007, by phone and email.

practitioners over the years, it is the theoretical validation of those recommendations that lends greater weight and value to this study's conclusions.

When Trial and Error is Too Costly

Another condition under which such a theory of institutional design may be useful to practitioners comes when learning by trial and error is costly, and applicable first hand experience is unlikely to exist. For example, research shows that organizations tend to remain relatively unchanged, even as their environments shift, leading eventually to the need for radical and swift redesign.[139] For instance, the FBI has remained the lead organization within the U.S. government for counterterrorism domestically even in the face of much criticism by the 9/11 investigations. If the U.S. were to suffer another terrorist attack in the homeland, some have speculated that the Congress would seek a quick and radical solution to protecting the homeland. In other words, the pendulum may swing too far in the opposite direction to the point where civil liberties considerations would not enter into the debate about the next security measure taken by the government in order to stop the next attack. Some critics have argued that Congress would have little choice but to create a new separate domestic intelligence organization outside of the FBI.[140]

Unfortunately, swift redesign leaves no time for experimental learning, so redesign decisions need to be right the first time to the extent possible. Without the products of systematic empirical studies, many practitioners would have little basis for

[139] M. T. Hannah and J. Freeman, "Structural Inertia and Organizational Change," *American Sociological Review*, Volume 49, (1984), pp. 149-164.
[140] Interview with Dick Clarke, May 2007, by phone; Interview with Paul Pillar, February, 2007, Georgetown University; Interview with William Nolte, August 2007, by phone.

making informed choices. In a fast changing world, personal experience applicable to any current choice situation is unlikely to be available. Also, because the feedback from practitioners' actions is both slow and subject to cognitive and motivational biases-- and in the noted cases with the national security agencies, rarely shared-- it is very difficult for accurate learning to occur. It may be that the aggregate personal interpretations of experience by a team of practitioners are likely to be superior to a single practitioner's interpretation, however, because of "bounded rationality" and "cognitive limitations" of all individuals, it is unlikely that the practitioners' interpretations are superior to the systemically evolved theory that is developed through careful integration of the results of scores of scientific studies. For instance, presently there is a debate within this country (although limited) concerning the tradeoffs involved in establishing a separate domestic intelligence agency within the U.S. government.

Most of the arguments by both sides of the debate, however, are based on experience and assumptions not grounded in any theoretical framework. The debate, however, seems to be stalled with few people convinced by either side of the debate's arguments. If, however, theoretical insights were brought to the debate, it is possible a clearer picture of the tradeoffs would be developed for the decision makers. On the other hand, if theory is not brought into the debate, the result may be that no decision is made with respect to a new agency, the U.S. suffers another attack in the homeland (which many experts predict will happen) and, in a rushed decision with little informed

debate, the president or the Congress establishes a security framework within the U.S. that unnecessarily compromises civil liberties.

Both academic theorists and policy practitioners have a common concern: to ensure U.S. national security. By extending and reframing theories from scientific disciplines, this study strives to bring the work of these two groups together to address this common concern. Social science theory seeks to identify and explain the significant regularities in human affairs. Using theories in a self-conscious way helps humans to inject rigor into their ability to process information. In their work, both scholars and practitioners must seek a clear understanding of cause and effect about policy issues in order to diagnose circumstances with which they are confronted, define the range of decisions options available to them and evaluate the likely consequences of a given decision. This common practice, coupled with a common deep concern for the substance and recognition of the high stakes involved in national security matters, provides a unique opportunity for this work to seek out what the social science theorists can provide in the way of concrete and useful assistance to practitioners.

Examining the theories developed by a range of social scientists, such as sociologists, economists, behavioral scientists and international relations scholars, reveals that they clearly have developed findings that have implications for the U.S. national security process and design and how effective it can be. While the 9/11 Commission and the WMD Commission identified some of the failures related to the 9/11 attacks and the Iraq WMD assessment within our intelligence community, what these commissions, as well as the reform legislation failed to do was make

recommendations and legislative changes that were logically connected to the actual failures and the history of the institutions that comprise the national security system. Theory likely could have helped in this area. For instance, if the investigations had considered and accepted some insights from theories such as organizational theory, they may have avoided the investigative approach of placing too much weigh on individuals and thereby focusing on accountability for failure. For, in fact, organizational theories have argued that system failures like 9/11 are not caused by individuals who made mistakes but rather by the nature of the system itself. In accepting this insight an investigation could have avoided spending time searching for individuals to blame or in creating bureaucratic positions to ensure accountability and, instead, could have invested time in looking for the less visible factors within the system that led to the failure (i.e., its complexity, cultural impediments). This study argues that effective reform requires an understanding of the impact of institution design and organizational culture on the ability of organizations to adapt to change.

By melding theoretical and practical knowledge, this study will employ both the descriptive policy analysis that the practitioners provide with more generalized propositions derived from theoretical frameworks that academics have developed. In doing so, this study will introduce the reader to the world of intelligence organizations and activities. The function of intelligence, in particular, as a part of the national security system, has been insufficiently addressed by academics. As a career government employee within the intelligence community and a part-time academic, this author hopes to provide theoretical insights for scholars and practical prescriptions for

practitioners and thus make a modest contribution to bridging the great divide separating institutional research and intelligence practice. In general, the goal of this study is to provide an example of how research and theory can be combined to produce down-to-earth prescriptions and insights on the complex world of national security. In particular this study provides examples of how theory may help interpret experience and empirical observations and how the latter can inform theory, revealing its strengths and weaknesses.

Methodology and Chapters

The Focus of the Study

The U.S. national security system is composed of agencies and departments that are responsible for protecting the U.S. from threats that may materialize both overseas in foreign lands targeted against American interests and within the United States. The study focuses on aspects of the U.S. national security system that are central to preventing a threat from materializing within the United States. Its parameters are narrow in the sense that it excludes from review the role of the intelligence community in its clandestine collection efforts abroad and focuses on the community's efforts domestically. The study is designed with this narrow focus for a number of reasons. First, all of the 9/11 investigations highlighted a common deficiency within the U.S. national security system – a gap in domestic intelligence collection. This was the area where little or no information was available to U.S. policymakers concerning the threats

that existed within the United States. As General Hayden stated, "On 9/11 we did not know if there was a threat from al-Qaeda in the United States."[141]

Second, although there likely are institutional deficiencies within the foreign intelligence collection apparatus of the U.S. security system that operate overseas, most disturbing were the deficiencies, as described by the investigations, in the domestic arena. Yet the enacted reforms included no major changes in this area of domestic intelligence collection. This was something that needed to be examined further. And third, if another attack occurs on U.S. soil the ramifications are potentially more catastrophic then those arising out of 9/11. In addition to the potential loss of life that could be exponentially higher, due to the possible use of weapons of mass destruction, there would likely be a deep loss of confidence in the U.S. government and its ability to protect the United States.

In sum, in deciding what aspects of security to focus the most attention on in this study, with the low probable likelihood of being able to tackle of them, this study identified areas where successful attacks are less likely but not impossible and from those cases identified those that would be the most disastrous if they were to occur and focused on those threats and the possible reforms that would be worth the money and resources to try to address those specific possibilities by reform efforts. For these reasons, this study focuses on the terrorist attacks within the homeland (like 9/11) and the role of the U.S. government institutions that are involved with domestic intelligence within the United States. This is not meant to suggest that terrorist attacks overseas are

[141] General Michael Hayden, "A Discussion with CIA Director General Michael Hayden," *The Charlie Rose Show,* October 22, 2007.

less likely to occur or that focusing on them and the institutions responsible for preventing such attacks from occurring overseas is not worthwhile. Nor is meant to suggest that organizational theory cannot contribute to a better design of other aspects of the U.S. national security system – it can. The hope is that further studies in that area will be done. Where reform efforts are costly and resources and money is always limited, focusing reform efforts on protecting the homeland against further attacks within the United States would seem an appropriate way to hedge against future intelligence failures involving a domestic attack.

The Three Issues

The three issues addressed in this study were based upon three widely recognized problems within the intelligence community that the 9/11 investigations highlighted in their reports: (1) the lack of imagination within the intelligence community which left the U.S. unaware of the gravity of the threat from terrorism and unable to prevent the attacks from occurring (Issue #1, Innovation within the Intelligence Community); (2) the lack of accountability within the system when failures occurred or deficiencies were not corrected (Issue #2, Assessing the Flawed Approach of the CIA Inspector General's report); and (3) the lack of an effective domestic intelligence capability within the United States (Issue #3, Evaluating FBI's Role in Domestic Intelligence Collection).

The Methods Used in the Research

This study utilizes the same research methods for the three issues although the emphasis has been somewhat different. Chapter 2 of this study will go into more detail

about the theories upon which this study draws from in order to assess the 9/11 investigations conclusions and recommendations for reform. Chapter 3 addresses the first issue on the lack of imagination that the investigations, particularly the 9/11 Commission, argues contributed to 9/11. On the issue of accountability, Chapter 4 examines *The CIA's IG Report* related to the events of 9/11. For that issue, various instruments were utilized: interviews with (former) officers of the CIA involved in the agency's counterterrorism efforts, policymakers, senior managers and knowledge observers of the CIA's counterterrorism efforts prior to 9/11; media accounts; internal reports and memos; official investigative reports such as *The CIA's IG Report on Accountability* and *The DOJ's IG Report*, and academic research.[142] The same approach was applied to the issue on domestic intelligence collection discussed in Chapter 5. The analysis on the third issue of domestic collection relies heavily on reports published by General Accounting Office of the U.S. government (GAO); the Department of Justice's Inspector General's Office; *The Joint Inquiry Report*; *The 9/11 Commission Report*; and *The WMD Commission Report*. In addition, in total, forty-three interviews of current and former government officials, subject matter experts and individuals from the private sector were conducted for this study.

[142] Most formal interviews were conducted during the period 2006-2008. A few interviews were done in 2002 while I was a member of the Joint Inquiry Staff. The author makes a distinction between formal "sit-down" interviews (lasting at least one hour) and informal "walking-and-talking" chats with CIA officials, reform investigators and academics. Formal interviews were held with forty-three individuals. Some of these interviews were done in person and some were conducted by phone. The author interviewed several of these individuals on more than one occasion. In addition, many informal interviews were held during the course of the research for this study as well as while the author was working for the U.S. government.

Since 9/11, a tremendous amount of information has been published about the role of the CIA and the FBI in preventing the 9/11 attacks. The official government investigations into the 9/11 attacks as well as numerous books written by former government officials provide an enormous amount of research that is employed in this study. Furthermore, individuals who worked within the national security system at many levels were easily accessible for research purposes. Many individuals who had formerly served at the CIA, the FBI and the White House were willing to donate hours of their time; they provided me with opinions, shared secrets (not classified information), and recaptured history. The interview method undoubtedly provides a researcher with an incomplete, inaccurate, and sometimes biased view. The approach taken to try to remedy these limitations was to double-check with respondents, checking against official documents, and subjecting certain observations to critical reflection and discussion with other respondents. Other respondents assisted in this process, in their eagerness to correct misinterpretations, by providing descriptions of meetings they attended concerning certain events that arguably took place. Through this method of verification, inaccurate and biased information that came from publications written by journalists and other outsiders was separated from useful pieces of information for this study.

Although most of this research was based on archival data and government reports, studies and transcripts, interviews with individuals were necessary in order to get a fuller understanding of the agencies that made up the national security system. For example, by interviewing both high level officials and working level employees of

the CIA and the FBI, not only could questions be raised or confirmed regarding official government reports, but also more could be learned about the culture of the agencies. Working for fifteen years within the U.S. government, ten years of which were spent in national security agencies, provided a unique understanding and perspective on how these institutions function. By working from the ground up this study is able to assess the extent to which the structural, higher, level of the system of organizations is well or poorly suited to the tasks the U.S. national security system must perform to ensure our security at home. This is very similar to how culture is studied by ethnographers who participate in the societies they want to understand. By taking this perspective the study can explain behavior that otherwise seems puzzling. While the study tries to reveal a bottom-up examination for organizational behavior it does not ignore the significance of important structural choices at the higher levels of that system.

As someone who does not have access to classified information related to the internal operations of the institutions under review in this study, it has been necessary to gather evidence from a careful review of these publicly available materials. Clearly interviews with current government employees and statistical data within the government institutions would have been valuable to this study. Given that the work of these institutions are very sensitive, research limitations are understandable. Such limitations, however, should not preclude an attempt by outsiders and academics to understand the institutional design and functions of these organizations. Moreover, it has been suggested by many that for certain categories of research on intelligence matters, much insight can be gained by thorough analysis of publicly available

information; for instance, "the organization, functions, management and administration of the intelligence system."[143] The research approach of this study has focused on just these matters of the intelligence system: the institutional design of the intelligence community and the effect of that design on the functions of the community.

The Chapters of the Study

In the following chapters, this study shows how institutional design can affect the functioning of the U.S. national security system. In Chapter 2, *new institutionalism theory* and Charles Perrow's *normal accident theory* serve as points of departure for understanding of how complex systems like the U.S. national security system may fail and the impact that the design of the institutions that make up that system have on the performance of the system as a whole. The first issue is examined in Chapter 3. In this chapter the 9/11 Commission's theory of intelligence failure based on a lack of imagination is examined. This chapter shows how, in fact, the CIA had organized itself and operated in innovative ways using imagination both during and after the Cold War and before the events of 9/11. Drawing upon the insights from the theories laid out in chapter 2, this chapter then reveals a number of conclusions related to how imagination and innovation can be supported and developed within institutions like the CIA based upon certain structural and cultural factors of the institution.

The second issue is examined in Chapter 4. This chapter demonstrates how, in placing blame on individuals for the events of 9/11 and ignoring theoretical insights from Charles Perrow's normal accident theory, CIA's inspector general inaccurately

[143] Arthur S. Hulnick, "Learning About U.S. Intelligence: Difficult But Not Impossible," *International Journal of Intelligence and Counterintelligence*, Volume 5, Number 1, Spring 1992, pp. 90-91.

portrayed the facts of the events leading to 9/11, providing faulty conclusions about the factors that led to the system failure on 9/11. Chapter 5 tells the story of the U.S. government's domestic intelligence capability and is the third issued examined in the study. This chapter reviews the 9/11 investigations' conclusions related to the FBI's ineffective domestic intelligence collection program prior to 9/11 and examines the studies that detail the FBI's progress in that area since 9/11. In applying insights from new institutionalism theory, this chapter examines the institution of the FBI, identifying the factors which prohibited the Bureau from operating as an effective domestic intelligence service prior to 9/11. It provides an assessment of the FBI's ability to change its performance in this area based upon reforms that have taken place within the Bureau after 9/11. The study concludes with Chapter 6 with a discussion of conclusions and recommendations including proposals for future changes to the U.S. national security system that could improve U.S. national security. The chapter also provides conclusions about the theories addressed in the study as well as recommendations for future research in these academic fields.

Audiences: Who Might Benefit From This Study

The Academics

This study is written to consciously speak to three different audiences. The first is the academic world. Hopefully, this work will help scholars and students (whether they study international relations, security issues, economics or organizations) gain greater insight into the institutional design of national security organizations. The author also hopes that the study will challenge the academic readers to reexamine their

theoretical presumptions. They should look beyond dusty theories on library shelves and ensure that our understanding of the world is still in line with the reality of an international system replete with players such as national security institutions. The hope is that with this study theorists might see that they can contribute in concrete ways by addressing questions of a fundamental nature and broad reach like national security. And lastly, this study may highlight to scholars the value that their work may have beyond the academic community.

The Policy-makers

The second audience is the policy world. Every day, individuals within the national security structures of the US respond to crises and conflicts that touch on matters intimate to the threats of terrorism and the proliferation of weapons of mass destruction. It is worrisome that those who operate in these institutions and those who are responsible for overseeing the operation of this institution function largely in a relative void of information and unbiased analysis. The intent is that this project may serve as an objective resource to policymakers by illustrating in a useful manner the complexities of the theories of institutional design and by presenting both possibilities and dangers with respect to the institutional design of our national security system. The goal is to provide simple, well-founded empirical propositions that accord with common sense and can be explained to almost any audience. The aim is to present the research in a digestible form that may prove more useful to policymakers than is now the case. For those practitioners who are all too ready to support or enact reforms to the national security system on simplistic assumptions that are not borne out by careful and

insightful analysis, this study suggests caution. Another objective is that the study will demonstrate to national security practitioners how scholars and their theoretical work may furnish new insights.

The General Reader

The third audience is the general reader. Although this study focuses on the reorganization of the intelligence community, one objective is to provide to individuals who are neither interested in learning the intricacies of theory and who may not be concerned with the inner workings of the U.S. government insight into a fascinating and critical topic to everyone's security in America. Many commentators and academics have noted that America may be more vulnerable today than ever before--not only to terrorist attacks but also natural disasters and industrial accidents.[144] This study offers critical insights into how to make the U.S. safer from terrorists' attacks by rethinking how our national security system is organized, may even contribute to the discussion on ways to make America safer from other catastrophes as well.

General Conclusions of the Study

Institutional Design of National Security Agencies Aligned with the Environment

A number of conclusions emerge from this study. First, a fundamental conclusion is that institutional and organizational design should constantly be reevaluated based upon the current state of the security environment within which the institution functions and the strategy which dictates the activities of the institution. The

[144] Kathleen Tierney, Michael K. Lindell and Ronald W. Perry, *Facing the Unexpected: Disaster Preparedness and Response in the United States*, Joseph Henry Press (2001); Perrow, *Normal Accidents*; Stephen Flynn, *American the Vulnerable*, New York: Harpers Collins Publishers (2004).

design of an institution is not static. Rather, the design needs to be constantly reevaluated and assessed in light of the institutional environment and national strategy. Critical evaluation is often best done by outsiders to an institution and therefore, it is to be expected that future commissions and investigations like the 9/11 investigations will need to take place. The desire, though, is that these reviews take place before a system failure occurs. Therefore, the effectiveness of those reviews and their recommendations are dependent upon the legitimacy and functionality of the commissions themselves. These reviews of appropriate institutional design will conducted with the right focus on institutional design and with competent professionals from both the practical and theoretical fields.

Whether the environment is relatively stable or very turbulent, one's strategy for success will have to change with the environment (and hopefully in advance of the changes in the environment) and the institutional design needs to change in line with both the new environment and new strategy. Some of that change will result from planned changes and some must stem from innovation with the institutions themselves. These institutions must adopt structures that are as complex as the environments they confront in order to meet the emerging and unexpected threats.[145] For those organizations that operate in complex, unstable environments, the adoption of standard, rational, hierarchical designs and practices may not be suitable. Unstable environments create a need for greater decentralization of authority and less emphasis on formal structure, since a shifting environment requires rapid decisions and changes; moreover,

[145] Paul R. Lawrence and Jay W. Lorsch, *Organization and Environment: Managing Differentiation and Integration*, Cambridge, MA: Harvard University (1967).

it takes too long for information and decisions to travel up and down a strict hierarchy.[146] While some form of formal hierarchy will likely remain necessary in a bureaucracy, designers must remain keenly aware of the need for alternative structures within which institutions can operate.

Institutional design is a process; it is a continuous process, not a single event. To keep the process continuous and current, a sequence for changing design policies is required. In today's world, a national security institution is one that lasts long enough to get you to the next one to address the new threats or the adapted threats. A continuously changing threat environment requires a continuously changeable national security institution to keep pace. The right mind-set in leaders is also required, but it does not supply the complete solution for success. Too often, institutions are seen as synonymous with structure, which changes infrequently. Aside from the structure of institutions other critical features must be examined when considering changes to institutions, among them practices, routines, and culture. Making radical changes to an institution's structure may not bring about the necessary changes to meet threats from the external environment. Such changes may, in fact, produce more problems than improvements, stifling innovation within the institution. As former senator Warren Rudman warned, changes without adequate preparation could leave the intelligence community, "worse than [it was] in the first place."[147] While structural changes may be

[146] Hal G. Rainey, *Understanding and Managing Public Organizations*, 2nd ed. San Francisco, CA: Jossey-Bass (1997); James D. Thompson, *Organizations in Action*, New York: McGraw-Hill (1967).
[147] Walter Pincus, "Intelligence Reform Will Not Be Quick," *Washington Post*, May 4, 2004.

quicker to implement by law, there are no quick fixes to system failures like those that led to 9/11.

Further Reform May Be Necessary

Second, even in light of the new legislation that aimed to fix the flaws in intelligence gathering that made possible the September 11th attacks, an ongoing debate persists about whether that legislation actually made changes that improved the effectiveness of the national security system. Today, six years after those terrorist attacks on the U.S. homeland, strong disagreement is formed, both within the U.S. government and without, about the usefulness of these legislative reforms. Some argue that the investigations and reforms were rushed, which resulted in the wrong kind of changes, as these relied too heavily on reconstructing the organizational structure of the institutions. Intelligence analysts contend that "intelligence capabilities can be significantly improved by adjusting policies and practices rather than institutions and structures."[148]

Much criticism surfaced over the decision to create an Office of the Director of National Intelligence (ODNI) to centralize and oversee the entire intelligence community. The fact that the DNI acquired only partial authority over the intelligence agencies through the legislation has been a point of concern by many intelligence officials. For example, former DCI and current Secretary of Defense Robert Gates argued that the centralization of authority was meaningless unless the DNI had authority

[148] Jennifer E. Sims and Burton Gerber, "Meeting the Challenge: Action Now," in *Transforming U.S. Intelligence*, ed. Jennifer E. Sims and Burton Gerber, Washington, D.C.: Georgetown University Press, (2005), p. 259.

over the 80 percent of the annual intelligence budget allocated to the Pentagon; if not, the new DNI would be an "intelligence eunuch."[149] Today, the DNI still lacks budget and execution authority over the entire intelligence community. This has compromised his ability to effectively direct each of the agencies that has a role in intelligence activities and created uncertainties and clashing cultural and practical priorities.[150] As one informed observer put it, "The DNI had no more authority to direct NSA to do something than the DCI did before 9/11."[151] It also comes as no surprise that the DNI has been criticized for not exerting sufficient authority over the FBI. The FBI, including the newly created National Security Branch with its intelligence mission, still answers to the Director of the FBI, who answers to the Attorney General of the United States. As the WMD Commission warned, "Without leadership from the DNI, the FBI is likely to continue escaping effective integration into the Intelligence Community."[152]

One point is clear: the package of new legislation, like so many of the commissions and studies that came before it, failed to look deeply enough into the theoretical implications that derive from the design of the U.S. national security system. A notable flaw of these investigations, which this study highlights, was the failure to analyze the affect that organizational culture has on the performance of the institutions that operate within this system. For these reasons, the institutional and organizational

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[149] Robert M. Gates, "Racing to Ruin the C.I.A.," *New York Times*, June 4, 2004.
[150] Richard Betts, "The New Politics of Intelligence: Will Reforms Work This Time?" *Foreign Affairs*, Volume 83, Number 3, May/June 2004, p. 6; Cumming, Alfred (2006), "The Position of Director of National Intelligence: Issues for Congress," *CRS Report for Congress, RL 32506*, August 12, pp. 3-4, 13-19, http://www.fas.org/irp/crs/RL32506.pdf; Posner, Richard A., "The Reorganized U.S. Intelligence System After One Year," *National Security Outlook*, special ed. (April 11, 2006), p. 6.
[151] Interview with Mark Lowenthal, DATE, TIME, LOCATION.
[152] *The WMD Commission Report*, Transmittal Letter to the President, March 31, 2005.

explanations presented in this analysis are more alarming than the more acceptable past interpretation about structural reform, largely because invisible and unacknowledged factors tend to remain undiagnosed and therefore are left unfixed. In sum, this study underscores the real possibility that the legislation failed to resolve the harder-to-find and analyze institutional factors that allowed for the events of 9/11.

Intelligence Failures Will Likely Occur Again

A third conclusion supports the idea of the relentless inevitability of surprises in the intelligence business and the irrevocable harm that can occur when the U.S. national security system faces such determined and fierce enemies and fails to prevent their actions. The treatment, however, also reveal by examining the elements of an organization's design such as structure and culture, the ways in which institutional design can have an impact on an organization's effectiveness. By uncovering and exposing the relevance of these complex factors within an organization's operations, the analysis provides some optimistic options for improving the effectiveness of institutions comprising the U.S. national security system.

Academic Theories Can Help Improve the Performance of National Security Institutions

Still a fourth conclusion suggests that real value can be gleamed from the insights of academic theory, which can then be applied to analysis of the U.S. national security system. Theories from diverse fields such as organizational theory, political science and sociology provide clarity to the seemingly incoherent and complex U.S. national security system. Furthermore, the theories themselves benefit from their application to the genuine problems of institutional life faced by policymakers.

Through such application, these theories focus on new idioms or ways of thinking that may not have been explored before. In short, this study combines a very practical approach by examining the working level mechanisms of the national security system in light of a theoretical framework developed from the academic work on institutions and complex systems.

Understanding how the complex U.S. national security system functions is a daunting task, even for those people who work in the system. But by examining this arrangement as a "complex system," keeping its historical and institutional context in mind, and appreciating the insights from theory, this study strives to understand how these institutions function as a system and what options are most promising for maximizing its effectiveness through institutional design.

Chapter 2

Explaining Institutional Design and Performance

> If a reform is to find a reasonable synthesis, it needs to take account not only of what it will make function better but of how it will cope with negative side effects. Synthesis or balance is defined concretely in changes in organization and procedure.
>
> -Richard Betts[153]

Introduction

In this area of institutional reform in the context of national security agencies there is, unfortunately, a dearth of research. This is primarily because those institutions responsible for defending the U.S. against such threats have not been the focus of academic study. Government institutions like the Central Intelligence Agency (CIA), the Federal Bureau of Investigations (FBI), and the National Security Agency (NSA) have been largely overlooked by scholars and theorists who study institutions, as well as those who examine U.S. foreign policy. These agencies have "fallen between the cracks of international relations and American politics."[154] On the one hand, political scientists examine U.S. foreign policy but treating the institutions within the U.S. national security system as inputs to policy decisions and not as phenomena to be studied in their own right. Scholars of international relations focus on state system level analysis and give little to no attention to the domestic level of analysis that includes the

[153] Richard Betts, *Enemies of Intelligence: Knowledge & Power in American National Security*, New York: Columbia University Press (2007), p. 143.
[154] Amy B. Zegart, *Flawed By Design, The Evolution of the CIA, JCS, and NSC*, Stanford: Stanford University Press (1999).

government institutions responsible for carrying out the state policies.[155] To the extent that international relations scholars examine institutions, they are focused on international institutions and organizations that affect the relations between states. These scholars, with some exceptions, are not interested in what is going on within the state.[156] On the other hand, organizational theorists, usually from the disciplines of sociology, economics, and business management, investigate organizational problems but focus primarily on private firms and not on governmental institutions and the national security agencies.[157]

Organizational Theory

This chapter uses building blocks from organizational theory and political science to develop insights into the recent post-9/11 attempts to reform institutions within the field of national security. Organizational theory focuses on explaining the origins, persistence and evolution of the social structure (i.e., organizations, firms, networks, markets, institutions) that orders economic life. Recently cross disciplinary work has been done between these fields of study that is helpful is examining the performance of the U.S. national security agencies both pre and post 9/11. Some

[155] Joseph S. Nye Jr., *Soft Power: The Means to Success in World Politics*, New York: Public Affairs (2004); Samuel P. Huntington *The Clash of Civilizations and the Remaking of the World Order*, New York: Simon & Schuster (1996).

[156] For those international relations scholars who do look at within- the-state variables see Graham Allison , *Essence of Decision: Explaining the Cuban Missile Crisis*, Boston, MA: Little, Brown (1971); Morton H. Halperin, *Bureaucratic Politics and Foreign Policy*, Washington, D.C.: Brookings Institution Press (1974); James D. Fearon, "Domestic Political Audiences and the Escalation of International Disputes," *American Political Science Review*, Volume 88, Number 3, (September 1994), pp. 557-992.

[157] Those that look at firms see John Roberts, *The Modern Firm*, Oxford University Press (2004); G. Baker, R. Gibbons and K. Murphy, "Relational Contracts and the Theory of the Firm," *Quarterly Journal of Economics*, Volume 17, (2001), pp. 39-83. Some have looked at national security agencies applying "transaction cost economics" see Richard A. Posner, *Uncertain Shield: The U.S. Intelligence System in the Throes of Reform*, New York: Rowman & Littlefield (2006). .

notable examples are Scott Sagan's *The Limits of Safety*,[158] Diane Vaughan's *The Challenger Launch Decision: Risky Technology, Culture and Deviance*,[159] and Charles Perrow's *Normal Accidents: Living with High-Risk Technologies*.[160] As this chapter illustrates, organizational theory provides some useful insights about the characteristics and performance of institutions as well as the constraints placed upon institutions that serve as barriers to effective performance and necessary change. In particular, insights from new institutionalism within organizational theory facilitates the examination of the specific understanding of how organizational action is fundamentally shaped by broader social and cultural processes of an institution.[161] The notion of new institutionalism is particularly helpful in explaining why the FBI still, even after recent efforts at reform, may be incapable of carrying out successfully the counterterrorism mission within the United States.

Political Science Theories

For political scientists examining domestic public organizations, it is difficult to assess the role of several intraorganziational elements in the function of the organization. For example, factors like culture and norms are inherently difficult to measure and do not fit easily within rational actor models. For many political scientists who are focused on explanations of major developments such as war and peace, intraorganizational factors like rules, norms and culture are inherently difficult for them.

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[158] Scott D. Sagan, *The Limits of Safety*, Princeton, NJ: Princeton University Press (1993).
[159] Diane Vaughan, *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA*, Chicago, IL: University of Chicago Press (1996).
[160] Charles Perrow, *Normal Accidents: Living with High-Risk Technologies*, Princeton, NJ: Princeton University Press (1999).
[161] W. R. Scott, *Institutions and Organizations* (2nd ed.). Thousand Oaks, CA: Sage (2001).

Within international relations scholarship, however, research done by constructivists can prove helpful in understanding these intraorganizational factors.[162] In combination with insights gleaned from new institutionalism, research done by constructivists is helpful in examining these factors and how they affect the behavior and performance of the institution. The new institutionalism school of sociology supplements the analysis of norms and culture of the constructivists by arguing that organizations are not just the products of individual rational decision-making (as the rational choice institutionalists argue), but are influenced in important ways by broader "institutional environments" such as organizational sector and higher-level structures.[163]

Working across these fields, this study argues that the 9/11 investigations failed to apply useful theory to their examination and recommendations for organizational reform. In doing so, the investigations underestimated the effects of factors of institutions like culture and structure and in so doing fell short of recommending more effective reforms. This study argues, based upon the insights from these fields that: (1) the 9/11 investigations mistakenly focused on individual accountability resulting in misguided conclusions; (2) the investigations failed to incorporate insights from institutional theory thereby undervaluing the power of certain institutional factors

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[162] Alexander Wendt, *Social Theory of International Politics*, Cambridge: Cambridge University Press (1999); Anthony Clark Arend, *Legal Rules and International Society*, New York: Oxford University Press (1999); Peter J. Katzenstein, *Cultural Norms & National Security: Police and Military in Postwar Japan*, Ithaca, NY: Cornell University Press (1996); Elizabeth Kier, *Imagining War: French and British Military Doctrine between the Wars*, Princeton, NJ: Princeton University Press (1997).

[163] John W. Meyer and Brian Rowan, "Institutionalization Organizations: Formal Structure as Myth and Ceremony," *American Journal of Sociology*, Volume 83, pp. 340-63 (1977); Walter W. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, Chicago, IL: Chicago University Press (1991); W. Richard Scott, "Reflections on a Half-Century of Organizational Sociology," *Annual Review of Sociology*, Volume 30, August, pp. 1-21 (2004).

involved in the reform process; and (3) the investigations recommendations (some of which have been enacted into law), in general, were misguided to the extent that they minimized the effect of structure and culture on institutional performance.

This chapter begins with a survey of the research in the fields of organizational theory, new institutionalism and systems theory, bringing together disciplines as disparate as sociology, constructivism, economics and business. In providing this literature review, the chapter illustrates some insights from organizational theory, new institutional theory and political science. It also brings into the research descriptions examples relevant to the focus of this study, namely the failures that led to 9/11. Without these theoretical insights, this study would be just another effort to explain what most policymakers believe is obvious about organizational failures. In other words, without the added value of theory, this study would essentially amount to another 9/11 Commission Report, but significantly less polished. Thus, the chapter serves as the basis for ideas provided in the case study chapters, the assessment of structural changes made to the intelligence community since 9/11, the accountability for system failure, and the institutional capability for domestic intelligence.

National Strategy and Institutions: The Connection

At its most general level, the story about the U.S. national security organizations and the efforts to reform those organizations begins with a foreign policy objective of the U.S. government. For U.S. foreign policy that usually means multiple objectives. Examples of the different U.S. foreign policy objectives over the years have included deterrence of communist power; minimizing the number of nuclear powers; promoting

democracy through the world; supporting human rights; preserving U.S. sovereignty; securing the U.S. homeland from threats, conquest and destruction; preventing the proliferation of weapons of mass destruction; and the attrition of terrorists. The next step in the process is choosing which strategy to use in order to accomplish each objective: containment, diplomatic cooperation, international institution-building, the use of preemptive military force. The strategy, being different than a policy objective, is a plan that determines the direction for deploying capabilities and activities in order to achieve the policy objectives. The strategy is the means used to reach the end goal or objective. Today, counterterrorism is the top national security priority. The U.S. strategies include aggressive collection of intelligence and the use of force to eliminate terrorists who can be located. Never before has intelligence and therefore intelligence reform be as central to U.S. foreign policy.

In theory, strategy is whatever the government's political elites believe it to be, which can be very vague at times. In practice, strategy is what the government's work force actually produces in specific activities, programs and operations. The *National Security Strategy of the United States* is the U.S. strategy at a general level with many aspirations articulated. The strategy at the practical level translates aspirations into specific concrete initiatives and actions. At times, because of a lack of specificity within the broad strategy or a failure of the policy leaders to follow through with specifics on how to implement the strategy, the intended strategy of the leaders is misunderstood and not implemented: there is a mismatch between the misunderstood strategy and the institution responsible for carrying out the strategy.

The next step in the process of the implementation of the policy objectives is critical to the ultimate achievement of the policy objective and central to this study: the role of the various organizations and institutions of the national security establishment in carrying out the strategy. A strategy implies that a set of activities needs to be carried in order to realize it. In the intelligence community these include the "value-chain" activities that must be undertaken in meeting the policymakers' needs, such as collection of information, analysis and assimilation of that information, the sharing of the information and the operational activities of covert action. There are a number of governmental organizations and institutions through which these activities are to be carried out and the strategy is to be implemented. The strategy is important to the institutional design process because it establishes the criteria for choosing among alternative organizational designs of the institution. Each institutional form enables some activities to be performed well while hindering others. Depending upon the structural and cultural characteristics of an institution, one institution may be better suited to implementing the strategy than another. In other words, institutional design matters in the context of implementing national security strategy.

Choosing organizational alternatives for the institution's design inevitably involves making trade-offs. Strategy dictates which activities are most necessary, thereby providing the basis for making the best trade-offs in the institutional design. If there is a mismatch between the strategy and the institutional design, multiple negative consequences can ensure: activities within the institution can conflict, groups within the institution could work at cross-purposes and institutional energy will be dissipated over

many frictions. How the U.S. government is currently organized to address counterterrorism entails a story about the mismatch between the counterterrorism strategy and the design of the institutions responsible for carrying out that strategy.

A well formulated strategy has several components: first, a goal against which the institution can measure itself and judge its success; second, a defined scope of work for the institution; third, a specification of the institution's competitive advantage in its scope of work; fourth, an explication of why the claimed competitive advantage will actually be realized; and fifth, a specific and articulated correlation between the strategy and the external environment.[164] As the environment changes, the strategy must be able to be adapt to that new environment. That is, "as the strategy is changed to match the new environmental challenges, the institution responsible for carrying out the actions necessary to fulfill the strategy needs to be adaptable."[165] When the competitive advantages that the strategy was built upon no longer exist, U.S. national security strategy must change. Furthermore, the institutions must also change in line with the new strategy and refocus away from the non-sustainable previous advantages. The structure of an institution as well as, its rules and routines, must change in line with the changes that may be necessary in the culture of the institution. Today, where there may be no long-term competitive advantage against our enemies (i.e., no guarantees that the U.S. will possess advanced weapons that our enemies will be unable to acquire themselves), the government institution must carry out activities that create short-term

[164] John Roberts, *The Modern Firm: Organizational Design for Performance and Growth*, Oxford University Press, (2004), pp. 12-18.
[165] Ibid. at 27.

temporary advantages against our enemies (i.e., disrupting and stopping our enemies before they can operationalize their threats) by acting in a preventive manner rather than a reactive manner. In this environment intelligence and the effective performance of the intelligence community is critical to achieving U.S. goals.

Institutions that can adapt and change are critical to the execution of a strategy that will have to change. These will be the effective institutions for the U.S. national security strategy in the future. As organizational theorists acknowledge, however, institutions tend to resist change. And, yet, in the face of the recognized need for national strategies to change to meet different threats, so too will effective institutions adapt. This chapter takes a look "inside the box" of institutions and builds on institutional and organizational theories to develop a general framework for what kind of institutions are necessary in implement the U.S. national security strategy in the post 9/11 world. This chapter challenges the structural realists who ignore the domestic institutions but rather focus on the state and systemic level and argues that the key to the U.S. surviving the changes in the international environment depends most upon the effective performance of the domestic institutions of the intelligence community.

U.S. National Security Strategy post Cold War

The international security environment that the U.S. faces has changed dramatically since the Cold War. During the Cold War the enemy was easy to detect operating out of embassies and through large military forces. In the Cold War environment the U.S. could rely on its military might to defend against such enemies. Today, however, the U.S. is confronted with radically different threats: bands of

terrorists driven by fanaticism and operating clandestinely, the proliferation of weapons of mass destruction that can be concealed in suitcases and deadly viruses that can quietly kill millions. In this international setting the U.S. military cannot function as the first line of defense even if only because of practical resource constraints involved in deploying forces overseas. Today, because of the changed nature of the threats, intelligence must now serve as the United States' first line of defense.

While U.S. policymakers have sought to adjust their high-level strategies to meet the new threats in the post-Cold War era, some have argued that there has been a failure to adapt the U.S. national security system to fit the new strategy in order to face the new threats.[166] Even after 9/11 and the intelligence reform legislation, critics argue, there still exists a mismatch between America's national security structure and today's international environment.[167] Although the current design of the U.S. national security system has remained effective for many decades facing the enemies of the Cold War, the system cannot compete with the more creative, sinister and capable enemies that the U.S. faces today unless the institutional organizations within that system can change.

After 9/11, at a time that intelligence is critical to the security of the U.S., many have questioned the competence of America's intelligence agencies. The Joint Inquiry Committee,[168] the 9/11 Commission,[169] the WMD Commission[170] all exposed grave

[166] Amy B. Zegart, "September 11 and the Adaptation Failure of U.S. Intelligence Agencies," *International Security*, Volume 29, Number 5, (Spring 2005), pp. 78-111.
[167] Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps*, New York: Rowman & Littlefield, (2007).
[168] Report of the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, 107th Con., 2d sess., December 2002.

shortcomings and raised serious concerns about the effectiveness of the agencies of the intelligence community that in large part define the U.S. national security system. This is not the first time in U.S. history that the intelligence community has been criticized. Since its inception in 1947 there have been over forty reports that have investigated and critiqued the performance of the intelligence agencies. Between the end of the Cold War and September 11 there were "six bipartisan blue-ribbon commissions, three major unclassified governmental initiatives, and three think-tank task forces" that reviewed the intelligence community and identified the need for change.[171]

The attacks on the U.S. homeland on 9/11, however, stand out as unique in American history as the only non-military, non-state deadly attack against the U.S. homeland by foreigners. As the Co-chair of the 9/11 Commission, former governor of New Jersey, Thomas Kean, stated, "We believe there are no precedents for our investigation."[172] The attack on 9/11 was "the deadliest attack on the continental United States y a foreign aggressor since the War of 1812."[173] If one believes that the 9/11 attacks provided the basis for the United State's invasion of Iraq in 2003, then the total number of deaths that were the result of the 9/11 attacks is larger than the number of

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[169] The National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, New York: W.W. Norton (2004).
[170] The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States*, Washington, DC: Government Printing Office, March 31, 2005.
[171] Amy B. Zegart, "September 11 and the Adaptation Failures of U.S. Intelligence Agencies," *International Security*, Volume 29, Number 4 (Spring 2005), pp. 85-88; Arthur S. Hulnick, "Does the Intelligence Community Need a DNI?" *International Journal of Intelligence and Counterintelligence*, Volume 17, Number 4, Winter 2004-05, p. 716.
[172] Philip Shenon, *The Commission: The Uncensored History of the 9/11 Investigation*, New York: Twelve (2008), p. 125 quoting Thomas Kean.
[173] Ibid.

Americans killed in the American Revolution. For many reasons, the 9/11 attacks stand alone as distinctly different from anything else the U.S. ever encountered. The day of September 11, 2001, changed the stakes for the United States. Those stakes could not be any higher. For that reason it is imperative that questions raised concerning the capabilities of the U.S. national security system and the intelligence community must be analyzed carefully in order to provide thoughtful and effective recommendations to improve performance. With the stakes so high, it is imperative to ask the question: Why, despite the worst terrorist attacks in U.S. history and a massive legislative overhaul, is the intelligence community still unable to operate effectively as a whole?[174]

Theory: Explaining National Security Institutions

Academics prefer explanations that are simple and have high explanatory power. Theories that are general are favored to those that are too specific and based on a particular event or set of facts. Parsimony is favored over complexity. In a similar fashion, policymakers prefer a simple and easily applied theory to resolve their complex policy issues. The reality, however, of the complexity of institutional failures that led to the inability of the U.S. to prevent the attacks of 9/11, is hardly explainable by one simple theory. The failure of the U.S. national security system is much more complex and requires a more complex explanation. The failure itself as well as the numerous institutional factors that contributed to the failure are multidimensional and require

[174] Walter Pincus, "Some Lawmakers Doubt DNI Has Taken Intelligence Reigns," *Washington Post,* February 2, 2006, p. A09; Michael Isikoff and Daniel Klaidman, "Look Who's Not Talking – Still," *Newsweek,* April 4, 2005, p. 30; Helen Fessenden, "The Limits of Intelligence Reform," *Foreign Affairs,* Volume 84, November/December, (2005), pp. 106-120; *Final Report on 9/11 Commission Recommendations,* 9/11 Public Discourse Project, December 5, 2005, available at http://www.9-11pdp.org/press/2005-12-05_report.pdf.

analysis of more than one social science theory. To rely on the easier task of looking for simple explanations runs the risk of missing the root causes of the failure and possibly never fixing the problem. For example, taking the easier path of considering only the role of individuals in operating within the system to find answers to mistakes, as the CIA's Inspector General did, will not explain why the system failed. Examining only the structural constraints within the agencies, as the 9/11 Commission did, will not explain why policymakers failed to make changes to our domestic intelligence capabilities before 9/11. Conversely, analyzing only the political factors operating outside of the government agencies will reveal little about why, post-9/11, the FBI remains unable to operate as the U.S. government's domestic intelligence institution.[175]

After 9/11 the FBI was given the necessary authority to lead counterterrorism within the U.S. as well as the necessary resources to carry that function out. The FBI hired hundreds of analysts doubling its analyst cadre, created Field Intelligence Groups (FIGs) to integrate law enforcement and intelligence operations in the field offices and scaled down barriers to sharing information.[176] Nevertheless, criticism has persisted on the grounds that the Bureau still has not changed the culture that overemphasizes law enforcement and prosecution over intelligence.[177] Over a period of four months during late 2004 and 2005, the Congressional Research Service conducted 65 interviews at FBI field offices and found that the culture of the criminal investigative mind-set was still

[175] Richard A. Posner, "The 9/11 Report: A Dissent," *The New York Times*, August 29, 2004.
[176] Testimony of Director Robert Mueller, House Appropriations Subcommittee on Science, State, Justice and Commerce and Related Agencies, 109th Cong., 1st sess., September 14, 2005.
[177] For a discussion of the differences between law enforcement and intelligence cultures, see Richard A. Posner, *Countering Terrorism*, Oxford: Rowman & Littlefield (2006), chapter 5.

actively dominating. According to one special-agent-in-charge who was interviewed, the special agents "will always be the center of the universe."[178] During an interview with a former intelligence official, he relayed a story that was told to him by the former Executive Assistant Director of Intelligence at FBI, Maureen Baginski. She had described her first day on the job at FBI headquarters as the new intelligence chief chosen to run the intelligence branch of the FBI. Baginski stated, "I was just settling into my office when an FBI agent came in with a tray of guns. He asked me to choose any gun from the tray that I would like. When I informed him that I was not comfortable having a gun he just looked at me like I had two heads."[179] The idea that an employee of the FBI would not want to carry a gun was inconceivable to the FBI agent. Adding resources and functions to the FBI would be easy compared to trying to reorient priorities and change existing norms within the FBI. Trying to change the law enforcement culture at FBI would prove "particularly vexing."[180] Taken together, the insights from constructivism, organizational theory, new institutionalism and system theory will illuminate the different aspects of the institutional failures within the U.S. national security system; shedding much needed light on both the root causes of the failures and the road to effective reform.

[178] Quote in testimony by Todd Masse, House Appropriations Subcommittee on Science, State, Justice and Commerce and Related Agencies, 109th Cong., 1st sess., September 14, 2005; Alfred Cumming and Todd Masse, "Intelligence reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress," *CRS Report RL33033*, August 16, 2005.
[179] Interview with Mark Lowenthal, February 20, 2008, Georgetown University.
[180] Amy B. Zegart, *Spying Blind: The CIA, the FBI and the Origins of 9/11*, Princeton: Princeton University Press (2007).

With that said, however, the aim of this study is not to cover every aspect of the failures of the U.S. national security system as related to 9/11. The aim of this study is to highlight the most important reasons for the most important failures as those failings were identified in the 9/11 investigations and that have existed for a number of years. The failures that this study will identify will provide insight not only into the past, showing how institutional factors negatively effective performance, but it will also provide insight into the future, demonstrating that some of the reforms passed after 9/11 were not the most effective of possible reforms and suggesting new ideas for reform. The characteristics of the institutions of the U.S. national security system, like the FBI, are not likely to change any time soon. Even less likely to change anytime soon is the culture and structure of the environment of those institutions; the broader American government and public. For that reason, looking back and assessing those institutional characteristics as well as the environment within which those institutions operate is important in order to see a picture of the future and to make a judgment about the possibilities of changes or reforms for the future.

Institutions Matter

To begin a discussion of the institutions that comprise the U.S. intelligence community it is useful to first discuss institutions. Institutions, like organizations and associations in general, form the basis of the social infrastructure of our behavior. Without institutions virtually every form of collective behavior would be impossible. If we were not able to fall back on fixed rules, norms and agreements that give our behavior meaning, collective behavior would be virtually impossible due to the

considerable transaction costs involved. Institutions thus often provide a source of stability and comprise the social circumstances that have formed actors identities in the past. This means that institutions are useful for determining behavior and providing a handle for cooperation. They are, however, also difficult to change because they contain and carry the bias of previous interactions, views and power relations. Institutions are thus a double-edged sword, on the one hand, they enable interactions, provide stability and certainty and form the basis on which actors' trust may be founded. On the other hand, they 'codify' previous power relations and may thus obstruct or hamper reform.

Those who minimize the importance of institutions and their design usually misunderstand what institutions are and specifically do not appreciate what is meant by institutional organization or design. They often confuse institutions and their designs with the formal structure of the institution or the organizational chart. Certainly the formal structure of an institution alone does not dictate outcomes. As one famous American sociologist noted, "Observers who assume firms to be structured in fact by the official organization chart are sociological babes in the woods."[181] Similarly, as two noted sociologists who study organizational design asserted, "It is impossible to understand the nature of a formal organization without investigating the networks of informal relations and the unofficial norms as well as the formal hierarchy of authority

[181] M. Granovetter, "Economic Action and Social Structure: The Problem of Embeddedness," *American Journal of Sociology*, Volume 91, (1985), p. 502.

and the official body of rules, since the formally instituted and the informal emerging patterns are inextricable intertwined."[182]

Over the years the general question of whether institutions matter has been debated by international relations scholars. They have demonstrated that at the international level, institutions can affect outcomes and behaviors. For example, international institutions have effectively lowered transaction costs, stabilized expectations, decentralized enforcement of rules and facilitated cooperation that otherwise would not have occurred.[183] It is not just the structure of these institutions that facilitate these outcomes. Rather, it is the proper coupling of different features of the institution (people, structure, processes and routines and culture) with the institution's strategy and the international environment that allows the institution to operate successfully to achieve its goals. Structure alone does not determine how or why institutions are effective. This insight may be the critical point that the 9/11 Commission failed to understand or at least failed to address in this report. In making providing its recommendations for reform the 9/11 Commission relied almost exclusively upon structural changes to the intelligence community. For this study, while the structure of an institution cannot be ignored as an important element of how it functions it must be analyzed in the context of the other elements of the institutions as well.

[182] P. Blau and W.R. Scott, Formal *Organizations: A Comparative Approach*. Chandler: San Francisco, CA, (1962), p. 6.
[183] G. John Ickenberry, *After Victory: Order and Power in International Politics*.

Within the field of "new institutional economics" it has long been recognized that institutions do matter and that the determinants of institutions are susceptible to analysis.[184] The economist Oliver Williamson goes on to identify the important internal structural features of an institution that are crucial to the analysis of institutions. Among these are norms, culture, traditions ("social embeddedness"), the formal rules of the institution that would include the power and authority distributions ("institutional environment") and the choice of governance structure, e.g., hierarchy versus markets.[185] Across disciplines, the last ten decades has seen a surge in the recognition of the importance of institutions and their internal makeup.

As with international relations scholars, in economics a range of arguments have evolved about how and why institutions matter. Economic scholars have argued that institutions play an important role in reducing transaction costs, reducing market uncertainty and information costs and also in monitoring and enforcing contract agreements.[186] These scholars focus on the corporate firm as the institution or primary significance in their studies. The firm is the institution that is created to help cope with these types of problems in the open market.

A System Theory Approach

This study builds on a number of theories in order to address design questions related to the U.S. national security system. Much of this study draws upon

[184] R. C.O. Matthews, "The Economics of Institutions and the Sources of Economic Growth," *Economics Journal* Volume 96, Number 4, (1986), pp. 903-18.
[185] Oliver E. Williamson, *The Mechanisms of Governance*, New York: Oxford University Press (1996).
[186] Douglass C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press (1990).

organization theory, as it lends insight into the functioning and complexity of organizations such as institutions. Organizational theory begins with the nature of human cognitive faculties. James G. March and Herbert A. Simon's assumption held that "the basic features of organization structure and function derive from the characteristics of human problem-solving processes and rational human choice."[187] While much evidence exists to support this hypothesis, it tends to underestimate the effect of structural and cultural attributes that transcend individual psychology – hierarchy, specialization, centralization, ideology or occupational culture and other barriers to information sharing. This study starts with the foundational theoretical insights developed by March and Simon, but extends those findings by building upon other organizational theories and applying the principles developed to the examination of the behavior of the institution of the Federal Bureau of Investigation.

Normal Accident Theory

Among the various organizational theory scholars who have focused on organizational failure, perhaps most notable is the work of sociologist Charles Perrow. Through his research, Perrow sought to understand how organizations differ in their core tasks and procedures and how this affects their ability to function flexibly and recover from crisis. For Perrow, organizations can be viewed along two axes. The first axis distinguishes organizations based upon their linearity and complexity. In *linear organizations* various components are segregated from one another and easily isolated, if necessary. For individuals working within linear organizations, these various

[187] James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley & Sons, (1958), p.169.

components or procedures are also widely understood, and different elements or routines may also be substituted for one another as needed. In contrast, in *complex organizations* each element is a highly specialized part of an interconnected system. These components are not widely understood across the organization as a whole.[188] In addition to linearity and complexity, Perrow also distinguishes between loosely and tightly coupled organizations. *Loosely coupled organizations* are highly "buffered" or attenuated; in other words, there is a degree of slack, distance, and delay between one component within the organization and others. *Tightly coupled organizations*, on the other hand, have components that are much more interdependent, relying directly on each other for their continued function. As Perrow observes, "what happened in one directly affects what happens in another."[189]

In "complex systems," accidents are presumed to be unavoidable because innocent and seemingly unrelated events can accumulate and align to create major malfunctions that produce disastrous results.[190] In examining the causes of accidents, Perrow identifies the two dimensions of coupling and interactions as the key to understanding a particular system's susceptibility to accidents. "Interactions" are the reciprocal actions among various components of the system. It is these interactions that are either "tightly coupled" or "loosely coupled." "Tightly coupled interactions" are those interactions that cannot tolerate delay. They have invariant sequences and negligible slack. There is no slack or buffer or give between two items. What happens

[188] Charles Perrow, *Normal Accident Theory*, (1984), p. 90.
[189] Perrow, *Normal Accidents* (1984), p. 90.
[190] Ibid. at 78

in one area directly affects what happens in another area of the system. "Loosely coupled interactions" have the opposite characteristics: fewer or less tight links between parts and therefore are able to absorb failures or unplanned behavior without destabilization.[191] These loosely coupled systems tend to have ambiguous, or perhaps flexible, performance standards. "Loosely coupled," however, does not mean "disorganized," unless by disorganized one means a lack of centralized control. Loose coupling allows for certain parts of the system to express themselves according to their own logic or interests or tasks.

In describing how the interactions can vary between linear and complex systems, Perrow uses the example of a production line to describe a "linear" process. The interactions in a production line are linear, according to Perrow, because "Production is carried out through a series or sequence of steps laid out in a line."[192] In the case of a failure in this type of interaction, i.e., "a part or a unit fails in an assembly line," it would be clear what would happen at the end of the line -- a "faulty product" -- and the system could identify and fix the problem by shutting down the line and repairing it or by bypassing the work station that caused the problem and assemble the missing parts later on. In contrast, a "complex interaction" is characterized by "branching paths, feedback loops, jumps from one linear sequence to another because of proximity and certain other features."[193] What distinguishes these types of interactions from linear interactions is that complex interactions are not designed into the system by

[191] Ibid. at 75.
[192] Perrow, p. 72.
[193] Ibid. at 79

anybody; no one intended them to be linked. These types of complex interactions are not ones that "operators" can anticipate or "reasonably guard against."[194]

Examples of these types of systems are helpful in understanding how the structure of the system will affect the likelihood of system failure. In accord with Perrow's definition, a post office would be a loosely coupled linear organization. It has relatively discrete components and loose connections to the postal system as a whole. A personnel or technical problem need not close a post office, nor would it bring the whole system to a halt. On the other hand, a dam would be a tightly coupled linear organization. A dam has little buffering; a failure in one area may have direct effects elsewhere in the system. The components of a dam, however, are widely understood and can be substituted if necessary (linearity). There are also loosely coupled complex organizations. Universities are good examples of this type of organization. There is extensive specialization (little likelihood of substitutions) and interconnection, but there is also buffering or slack between components so that a problem in one department or with a faculty member does not automatically jeopardize other faculty, another departments or the entire university. The final type of organization, in Perrow's theory, is the tightly coupled complex organization. Nuclear power plants, chemical plants, and spaceflight are examples of such an organization. These are highly specialized, interconnected, interdependent systems in which operators only understand a small piece of the larger system. In these systems with little to no slack, "Resources cannot be substituted for one another and failed equipment entails a shutdown because the

[194] Ibid. at 75.

temporary substitution of other equipment if not possible."[195] Failures in complex, tight systems produce total system failure.

According to the *normal accident theory*, an accident is "a failure in a subsystem, or the system as a whole, that damages more than one unit and in doing so disrupts the ongoing or future output of the system."[196] This type of failure affects the third (subsystem) or fourth (the system) levels of the system. A failure for the U.S. national security system would be an "accident" that disrupted the missions and responsibilities of the subsystems of Homeland Security Council (HSC), the National Security Council (NSC), Congress, the Department of Defense (DOD), the Director of National Intelligence (DNI) or the Department of Homeland Security (DHS), causing them to not be able to function as they were designed to. Distinguished from accidents are "incidents," which produce less serious occurrences that "involve damage that is limited to the parts or a unit, whether the failure disrupts the system or not."[197] These disruptions or "incidents" occur at the first or second level of a system. The point of transition between accidents and incidents between the second and third levels is significant because that is where most of the engineered safety features come into play. These features supply the tools that systems engineers and, to a limited extent Perrow, argue can help to limit or minimize system failures or accidents in complex systems. Perrow suggests redundancy (backup capability) as capable of minimizing accidents in complex systems.

[195] Perrow, p. 94.
[196] Ibid. at 66
[197] Perrow, p. 70.

For Perrow, it is these tightly coupled complex organizations that pose the highest risk of failure. This is not due to operator error, improper training or insufficient technology as is often thought. Rather, Perrow explains, under such systems the interplay of interconnectedness, interdependency, specialization and the limits of knowledge create conditions such that minor failures, errors, or accidents cannot be easily identified and remedied. Unexpected errors and mistakes will combine in unpredictable ways. Each mistake alone might not be important, but in combination they can have synergistic effects and be difficult for operators to understand and remedy. The result can be a cascading effect of small errors that ultimately result in a massive system failure, i.e., a *normal accident*.[198]

Like other theorists, Perrow argues organizational factors such as design of the system play a role in the organization's performance. In addition, insights from Perrow's normal accident theory suggest that the structural characteristics of the organizations also impact on the organizations' performance specifically against preventing accidents. Such insights are useful in assessing the U.S. national security system and the effects that its structure have on its performance. Based upon Perrow's normal accident theory, system accidents or failures of the organization will take place when the systems themselves are characterized by "interactive complexity" and "tight coupling." These "system accidents" cannot be foreseen or prevented. When the system itself is interactively complex, independent failure events can interact in ways that cannot be predicted by designers and system operators. Like a university, events

[198] Ibid. at 75.

can occur in part of the system and produce unforeseen impacts upon another part of the system; it is a complex, interdependent system. Likewise, the national security system operates as a complex system with unforeseen consequences from actions in one part of the system that can affect another part of the system. If the system is also tightly coupled, cascading effects can quickly spiral out of control before operators are able to understand the situation and perform appropriate corrective actions. In such systems, apparently trivial incidents can cascade in unpredictable ways, with possibly severe consequences.[199]

Perrow concludes that accidents are inevitable in these systems; such systems for which accidents would have extremely serious consequences should not be built. He argues that efforts to improve safety in interactively complex, tightly coupled systems all involve increasing complexity and therefore tend to render accidents more likely. However, he does put forth one design suggestion for improving safety and reducing chances of an accident: redundancy. Redundancy would create interchangeable elements that perform the same function and can serve as back ups in order to prevent failure. Redundancy, however, introduces complexity and encourages risk taking (more on this later with discussion of slack resources). Aside from redundancy, Perrow provides an important clue as to how to design safer systems in his identification of the two important factors in system accidents, i.e., reduce the interactive complexity and tight coupling in our designs. Interactive complex systems with tightly coupled designed are usually created because they allow greater

[199] Perrow, p. 73.

functionality and efficiency to be achieved. Simpler decoupled designs, however, can achieve the same basic goals. The dilemma when choosing between these options is that there are tradeoffs involved with choosing a decoupled system. And a determination has to be made about how much risk is acceptable in order to achieve the goal of reducing a system accident.

Organizational sociologists like Charles Perrow have made important contributions to safety by emphasizing organizational aspects of failures. Normal accident theory has also provided context for understanding the structural causes for failure within the U.S. national security system. From Perrow's own definition, the U.S. national security system is a "complex, loosely coupled" system. This system consists of the intelligence community with its sixteen different agencies along with other institutions that play a role in US national security (e.g., Congress and the National Security Council). These institutions have different functional responsibilities, and some have overlapping responsibilities. The intelligence system is complex and loosely coupled in that it represents a set of complex interactions with non-linear feedback loops, often not even recognized or anticipated, and specific functional niches that reflect momentarily successful adaptations to the environment. The organizations and institutions within the system, however, have slack built between them; they are loosely coupled. Consequently, the intelligence community has been described as a fragmented group of organizations that operate separately with little connection between them at times (i.e., as in stovepipes).

It is likely that the U.S. national security system was complex from its very beginning as are most organizations, according to Perrow. Since the creation of the entire system spans over many years and various parts and units of it have been created by different laws and executive orders over those years, i.e., the National Imagery and Mapping Agency (NIMA) was not created until 1996, however, it is more appropriate to describe the system as it existed before 9/11 and even more so today, as a truly "complex" system. The true characterization of the national security system as complex was not readily apparent during the Cold War and only after 9/11 was this made clearer. Arguably given the nature of some reform recommendations, it is questionable as to whether even after 9/11 there is enough of an understanding about the complexity of the system. Although some systems are inherently complex, others become more complex and more tightly coupled over time due to innovation or perhaps by the intrusion of another system (i.e., the danger from terrorism). But this can also work in the opposite direction. A system can become decentralized, that is to say, more loosely coupled and/or linear. Under these conditions, operators retain more control over smaller and more easily understood segments of the system, with greater buffering being inserted between segments.

Arguably it was the nature of the Cold War, the environment the system faced during that time period, which allowed the complexity of the intelligence system to be masked. During the Cold War the threat environment was comprised of a single real enemy that was static. The national security system was able to focus many more resources against a single target with much deeper levels of information and expertise

and intelligence sources focused on this target. With terrorism's emergence, the events of 9/11 and the resultant examination of why the system failed to warn against those attacks, clarity was increased about the structural organization of the system and how it affects performance. System failures prior to the 9/11 attacks were recognized but, at least from the academic world, no sense of urgency existed to identify the system as a "complex" one. During the Cold War, with one main enemy and the knowledge and resources to focus on it with some success, the quasi-apparent loosely federated structure of the intelligence system was tolerated because it was still adequate for addressing the threat even with its design flaws. And there were arguments that making changes could present a greater risk. When there arose talk about necessary changes to the system, bureaucratic and congressional battles over power and jurisdiction threatened to derail not only the reforms but also the current ability of the system to perform adequately.

The key definitional characteristic of a complex system is that the system will produce behavior and outcomes that are not necessarily predictable by examining only its individual components or parts. Perrow identifies a system as having four different levels of increasing aggregation: a *part*, "the smallest component of the system," which is the first level; a *unit*, a "functionally-related collection of parts," which is the second level; the *subsystem*, an "array of units," which is the third level; and the *system*, which is the collection of all of the subsystems. Beyond the system is the environment.[200] Perrow argues that in a complex system the interactions that occur between the parts,

[200] Perrow, *Normal Accidents*, p. 65.

units and the subsystems of a system were not rationally designed into the system, nor could they have been foreseen by the designers or the operators of the system.[201]

Based on a systems approach to the reform of the U.S. national security system to reduce "system failures" or accidents in the system, it is critical to examine and assess the system as a whole rather than divide up the individual parts and draw conclusions and for reforms based only at that limited examination. The effectiveness of any reform and redesign of this system will depend upon an assessment of the entire U.S. national security system, and not, as suggested, reforms and most of the studies and commissions have done focus solely on the individual agencies and departments.

Looking at the component parts of the system is useful in assessing the causes of system failures because this can help identify component failure accidents; this cannot be where the analysis ends, however, thinking only of the CIA and how to reform that one agency in order to reduce failures of that component will not address the system failures of the entire U.S. national security system. The failure to prevent the 9/11 attacks against the United States was a complete system failure. It was not a failure of one agency or unit within the system nor was it a failure of just the intelligence community (a subsystem). This was a "system failure" that came as the result of "the interaction of a number of failures that were not anticipated, expected or, in some cases, comprehensible to the persons who designed the system and to those who were operating the system."[202]

[201] Ibid. at 75
[202] Ibid. at 77

Component failure accidents "involve one or more component failures (part, unit or subsystem) that are linked in an anticipated sequence."[203] In contrast, *system accidents* "involve the unanticipated interaction of multiple failures." Both of these types of accidents start with the failure of a component, usually at the lowest level of the system. For the U.S. national security, this is the people level. An operator will make an error. An analyst will fail to watchlist a terrorist to prevent him from entering the United States. Both of these types of accidents commonly start with a human error, but what differentiates a system failure (which is more devastating) from a component failure is that with a system failure there occur multiple failures that *act in unanticipated ways*. While component failure accidents are more common, system failures are more damaging and far more serious. The good news, according to Perrow's research; is that system failures are less likely to occur than component failures. However, when they do occur, the ramifications are far worse more severe.

An Extension of the Normal Accident Theory

Scott Sagan, a political scientist from Stanford University, in his analysis on near accidents in the nuclear weapon systems discusses the limits and dangers of redundancy as a safety device within these systems. Sagan extends Perrow's theory of normal accidents by explaining more directly the role of redundancy within a system. While Perrow provides a casual reference to redundancy as a major safety device, Sagan, in his book, *The Limits of Safety*, clarifies the role of redundancy in minimizing

[203] Perrow, p. 70

failures in systems.[204] Essentially, Sagan concludes that redundancy may be a safety device against system failures especially if it is placed in the original design and its interactions with other components can be envisioned. But it also can create "unanticipated interactions with distant parts of the system that designers would find hard to anticipate."[205] Sagan and other scholars of the normal accident theory highlight that if redundancy is part of the idea of creating a decentralized system than the solution may backfire. First, redundancy increases overall complexity and thus invites opportunities for system failure. Second, redundancy may lure operators into "social shirking," or a false sense of security, assuming that some other part of the system is compensating for whatever gaps or slips may appear in their own measures. Finally, redundancy may encourage increased production or activity, thereby raising the level of information or analysis and collection but not necessarily the level of quality of the intelligence.[206]

Recognizing these problems with redundancy, along with Perrow's insights about reducing failure, decentralization of the U.S. national security system should be done as an alternative to, rather than a replication of, existing organizations. Intelligence functions that are discrete and non-interchangeable should limit overall complexity and opacity, and prevent shirking by keeping a high level of responsibility on the local operator. The best organizational model for the functions of U.S. national

[204] Scott D. Sagan, *The Limits of Safety: Organizations, Accidents, and Nuclear Weapons*, Princeton, NJ: Princeton University Press (1993).
[205] Ibid. at 45.
[206] Scott Sagan, "The Problem of Redundancy Problem: Why More Nuclear Security Forces May Produce Less Nuclear Security," *Risk Analysis*, Volume 24, Number 4, (2004), pp. 935-946.

security might then be a loosely coupled yet complex system, similar to a university where there is widespread specialization alongside a high degree of buffering between segments.[207] A focus on decentralization would reduce the problem of increased production that comes with redundancy because of the limits of scale.

One potential stumbling block to applying the lessons learned here to the organization of the U.S. national security agencies is trust. A decentralized system is effectively a local solution to a threat with a limitless capacity to generate fear. Even if these lessons from normal accident theory are accepted, their implementation will rely upon a commodity in short supply in most advanced democracies: trust. Centralized, complex solutions have emerged as solutions to terrorism and other risks in part because governments and societies have lost trust in authorities to defend against them. This has helped push highly complex solutions into the foreground as it appears to eliminate human judgment from the equation, and thus compromises the entire issue of trust.

After 9/11 family members of survivors of the attacks lobbied hard for the investigations into 9/11 to find those individuals responsible for the failure of the US government to protect them against the attacks. The 9/11 Commission answered these calls for accountability with reforms advocating a more centralized intelligence system with one clear person at the top who would be responsible for the entire intelligence community. These reforms created a more centralized system for the intelligence community, adding another layer of bureaucracy on top of the agencies with the

[207] Perrow, pp. 330-335.

creation of the Office of the Director of National Intelligence (ODNI). Other examples of a move towards centralization with this system are the creation of the National Counterterrorism Center (NCTC) and the Department of Homeland Security (DHS). While much can be done to make these systems somewhat safer, accidents cannot be entirely avoided. As Perrow notes, however, "some solutions are more benign then others." Perrow continues, "there is one solution that may not be so benign: instituting highly centralized, authoritarian organizational structures."[208] This is precisely what was done to the U.S. intelligence system after 9/11.

As with the centralization of management at FBI headquarters, the loss of trust in the individual operators to do their jobs effectively in the field resulted in an overall move towards centralization but with the creation of a systemic structure that did not necessarily make the system more failure-proof. By focusing on accountability and individuals who made mistakes, the lack of trust became a basis for the structural decisions made in the reorganization of the U.S. national security system that lead to a centralized system. The lessons from normal accident theory, however, suggest that a decentralized and discrete system for national security and counterterrorism would be the optimal structure to create. This would require, though, increasingly dispersed trust with an array of measures overseen by operators and authorities with highly specialized tasks.

Both Sagan and Perrow provide rather pessimistic conclusions about the possibility of reducing the likelihood of complex system failures. However, one thing

[208] Perrow, p. 330.

that both of them point out is that system characteristics affect the degree to which safety inducing factors (such as redundancy, safety goals, learning, training, and empowerment) can be established. Both Sagan and Perrow's theories argue that the likelihood of a system failing will depend on the system's configuration. The particular configuration of the system can either discourage small errors that make the unanticipated interaction of errors possible, or encourage such errors to occur. For example, Perrow argued that the air transport system managed to reduce tight coupling enough to make collisions extremely rare.[209] Both Perrow's normal accident theory and Sagan's high reliability theory inform the analysis of this study. They both emphasize the necessity of examining the system as a whole, not just the parts. Furthermore, they both suggest that specific system characteristics like structure, people, rules, procedures, and culture matter when it comes to reducing the likelihood of system failure.

When applied to the national security system the institutional approach of this study falls in line with Perrow's system theory to imply a holistic approach. Both of these perspectives and the resultant theoretical insights are holistic in that they turn attention on the system as a whole and consider how separate parts contribute to the whole. Thus, rather than concentrate on one particular level of the national security system -- an agency's headquarters, agency managers, line officers --an institutional approach, like the system approach, focuses on the relationship between the various levels. Both institutional analysis and systems analysis emphasize a long-term perspective. It is assumed that administrative relations, structures, visions, and

[209] Ibid. at 340.

outcomes are a product of long-term developments. So, if we wish to learn about the potential effects of institutional design, an institutional system perspective presupposes study over a considerable time period.

Complex systems like the national security system are not necessarily high-risk systems with catastrophic potential. For instance, universities and research and development firms are considered complex systems. It does appear that with complex systems loose coupling is the best way to structure the interactions between the parts of the system. As Perrow argues, the systems that are most at risk for catastrophic failure are the complexly interactive, tightly coupled ones. Current efforts to centralize and increase the tight coupling of interactions within the U.S. national security system may ultimately create a system that Perrow would predict will be most susceptible to catastrophic failure.

In a complex system like the U.S. national security system, the system will produce unexpected interactions among multiple failures. While these are troubling and unwanted, they need not bring about Perrow's accidents that might bring down the entire system. These accidents can be avoided if the system is also loosely coupled since loose coupling provide more time, resources and alternative paths to cope with the disturbance and limit impacts. But in order to take advantage of loose coupling, those at the "point of disturbance" must be free to "interpret the situation and take corrective action." Since those disturbances are generally likely to be experiences by the operators first (i.e., people in the field), that system should be decentralized. In other words, these operators need to be able to "move about" and inspect the problem in order to resolve it.

They must have the discretion to stop their ordinary work and to cross departmental lines --and even institutional or organizational lines--to communicate with others in order to make changes that normally would need authorization. This is a part of decentralization. This type of experimentation to solve a problem is possible because of the loose coupling of interactions which provides slack and extra time for operators to experiment and use innovative means to solve problems. In a complex system with unexpected interactions occurring in order for the system to recover once an "unwanted system state" is identified. When this occurs actors in the field must take action in order to prevent the failure from spreading. Loosely coupled systems like the national security system allow for this to happen because they contain sufficient slack, resources, alternative paths, substitutes, and safety devices. The actors in the field, however, are the best people to bring these assets into play in order to resolve the problem. Thus, "where systems are both complexly interactive and loosely coupled, decentralization is efficient both for diagnosing and recovering from errors."[210]

Charles Perrow's normal accident theory serves a useful purpose in the analyze of the intelligence failure of 9/11; the theory puts the examiner in the position of addressing the outcome at the system level instead of falling into a common trap of putting too much weigh on individual actors in the system. One shortcoming, however, of Perrow's theory is that it does not address the issue of how culture may impact the functioning of the system. As Perrow acknowledges, in the Afterword to his book, his own emphasis is on power of those that insist on creating and operating the "complex"

[210] Perrow, p. 333.

risky systems. Although Perrow recognizes the potential importance of analyzing culture, he believes that the more critical and time sensitive threat is the existence of the risky systems themselves and therefore, he believes that studying culture and how it impacts the effective operations of a system is "a luxury in the world of risky systems, one that I hope we can afford, and one that social science disciplines such as psychology, sociology, and political science can address and profit from."[211] A large part of the this study is devoted to building upon what Perrow provided in an understanding of the organizational factors that cause systems to fail but it also will go beyond what Perrow acknowledges is a limited approach to incorporate culture into a discussion on improving the performance of institutions that make up complex systems.

New Institutionalism

Political science, sociology, and economics abound with discussions of institutions and how they constrain behavior, affect outcomes and at the same time constitute important phenomena to be explained in their own right. Institutions structure politics by determining those who are able to participate in a particular political arena; they shape various actors' political strategies; and, they influence what these actors believe to be both possible and desirable. Institutionalists are those scholars who think theoretically about institutions and their impact on behavior and outcomes. This study focuses on institutional theory as a starting point because it represents one of the more robust social scientific approaches. To better understand the

[211] Perrow, p. 360.

U.S. national security system, it makes sense to integrate some theoretical threads regarding institutions and organizations by building on already developed theories.

New institutionalism amounts to "bringing institutions back in."[212] After a period of neglect, social scientists have rediscovered institutions. A substantial body of literature exploring the consequences of institutions has developed. This new literature defines institutions in broad terms as "the humanly devised constraints that shape human interactions."[213] Each of the social science disciplines has developed its own "new institutionalism." Hall and Taylor identified three 'schools of thought' about institutionalism: (1) the 'rational choice' approach, (2) the historical approach, and (3) the sociological approach.[214] The 'rational choice institutionalism' is associated with institutional economics.[215] Its behavioral assumptions premise rational actors with fixed preferences and values. Emphasizing the role of strategic information and behavior in institutional emergence and change, this school of thought attributes the origin of institutions to deliberate design and voluntary agreement among actors.[216] (ADD the historical & socio here).

Based upon these three schools of thought, the "new institutionalism" in economics, political science and sociology is a multifaceted phenomenon. The three

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[212] T. Skocpol, 'Bringing the State Back In: Strategies of Analysis in Current Research', in P.B. Evans, D. Rueschemeyer and T. Skocpol, eds, *Bringing The State Back In* (Cambridge University Press, (1985), pp. 77-96.
[213] Douglass C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge, MA: Cambridge University Press (1990).
[214] Peter A. Hall and Rosemary Taylor, 'Political Science and the Three New Institutionalisms,' in K. Soltan, E.M. Uslaner and V.I. Haufler (eds) *Institutions and Social Order*, Ann Arbor: University of Michigan Press (1998), pp. 15-43.
[215] Oliver E. Williamson, *The Economic Institutions of Capitalism*. New York: Free Press (1985).
[216] Hall and Taylor, 'Political Science and the Three New Institutionalisms."

broad approaches share a common concern for the role of institutions in social science, however, they diverse sharply on theory and method. The rational choice institutionalists argue that individuals and their strategic calculations are the central focus with respect to how institutions function. As suggested by one of the new institutionalist economists, Douglass North, institutions are created by utility-maximizing individuals with clear intentions. For these theorists, institutions are an intervening variable capable of affecting an individual's choices and actions but not determining them.

Historical instititutionalists do not deny that individuals attempt to calculate their interests, but they argue that outcomes are the product of interactions among various groups, interests, ideas, and institutional structures. Preferences for these theorists are not fixed but emerge based upon the institutional context in which they exist. The ideas of James March and Johan Olsen on bounded rationality are borrowed by historical institutionalists. To these theorists, institutions play a determinant role since they shape the actions of individuals but are at times affected by collective and individual choices.

The sociological institutionalists contend that individual decisions are a product not only of institutional setting, but also of a much larger frame of reference. Individuals are embedded in cultural and organizational "fields" or "sectors" that determine the very concept of "self-interest and "utility." Walter Powell and Paul DiMaggio emphasize the idea of embeddedness, which underlies the important role of culture, society, and organizational identity in defining the interests that a person might

develop. For sociologists, institutions are themselves dependent upon larger "macro level" variables such as society and culture, and the individual is viewed as largely dependent, unimportant variable.[217]

To some extent, both historical and sociological institutionalists reject the strong rational actor model. They both consider institutions to be dependent variables and include cognitive and cultural explanations within their analysis. Within the theory of new institutionalism, uncertainty is pervasive and information is never complete. Institutions are not sure about the environment in which they must operate on a day-to-day basis. In new institutionalism, the problems that institutions face can never be completely resolved, though, they can be mitigated by designing the institutions in a certain fashion.

In sociology, the new institutionalist scholars are focused on the way in which international life establishes normative orientations, conventions and taken-for-granted practices that shape and influence behavior. These socio-historical institutionalists present much smaller units of analysis in the form of norms, rules and ideas comprised in institutions.[218] "Sociological institutionalism" which began as a subfield of organization theory, concentrated on institutional forms and procedures in organizations. In contrast to the "rational choicers", "sociological institutionalism" concludes that institutionalism in organizations is not a result of a strategic search for

[217] Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality', in Walter W. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, Chicago, IL (1991).
[218] J.G. March and J.P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politic*, New York: The Free Press, (1989).

maximum efficiency. Instead, institutional forms and practices are adopted for legitimacy, through a "logic of social appropriateness" rather than "a logic of instrumentality". Institutionalism reflects the historic accretion of culturally specific forms and practices with their origins and diffusion related to their specific context. This approach defines institutions broadly, seeing them as including symbolic systems, moral values and societal norms. Blurring the distinction between institutions and cultures, "sociological institutionalism" considers culture itself as a form of institution, where institutions give social life its meaning in an interactive and mutually constitutive relationship between institutions and action.[219]

Two significant works have contributed to the advancement of institutionalism in the sciences: James Q. Wilson's *Bureacracy*[220] and March and Olsen's *Rediscovering Institutions*.[221] The work of Wilson and March and Olsen highlight the limitations of economics and market logic as the theory that accounts for institutional behavior. They construct their theories on considerations of structure, particularly hierarchy, and individual and group behavior in institutional contexts, on the influence of professional and cultural norms on institutional behavior patterns and on institutional longevity and productivity. *Rediscovering Institutions* argues that human rationality is limited or "bounded." For March and Olsen, human action is an attempt to "satisfice" and fulfill expectations which are context specific and deeply embedded in cultural,

[219] Hall and Taylor.
[220] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Basic Books (1989).
[221] James G. March and Johan P. Olsen, *Rediscovering Institutions*, New York: Free Press, (1989).

socioeconomic and political fields or structures.[222] Their definition of institution emphasizes rules, structures, codes and organizational norms and is based upon Max Weber's view of organization as constructs designed to distribute rewards and sanctions and to establish guidelines for acceptable types of behavior.[223] March and Olsen, however, unlike Weber, bring in the role of the individual while Weber largely ignores how individuals might act within bureaucracies and organizations.[224] For March and Olsen, their goal is to show how individuals behave according to a set of rules and procedures which define the appropriateness of their actions.[225] They argue that institutions matter because they shape, even determine, human behavior. In cases where there are no clear guidelines for how individuals should act in the face of specific problems, the individual will weigh alternatives and dip into a "garbage can" of possible solutions. The solutions are based upon the new situation that the individual faces. Powell and DiMaggio expand upon March and Olsen's definition of institutions by adding customs and conventions to the definition. They rely on March and Olsen's argument that actors "associate certain actions with certain situations by rules of appropriateness."[226]

Much of the debate among scholars is not about whether institutions matter; they have been empirically proven to matter. Rather the debate turns on the extent to which they matter. The different approaches of new institutionalism illustrate that the

[222] Ibid. at 9-19.
[223] Max Weber, *The Theory of Social and Economic Organization*, New York: Free Press (1997).
[224] James G. March and Johan P. Olsen, *Rediscovering Institutions*, New York: Free Press, (1989), p. at 20.
[225] March and Olsen, pp. 23-24.
[226] Powell and DiMaggio, p. 10.

disagreement arises over how much weight ought to be given to the individual and to the institutional context within which decisions are made and to the larger environmental factors such as culture, social norms, and custom. Beyond the debate over the level of attention to be given to different factors of institutions, little disagreement persists over the importance of studying institutions. Institutions are viewed as important to study because they are pervasive and central in domestic and international politics: from issues of international economic development to domestic political issues. Yet their operation and evolution remains difficult to understand. They are very complex. Beyond the more mundane economic and practical issues with which institutions deal, they also have the potential to facilitate important security strategy and protect the national security of the United States from foreign and domestic threats. Without an institution that can optimally implement our national security strategy there are doubts about whether the U.S. can operate effectively. Without knowledge about the manner in which an institution like the intelligence community operates – and what makes it work well – there are likely to be fewer effective and worse institutions than if this knowledge were widespread. Through interdisciplinary research, this study will use theories and the application of the theories to the empirical research, in order to gain knowledge to understand the role of the U.S. national security institution, how it performs and how it may be organized to perform better.

Benefits of Institutions

Institutions are providers of effective solutions to problems of order, safety and well-being.[227] Institutions accomplish this remarkable feat by maintaining normative and regulative structures that affect individuals inside and outside the institution.[228] Institutions gravitate toward the preservation of the status quo. This does not mean, however, that institutions are inherently rigid and allergic to change. All organizations change over time, but institutions do so while preserving the organizational essence that has been so carefully cultivated and protected over long stretches of time.[229] Institutions thus allow for reasonable adaption to changing needs, whether it comes from within the organization or from without. This responsible balance between preservation and responsiveness is to be preferred over knee-jerk reactions to environmental change. Stability is preserved through flexibility.[230]

Institutions prove to be quite effective in achieving their goals. Members of an institution know what to do, because the prescribed way of doing things is reflected in the powerful rules, regulations and routines of an institution. This tacit knowledge is the outcome of trial-and-error processes: only best practices make it into the institution's mission. Institutional characteristics thus enhance the problem-solving capacity of an organization. Institution characteristics are especially beneficial when it comes to organizations that work within complex systems or complex technology and

[227] R. Dahrendorf, *Law and Order*, London: Stevens and Sons (1985).
[228] R. W. Scott, *Institutions and Organizations*, Thousand Oaks, CA: Sage Publishers (1995).
[229] L.D. Terry, *Leadership of Public Bureaucracies: The Administrator as Conservator*, Thousand Oaks, CA: Sage Publishers (1995).
[230] C. Offe, "Designing Institutions In East European Transitions," in R.E. Goodin, ed., *The Theory of Institutional Design*, Cambridge, MA: Cambridge University Press, pp. 199-226 (1996).

dangerous materials. For these organizations, like the agencies that make up the national security system of the United States, high reliability is more important than high efficiency. A culture of safety is critical for such organizations. The formulation of safety as an important goal is needed to support the culture of safety. Institutions facilitate high-reliability cultures.[231]

Furthermore, while discretion is something that can operate effectively within an institution, unchecked discretion may create space for deviance. While discretion by itself does not cause or even nurture moral deviance, street level bureaucrats need discretionary room in order to mediate between general policy guidance and specific circumstances and demands. Institutions, however, serve to provide a check on discretion in that they regulate the behavior of their members.[232] The institution can institutionalize the values that are necessary in order to minimize deviance but at the same time allow for discretion. Ordinary organizations do not have the capacity to do this. Institutions can create structures in which discretion is an essential attribute that facilitates effective and efficient policymaking, but in which it cannot be used as a resource for a member's own purposes.[233]

The International Setting and an Institutions Design

Years ago scholars of organizations paid little attention to environmental influences upon the performance of organizations. Today, there is much to be found in

[231] Karl E. Weick, K.M. Sutcliffe and D. Obstfeld, "Organizing for High Reliability: Processes of Collective Mindfulness," *Research in Organizational Behavior*, Volume 21, pp. 81-123 (1999).
[232] P. Pettit, "Institutional Design and Rational Choice," in R.E. Goodin, ed., *The Theory of Institutional Design*, Cambridge: Cambridge University Press, pp. 54-89 (1996).
[233] J. A. Desveaux, *Designing Bureaucracies: Institutional Capacity and Large-Scale Problem Solving*, Stanford: Stanford University Press (1995).

the organizational literature about the need for organizations to change in light of outside pressures or crises. The organizational design of institutions should be a continuous process rather than that of a one time event. As policy objectives and strategy change to meet the different challenges from the environment, the organizational design of the institution will need to change as well.

In the 1960's, the U.S. intelligence community focused on the threat of the Soviet Union, the possibility of war in Western Europe, and support for the ongoing conflict in Southeast Asia. This focus was directed by the US National Security Strategy that was geared towards the international setting the U.S. faced during the 1960's and through the 1980's that entailed a significant threat from the Soviet Union and the spread of communism. This, in turn, dictated what activities of the intelligence community were necessary to carry out the strategy. This strategy then shaped the manner in which information was collected and analyzed by the various members of the intelligence community. After the early 1990's, the environment changed and the primary threat to the United States shifted from the Soviet Union to transnational terrorism. However, the infrastructure of intelligence collection and analysis did not -- and still has not --changed from its Cold War roots.

With a fundamentally different environment and new objectives and strategy, a change should have come to the institutions of the intelligence community. The flaws of the intelligence community uncovered by the 9/11 investigations are inherent to the organizational design of the institutions within the community and the division of labor among the institutions. These institutions are relics of an intelligence community

designed to fight the Soviets, as opposed to today's transnational terrorist threats. As the *9/11 Commission Report* stated, "However the specific problems are labeled; we believe they are symptoms of the Government's broader inability to adapt how it manages problems to the new challenges of the 21st century."[234]

One benefit of studying the significance of the design features of institutions is to determine whether there is a possibility of maximizing the effectiveness of new institutions as they are created for the first time. By designing an institution in the most effective way from its genesis one can minimize costs and failures. From what is gained through this study one can design an institution that not only work optimally in the current environment but also can adapt appropriately to future changes in the environment. Furthermore, for dealing with institutions that already exist; this study can help in understanding whether there are design changes necessary to be made in order that the institution can function optimally. Change, however, does not automatically produce improvement.

If the government is not performing as well as it should, government organizations clearly need some change to improve performance. Knowing which specific design changes should be made to the U.S. national security institution in order to more effectively defend the U.S. national security is critically important. Furthermore, with a careful analysis of the appropriate changes to make to the design one gets the added benefit of avoiding the scenario of any drastic and overly reactionary steps taken after a perceived institutional failure that may do more damage to a civil

[234] The National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (New York: W.W. Norton, 2004), p. 353.

society and a system of checks and balances. Two years after the organizational changes made to the intelligence community and the domestic national security system someone should be thinking about whether the design is one that fits the environment and strategy of the intelligence community in order to make a conclusion about whether the institution is maximizing U.S. national security. The jury is still out as to whether the actual reforms that were legislated were the optimal design choices for the intelligence community. Now is a good as any time to take up this issue.

In order to understand the conditions under which United States national security maximization can take place, it is necessary to understand how the intelligence community operates, the conditions under which it came into being and has evolved of time and ultimately its specific organizational design. That is not to say that institutions always facilitate success in maximizing security: on the contrary, it would appear that in light of the September 11 attacks and the intelligence reporting on Iraq's WMD, at least some of the institutions or organizations that make up the U.S. national security system failed to protect the U.S. security in these cases. Conversely, instances of protecting national security can take place with only minimal institutional structures to support them. But all efforts to protect U.S. national security take place within an institutional context of some kind, which may or may not facilitate successful security. To better understand how to maximize U.S. security, we need to investigate the sources and nature of institutions and how institutions change over time.

Institutional Design

The designing of institutions involves the devising and implementation of rules, procedures and organizational structures that will enable and constrain behavior and action so as to accord with held values, achieve desired objectives or execute given tasks. As with the U.S. national security system, institutional design is invoked in the creation and implementation of all formal institutions that did not evolve spontaneously. So too does the evolutionary transformation or change of institutions involve institutional design, even if that transformation may be informal or spontaneous. Institutional design occurs whenever institutions are 'created and changes through human action either through evolutionary processes of mutual adaptation or through purposive design."[235]

Through the precise systematic relationship between institutional design and institutional effectiveness is unclear there have been numerous studies of the intelligence community that have focused on institutional performance that indicate that this relationship exists, most of them though focused on the structural aspect only of the design. While a poor institutional design does not guarantee catastrophic failure it does incur costs. And depending on the complexity of the system and the complexity of the external environment the institution must work within, the costs may be so great as to cause catastrophic failure of the institution.[236]

Identifying a theoretical connection between institution design and institutional performance in general is no easy task. This study will build on the theoretical

[235] E. Gualini, *Planning in the Public Domain*. Princeton, NJ: Princeton University Press (2001).
[236] Perrow, *Normal Accidents*.

approaches from the social science disciplines, in order to provide a better understanding about the design of the national security institution of the United States and how that design relates to its effectiveness in protecting U.S. security. This study does not develop any new theory about institutions but rather borrows from already existing theories and applying what we have learned from these theories to the problem of the design of the U.S. national security institution.

Designing an Institution: The Positive and the Negative

There are two general views about the possibilities of designing effective institutions in the public sector: one pessimistic and one optimistic. The pessimists argue that the public sector does not lend itself to ambitious blueprints and enlightened leadership which institutions need. They view the role of the designers to be limited by environmental constraints (i.e., democratic values that would define legitimate actions of an institution); organizational deficiencies (i.e., the complexity of the bureaucracy) and individual limitations (i.e., the bounded rationality of managers). These factors, in the pessimists' view, work to preclude effective design efforts.[237] As Kaufman observed in his research on six federal agencies, the leader of a public bureaucracy is "hemmed in by a set of constraints limiting his capacity to make things happen in and to his bureau as he [wants] them to happen."[238] From this perspectives it would seem that organizational design would have little meaningful affect on how employees think and act within the bureaucracy.

[237] C. C. Hood, *The Limits of Administration*, London: John Wiley (1976).
[238] H. Kaufman, *The Administrative Behavior of Federal Bureau Chiefs*, Washington, D.C.: Brookings Institutions (1981).

All of these types of constraints beset the U.S. national security system. The institutions that operate within this system are part of a liberal democracy. The managers of these institutions are answerable to Congress and the public and must ensure that their institution works within the laws and values of the democracy. The policymakers must translate the multiple, complex and general aims of national security into effective bureaucratic routines that can be accomplished without gross expenditures of human and financial resources and without violating fundamental principles of civil liberties. The challenge for the policymakers who bear ultimate responsibility for the performance of the institution is to make sure that implementation discretion in the field is in line with official policy intentions. The limits of administration, however, prevent them from doing so.[239] Policymakers are unable to formulate clear and accurate policy instructions due to their bounded rationality.[240]

It is impossible for the policymakers in Washington to determine at all times whether implementers deviate from policy directives; because complete and unambiguous feedback is seldom available.[241] Even if they could detect deviation from the official policy the means available to them for intervention are limited. It is not easy for public administrators to fire or replace individuals. Furthermore, policymakers would be unwise to adopt coercive tactics to ensure compliance, because that would

[239] Hood, *The Limits of Administration*.
[240] Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organization*, New York: Free Press (1945); James G. March and Herbert A. Simon, *Organizations*, New York: John Wiley (1958).
[241] H.L. Wilensky, Organizational Intelligence: Knowledge and Policy in Government Industry, New York: Basic Books (1967); Herbert Kaufman, *Administrative Feedback: Monitoring Subordinates' Behavior*, Washington, D.C.: Brookings Institution (1973).

only make matters worse: "The use of coercion . . .. is an invitation to sustained sabotage . . . and leads to disaster."[242] The notion that policymakers or leaders exercise some kind of direct, top-down control over policy implementation has been denounced as a "noble lie."[243] Institutional design cannot bring together the different worlds in which policymakers and field employees live. This "appreciative gap," however, can be bridged by providing implementing actors with as much discretion as they can handle.[244] Leaders would be smart to rely on the members of the institution for carrying out their tasks in the best way they see fit. The policymakers and leaders ought to trust that the field employees know what that best way is in concrete situations.[245]

Kaufman's 1960 study of the U.S. Forest Service serves as a critical example of how a shared sense of mission, or culture, within an institution operates to create a unity of action even in the field where policymakers have little control over implementation of policy. Kaufman found that even when local circumstances seemed to allow for flexible interpretations of policy directors, the forest rangers that were out alone in the woods far away from Washington D.C., approached their tasks in very similar ways that were acceptable by headquarters. Whenever the Forest Service manual failed to provide an answer to a problem encountered in the field, rangers would devise a solution that could actually stand headquarters scrutiny. The FBI under the leadership

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[242] M. Landau and R. Stout, Jr., "To Manage Is Not to Control: Or the Folly of Types II Errors," *Public Administration Review*, Volume 39, Number 2, March/April 1979, pp. 151-152.
[243] R.F. Elmore, "Backward Mapping: Implementation Research and Policy Decisions," *Political Science Quarterly*, Volume 94, Number 4, (1979),pp. 69-83.
[244] J.F. Handler, *The Conditions of Discretion: Autonomy, Community, Bureaucracy*, New York: Russell Sage Foundation (1986).
[245] H.R. van Gunsteren, *The Quest for Control: A Critique of the Rational Central-Rule Approach in Public Affairs*, London: John Wiley (1976).

of Hoover, like the U.S. Forest Service, had a broadly shared sense of mission throughout the Bureau. All FBI agents knew that their job was to conduct investigations and to make sure that they did not damage the reputation of the Bureau through their behavior. Throughout the numerous field offices in the United States FBI field agents shared and endorsed the definition of the agency's core tasks.[246] The culture of the institution served to fill the gap between policy direction at headquarters and actions in the field. Hoover did not have to be in every field office supervising the agents in order to make sure that they were implementing his policy directives. The agents understood what their tasks were and therefore carried them out in line with what they believed to the mission of the Bureau because the agents believed that was the correct way to behave. For the study of institutions, culture and a shared sense of mission is important to the understanding of how public institutions operate in line with policymakers directives or, as the case may be, fail to operate in accordance with those directives.

According to new institutionalism in political science, behavior reflects, to a large extent, a "logic of appropriateness" that is constituted by cultural framing and cognitive filtering.[247] Culturally embedded institutions provide frames of meaning that determine how problems are defined and how possible solutions are identified and evaluated. Rules are followed because they are seen as natural, rightful, expected and legitimate. Ideas of problems and solutions can actually change in spite of strong

[246] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Basic Books (1989).
[247] James G. March and J. P. Olsen, *Rediscovering Institutions*, New York: Press (1989).

"enculturation." This is the point of institutional innovation and adaptation. Such processes of ideational change are explained, at least partly, by changes in forms of interaction among the different social actors.[248] The actors are embedded in a social collectivity within an institution but they interact with each other in facing problems and finding solutions. They do what they see as appropriate for themselves in specific types of situations. The actors will take reasoned action by trying to answer some basic questions: What kind of situation is this? What kind of person am I? What does a person such as I do in a situation such as this?[249] Within an institution they actors ask these questions as they face problems to solve. They ask the questions in the context as members of the institution: What kind of situation is this? As a member of this institution what kind of person am I? What does a person who is a member of this institution do in a situation such as this?

Social Science Theories of Culture

Difference Between the Theories on the Nature of Culture

The conceptualization of "culture" within the social sciences has tended to follow the evolution from biologically-based or socio-psychological theories, to rational-choice and structuralist theories, to post-modernist and constructivist theories.[250] When studying culture, social scientists either gravitate towards a single

[248] J.L. Campbell, "Mechanisms of evolutionary change in economic governance: Interaction, interpretation and bricolage," in L. Magnusson and J. Ottoson, eds., *Evolutionary Economics and Path Dependency*, Cheltenham: Edward Elgar, (1997), pp. 10-32; J. L. Campbell, "Institutional Analysis and the Role of Ideas in Political Economy," *Theory and Society*, Volume 27, pp. 377-400.
[249] James G. March and J. P. Olsen, *Rediscovering Institutions*, New York: Free Press (1989); James G. March, *A Primer on Decision Making: How Decisions Happen*, New York: Free Press (1994).
[250] Adam Kuper, *Culture: The Anthropologists' Account*, Cambridge, MA: Harvard University Press (1999); Philip Salzman, *Understanding Culture: An Introduction to Anthropological Theory*, Long

theory or take a more multi-theoretical or sometimes a multi-disciplined approach. For each social science discipline, the definition of culture reflects the theoretical lens used to observe and analyze, which underscores the prevalence of many definitions and conceptualizations of culture.

The most common definitions assert that culture consists of unconscious and/or conscious values, beliefs, perceptions and behaviors.[251] Some theories suggest that culture describes something that is cognitive (thoughts, values, beliefs, attitudes and/or perceptions), behavioral (norms and actions) or a process or a relational process (relationships or socialization). Other theories contend that culture includes material constructs (social institutions and organizations). Overall, the differences in these theoretical definitions and conceptualizations tend to turn on the appropriate scope or unit of analysis, what variables should be analyzed in attempting to describe culture, the extent to which generalizations can be made about the interaction of these variables, and how certain variables influence and impact behavior, action and outcomes. The theoretical debates surrounding the scope or unit of analysis argue that culture is found on a continuum ranging from the micro-levels to the macro-levels.[252]

Culture may be found either within an individual, among groups, or among or across nation states. At the micro-level, culture is typically considered an innate

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Grove, IL: Waveland Press, Inc. (2001); Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture and Structure*, Cambridge, UK: Cambridge University Press (2002); Lisa Wedeen, "Conceptualizing Culture: Possibilities for Political Science," *American Political Science Review*, Volume 96, Number 4, (2002), pp. 713-727.

[251] Geary Weaver, *Culture, Communication and Conflict: Readings in Intercultural Relations*, Boston, MA: Pearson Custom Publishing (2000).

[252] Quitan Wiktorowicz, *Islamic Activism: A Social Movement Theory Approach*, Bloomington: Indiana University Press (2002).

biological function -- a psychological trait of an individual that is reflected in an individual's attitudes and beliefs or as a personality trait.[253] At the meso-level, culture is often theoretically depicted as common norms, practices or patterns of behavior. For example, anthropologist Margaret Mead defined culture as, "the total shared, learned behavior of a society or a subgroup."[254] At this meso-level of theoretical analysis, culture is defined by the institutions of a group, society or nation that encompass similar cultural traits. Some proponents of this theory believe a person can shift traits or identities based on the environment in which they find themselves.[255] This means a more casual relationship exists between culture and individuals, as compared to the deterministic theories found at the micro-level of the individual. By way of illustration, anthropologist Franz Boas defined culture as, "all the manifestations of social behavior of a community, the reactions of the individual as affected by the habits of the group in which he lives, and the product of human activities as determined by these habits."[256] At the macro-level, culture is typically described as a rational aggregate of decisions and actions that produce outcome between nations.[257] One alternative theory that combines meso- and macro-levels argues that culture is a collective concept that provides a repertoire of actions and a range of what can be done by individuals within a

[253] M.D Murphy, *Anthropology Guides for Students*, Department of Anthropology College of Arts and Sciences The University of Alabama (2001). Retrieved online 13 August 2007 from: http//www.as.ua.edu/ant/Faculty/Murphy/anthros.htm.
[254] Margaret Mead and Rhoda Metraux, eds., *The Study of Culture at a Distance: Margaret Mead, The Study of Contemporary Western Cultures*, Volume 1, New York, NY: Berghahn Books (2000).
[255] Alastair Johnston, "Thinking about Strategic Culture," *International Security*, Volume 19, Number 4, (1995), pp. 32-64.
[256] Franz Boas cited in John Monaghan and Peter Just, *Social and Cultural Anthropology: A Very Short Introduction*, New York, NY: Oxford University Press, (2000), p. 37.
[257] Graham Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis*, 2[ed.], Reading, MA: Longham (1999); Wedeen (2002).

society.[258] For example, anthropologist Claude Levi-Strauss provides a structural definition of culture:

> Culture is neither natural nor artificial. It stems from neither genetics nor rational thought, for it is made up of rules of conduct, which were not invented and whose function is generally not understood by the people who obey them. Some of these rules are residues of traditions acquired in the different types of social structure through which . . . each human group has passed. Other rules have been consciously accepted or modified for the sake of specific goals.[259]

Differences Between the Theories on the Impact of Culture

In addition to theoretical differences over scope, applicable variables and the types of generalizations that can be made, social science theories differ over the impact culture has in regulating behavior, action and outcome. For example, the dominant theoretical schools of thought in comparative politics -- which are rational-choice, structure and culture -- view culture's impact in a different way.[260] These comparative political theories are representative of the debates going on within the other social science disciplines, such as anthropology and psychology, as well as sub-disciplines of political science, such as international relations and political economics.[261] Each of the theories within the various disciplines begins with a different focus. The Rationalists study how actors employ reason to maximize their interests. The Structuralists explore the structures, networks, and systems that influence or constrain man's actions. Unlike rationalists, they do not feel grand generalizations or trends can be made. Rather,

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[258] Johnston, 1995.
[259] Cited in Monaghan and Just 2000, p. 41.
[260] Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture and Structure*, Cambridge, UK: Cambridge University Press (2002).
[261] Monaghan and Just (2000); Salzman (2001); Lichman and Zuckerman (2002); Wiktorowicz (2004).

structuralists contend that there can be differences in initial conditions, institutions, structures, groups as well as causes and consequences that can produce dissimilar effects in different systems.[262] Culturalists study the beliefs, rules and norms that comprise individual and group identities. Unlike rationalists, strict culturalists contend that each culture is unique and therefore every situation produces outcomes that are path-dependent and unpredictable.

Not surprisingly, each school's particular philosophy and methodology contains drawbacks. For rationalists the cultural question does not matter. They question the notion that culture as norms and values or beliefs ever produces outcomes. In practice, for the rationalist, the issue of culture gets weeded out as individuals calculate and maximize their interests. This can lead to a rather mechanical view of behavior in the world. Structuralists emphasize that it is the structures, organizations, or institutions -- not rational choices of the individuals or the individual or collective identities -- which produce outcomes. Structutalists, as well as the rationalists, often are blamed for being rather deterministic. Culturalists confront the opposite problem. For culturalists who argue many variables affect outcome it becomes impossible to test such assertions using normal social science tools.

While each of these theories is bound by certain conceptual, empirical and theoretical limits, each has some explanatory power.[263] So how can social science theoretical debates help the U.S. national security community in its attempts to protect American security? At first glimpse, it appears that these theoretical debates are not

[262] Lichman and Zuckerman.
[263] Lichbach and Zuckerman, 2002; Wedeen 2002.

very encouraging if U.S. policymakers are looking for a concrete methodology to explain culture and how and why it matters let alone how to integrate culture into a framework for analyzing the effectiveness of the institution of the U.S. national security system. Perhaps this is why no reform study or commission report published on the U.S. national security system has ever addressed the issue of the role of culture in national security arrangements. As specifically related to the 9/11 attacks, the official government reports that serve as the basis for this study all neglect to investigate the impact that culture had on the events that lead to the U.S. government inability to prevent the attacks. While the 9/11 investigations make passing references to culture, i.e., FBI's cultural aversion to the use of technology, the reports failed to analyze the nature of organizational culture within the different intelligence agencies and the impact that these different cultures had on the actions taken, or not taken, by these agencies in their efforts to combat terrorism.

The Study of Culture as it Relates to the Effectiveness of an Organization

The relationship between culture and the effective functioning of social organizations has been a recurring theme in various disciplines within the social sciences for over fifty years. Sociologists, social anthropologists and social psychologists have often presented culture and ideology as integral features of the functioning of a society.[264] These scholars from these different disciplines focused on culture as a critical aspect of a social organization's ability to adapt and innovate in the

[264] Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. by Talcott Parsons, New York: Scribners (1930); G. H. Mead, *Mind, Self, and Society*, Chicago, IL: University of Chicago Press (1934); A. R. Radcliffe-Brown, *Structure and Function in Primitive Society*, London: Cohen (1952).

face of certain pressures -- whether from changes in the environment or from within the organization itself. According to the perspective of these scholars, if such an organization is unable or unwilling to adapt to these pressures it will likely not be effective or successful in obtaining its goals and may even cease to exist. This perspective is also reflected in the work of ethnographers such as W. F. Whyte and psychologists such as E. H. Schein.[265] Organizational theorists have also examined the relationship between culture and the performance of organizations but have seldom developed explicit theories of organizational culture and effectiveness.[266]

While some progress has been made in related research areas such as socialization and change within organizations,[267] little attention has been given to the issue of organizational culture and its impact upon the effective performance of the organization, particularly within government bureaucracies. A number of understandable explanations for the limited amount of empirical research on culture and its link to organizational performance can be posited. First, the term culture itself is difficult to define and measure. Within different areas of research definitions vary. Second, the concept of effectiveness also presents definitional challenges. The concept

[265] W. F. Whyte, "The Social Structure of the Restaurant," *American Journal of Sociology*, Volume 54, (1949), pp. 302-310.; E.H. Schein, *Organizational Culture and Leadership*, San Francisco, CA Jossey-Bass (1985); Schein, "Organizational Culture," *American Psychologist*, Volume 45, Number 2, (1990), pp. 109-119.

[266] A. Wilkins and W.G. Ouchi, "Efficient Cultures: Exploring the Relationship between Culture and Organizational Performance," *Administrative Science Quarterly*, Volume 28, (1983), pp. 468-481. J. B. Barney, "Organizational Culture: Can it Be a Source of Sustained Competitive Advantage?" *Academy of Management Review*, Volume 11, (1986), pp. 656-665; G. Safford, "Culture Traits, Strength and Organizational Performance: Moving Beyond 'Strong' Culture," *Academy of Management Review*, Volume 13, Number 4, (1988), pp. 546-558.

[267] J. Van Maanen and E. Schein, "Toward a Theory of Organizational Socialization," in B. Staw and L. Cummings (eds.) *Research in Organizational Behavior*, Greenwich, CT: JAI Press, Volume 1, (1997), pp. 209-264. J. P. Kotter and J.L. Heskett, *Corporate Culture and Performance*, New York: Free Press (1992).

of effectiveness, like culture, is multidimensional and requires that the term be defined by a complex set of stakeholders with potentially differing, incompatible and changing criteria for understanding and measuring it.[268] There is not necessarily one way to measure the effectiveness of an organization and reasonable minds can differ as to what the criteria for measuring effectiveness should be. Joining the concept of culture with the concept of effectiveness together as a research question is therefore often problematic. Furthermore, beginning with the origins of culture research within organizational studies and based on the critique of the positivist approach to social science, many cultural researchers have argued that culture should not be studied as a "variable" with "outcomes." These scholars discourage the integration of culture research with other elements of organization theory, such as effectiveness, which are usually discussed in terms of variables, dimensions, causes or effects.[269] The relationship between an organizations culture and the ability of that organization to perform well is critically important in light of the failure of the U.S. government to effectively prevent the 9/11 attacks. In order to get closer to a true understanding about the causes of that failure it is imperative to first examine closely the nature of organizational cultures and the role they play in supporting or hindering the objectives of the organization. In order to accomplish this, this study attempts to build upon

[268] K. Cameron and D. A. Whetten, *Organizational Effectiveness: A Comparison of Multiple Models*, New York: Academic Press (1983).
[269] V. L. Meek, "Organizational Culture: Origins and Weaknesses," *Organizational Studies*, Volume 9, Number 4, (1988), pp. 453-473; C. Siehl and J. Martin, "Measuring Organizational Culture: Mixing Qualitative and Quantitative Methods, in M. O. Jones, M. D. Moore and R. C. Snyder (Eds.), *Inside Organizations: Understanding the Human Dimension*," Newbury Park, CA: Sage Publications (1988), pp. 79-103.

institutional theory in order to works towards an understanding of the role that culture has within organizations.

Towards An Institutional Theory of Culture

Building Upon Political Science & Organizational Theory

Political science has long been deficient in its treatment of culture within its fields of study. The disciplines most notable failure in this area has been its failure to look inside the "black box" of government agencies to examine the specific impact that culture has on the way that government institutions operate. Rather than peer into the internal operations of such organizations, the dominant approach of political science -- rational choice analysis -- has focused on decisions of officials of the institution to explain outcomes and the incentives that motive those officials to act in certain ways. Historically, fields within political science have ignored the internal forces within an organization that affect outcomes, such as norms, routines and cultures.

For the most part, the theories proffered by political scientists suggest that organizations change and adapt based upon their own self interests and a desire to survive. For examples, scholars from the congressional dominance school of thought argue that in the face of Congressional cuts to an agencies' budget and threats to its very existence, an agency will change, adjusting its priorities and activities to satisfy congressional demands. These political scientists argue that Congress, as an institution, ensures that its preferences are followed by utilizing control mechanisms such as

threatening to withhold appropriations.[270] Other scholars point to the President's interests, interest groups and courts as the motivating factors for agency changes.[271] From this literature, one is left with a sense that government institutions are constantly changing, whether due to pressure from lawmakers to conform to their wishes or from self interests of the executive branch -- either presidents or the agencies themselves. This suggestion, however, seems contrary to the facts as they were uncovered by the 9/11 investigations. The conclusions by these investigators found that the government institutions that were responsible for protecting the homeland from terrorists' attacks had not changed since the Cold War and because of a failure by the U.S. government to be "imaginative" about the terrorist threat, the United States was ill prepared for those attacks. In other words, even though the intelligence community faced great pressure from Congress to combat terrorism and the agencies themselves operated against the terrorists prior to 9/11, according to the 9/11 investigations, the institutions that comprise the U.S. national security system failed to adapt in the face of the threats from terrorism.

The rational choice approach seems unable to answer the puzzle: why government agencies whose financial support and actual existence depends on their effective performance against terrorists and protecting the homeland would fail to adapt

[270] Barry Weingast and Mark Moran, "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission," *Journal of Political Economy*, Volume 91, (1983), pp. 775-800; Matthew McCubbins, Roger Noll, and Barry Weingast, "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies," *Virginia Law Review*, Volume 75, (1989), pp. 431-82; Randall Calvert, Matthew McCubbins, and Barry Weingast, "A Theory of Political Control and Agency Discretion," *American Journal of Political Science*, Volume 33, (1989), pp. 588-611.

[271] Terry M. Moe, "An Assessment of the Positive Theory of 'Congressional Dominance,'" *Legislative Studies Quarterly*, Volume 12, Number 4, (1987), pp. 475-520.

in the face of a known threat. The behavioral outcomes, as concluded by the 9/11 investigations, are puzzles for rationalists. It is this empirical puzzle that Chapter 3 and Chapter 5 of this study focus on. Chapter 3 assesses the 9/11 Commission's conclusion that the government lacked imagination prior to 9/11 by illustrating how CIA acted in innovative ways prior to 9/11 to counter the threat. The CIA's institutional behavior was driven by the culture of that institution. Chapter 5 looks at intelligence collection within the United States focusing on the FBI and the 9/11 investigations' conclusions that U.S. domestic intelligence collection was insufficient to counter the terrorist threats prior to 9/11. The chapter demonstrates that cultural factors, both within the institution of the FBI and the larger organization of the Department of Justice which the FBI is a part of, had a large impact upon the behavior of the FBI in its approach to counterintelligence and counterterrorism prior to 9/11.

A New Focus on Culture Within Political Science and Its Institutional Impact

Recently, some important exceptions have emerged within the fields of political science to challenge the dominant perspective of the rational choice analysis -- ones that provide a clearer view of the complex set of constraints on institutions to act and to change. These new perspectives have brought into the debate about institutional performance and change a discussion about the role of norms, identities and culture within institutions. Specifically, within new institutionalism, strategic studies and constructivist theories, a number of scholars have focused on the role of norms and

culture within the state, as well as within organizations, by identifying the effects that these factors have upon the behavior of the institutions.[272]

According to culturalists, culture helps to explain organizational choices and behavior which can lead to a clearer understanding of outcomes. Broadly understood, for these scholars, organizational culture consists of beliefs and norms, symbols, rituals and practices which give meaning to the activity of an organization and its members. Within international relations, the structural realists choose not to examine the domestic organizational level and its impact on behavior. Rather they are primarily concerned with examining the behavior of international actors and thus only focus on the structure or international level. Scholars who accept the cultural approach, however, are critical of structural realists within international relations who chose only to focus at the structure level, treating international actors' preferences as given.[273] If one accepts that organizational culture exists -- as the 9/11 investigations acknowledged -- it is not logical to argue that preferences are fixed because as cultures differ and change they affect the preferences of the actors. Because the structural realists ignore the domestic level and the role that culture plays in affecting behavior, they are unable to explain

[272] Amy B. Zegart, *Spying Blind*, Princeton University Press (2007); Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, New York: Columbia University Press (1996); Peter J. Katzenstein, *Cultural Norms & National Security: Police and Military in Postwar Japan*, Ithaca, New York: Cornell University Press (1986); Elizabeth Kier, *Imagining War: French and British Military Doctrine between the Wars*, Princeton, NJ: Princeton University Press (1997); Scott D. Sagan , *The Limits of Safety: Organizations, Accidents, and Nuclear Weapons*, Princeton, NJ: Princeton University Press (1995); Anthony Clark Arend, *Legal Rules and International Society*, Oxford University Press (1999).
[273] Alexander Wendt, 'Anarchy is What States Make of It: The Social Construction of Power Politics', *International Organization*, Volume 46, Number 2, pp. 391-425; Martha Finnemore, *National Interests and International Society*, Ithaca, NY (1996), pp. 7-10.

events like 9/11 and assess the conclusions of the 9/11 investigations that government agencies failed to prevent the very events that they were created to prevent.

To recognize the existence of culture at the national or organizational level (as the culturalists do), however, is not sufficient to explain institutional behavior. In view of this, culturalists have demonstrated that norms, as part of culture, in fact, provide identities and prescribe action within an organization. In this way, norms shape the very way actors define their interests and form preferences from them. In other words, as norms change, and therefore the culture of an organization, the preferences of the actors can be altered. Norms serve to instruct actors about who they are and what they can do and , in effect, tell actors what they should do. Through an examination of the role of norms within culture, the culturalists have been able to illustrate how actors form preferences and then act upon them. If such norms can change, ultimately changing culture, then the neorealist's approach of given and fixed preferences is challenged.

To understand the function of culture and how culture affects institutional behavior, one needs to understand the role of norms operating within the particular culture. While international relations scholars have defined norms in a variety of different ways, norms are generally described as those beliefs which prescribe behavior for the members of the particular organization or institution.[274] These "norms establish expectations about who the actors will be in a particular environment and about how

[274] Jeffrey W. Legro, 'Culture and Preferences in the International Cooperation Two-Step', *American Political Science Review*, Volume 90, (1996), p. 122; Jeffrey W. Legro, *Cooperation under Fire: Anglo-German Restraint during World War II*, Ithaca, New York (1995). For a review of the various definitions scholars have provided see Gregory A. Raymond, 'Problems and Prospects in the Study of International Norms', *Mershon International Studies Review*, Volume 41, (1997), pp. 205-246.

these particular actors will behave."[275] The expectations and beliefs play a key role in determining how the members of an institution will operate on a day-to-day basis and the judgment calls they will make during the course of their work.

Writing in strategic studies, Peter Katzenstein distinguishes between *constitutive* norms, which "express actor identities", and *regulatory* norms, which "define standards of appropriate behavior".[276] Both types of norms together establish the expectations about the specific actors who will be in a particular environment and, importantly, how those actors will behave.[277] For constructivists, norms shape the way actors define their interests and from them form preferences by providing identities and prescribing behavior.[278] In sum, norms provide a framework to actors within organizations as to who they are and what they can do as well as what they should do. To understand why actors within the intelligence community acted in a certain way leading up to 9/11-- or failed to act -- it is important to understand the role that culture and norms played within the various institutions that comprise the intelligence community.

As this study demonstrates, there are benefits to examining the domestic level of analysis (institutions) and not just the inter-state or individual level of analysis. This argument has been supported by recent organizational analysis within strategic studies

[275] Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, 'Norms, Identity and Culture in National Security', in Katenstein, eds., *The Culture of National Security: Norms and Identity in World Politics* (Columbia, SC, 1996), p. 54.
[276] Katzenstein, *Cultural Norms*, pp. 18-19.
[277]Ronald Jepperson, Alexander Wendt and Peter J. Katzenstein, 'Norms, Identity and Culture in National Security', in Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics*, Columbia, SC, (1996), p. 54.
[278] Arend, *Legal Rules and International Society*.

and other cultural studies.[279] Looking within the organizational "black box," provides insights into the behavior of the government organizations that are the focus of this study and can led to an understanding of why certain security strategies fail. By examining culture as an element of a government institution like the FBI or the CIA, it is possible to gain an understanding for the behavioral outcomes of these institutions that are puzzles for the rationalists to explain. Chapter 4 of the study demonstrates that by placing too much emphasis on the individual mistakes made my people within the intelligence community (the leaders or the line employees), the individual level of analysis, fails to recognize the benefits that can be gained by understanding how institutions function based upon their internal characteristics. In the same vein, focusing only at the state level in studying national security strategies fails to appreciate the role that the institutions within the states have on the effective achievement of those strategies.

In a recent move to examine the role of military institutions within states and the role of culture within those institutions, Elizabeth Kier in her book *Imagining War: French and British Military Doctrine between the Wars*,[280] explains why military organizations choose one structure or strategy over another directly impacting the military effectiveness of the state against the enemy. In focusing on the role that culture plays in determining how a military will organize itself, Kier demonstrates how norms effect the way a military organization will organize to conduct war. For Kier, culture is

[279] Theo Farrell, 'Figuring out Fighting Organizations: The New Organizational Analysis in Strategic Studies', *Journal of Strategic Studies*, Volume 19 (1996), pp. 122-135.
[280] Elizabeth Kier, *Imagining War: French and British Military Doctrine between the Wars*, Princeton, NJ: Princeton University Press (1997).

the means through which action takes place which affects an organization's ultimate behavior. In her book Kier examines the military doctrinal developments in France and Great Britain during the interwar period.

In examining the French and British military doctrine, Kier uses a cultural approach to take issue with the conventional wisdom that military organizations inherently prefer offensive doctrines. In challenging the structural realist approach that argues that military organizations possess a given preference for offensive doctrines, Kier argues that a military's culture affects its choices between offensive and defensive military doctrines. Drawing upon organizational theory, Kier demonstrates that military organizations differ in their worldview and the appropriate conduct of their missions. For Kier it is this organizational culture which determines how the military will respond to constraints such as terms of conscription set by civilian policymakers and not the individual leaders and their interests.

In *Imagining War*, Kier explains why the French Army switched from an offensive to a defensive doctrine in 1928, even in the face of the offensive capabilities that their conscript forces provided. The French Army was responding to the introduction of a short-term conscription. Kier shows that the French Army believed that conscripts were incapable of implementing an offensive doctrine. Therefore, the French Army adopted a defensive doctrine even though it did not value such a doctrine but because of its belief that the conscripts could not implement an offensive doctrine. Kier shows how the French Army's beliefs and norms defined its organizational capacity and behavior. She illustrates how regulatory norms shaped the behavior of the

military by providing actors with ways of defining problems and responding to them appropriately. The actors ask themselves, "What kind of situation is this" and "What am I suppose to do?"[281] In other words, the culture within the military operated to affect behavior by "shaping a repertoire of 'tool kit' of habits, skills, and styles from which people construct 'strategies of action'."[282]

Constitutive norms also shape the behavior of military institutions by facilitating the process by which actors construct identities which give meaning to their actions and the actions of others around them. The particular identity that is developed will dictate how the actors/institutions perceive their missions to be and therefore will result in certain behavior that is perceived to be in-line with that identity. As with Kier's French military, the actors ask themselves, "What am I supposed to do as an French Army officer?" Even in the face of the value of conscription forces that the Germans used against the French, the French continued to possess a negative view of conscription forces, which led the French Army to be blinded to the possible benefits of the conscription forces. The military's organizational culture blinded it to a potentially more effective way of operating.

In a similar view, since the creation of the FBI, the dominant law enforcement culture within the Bureau has played a key role in creating a negative view within the Bureau of the potential value of intelligence in support of its functions. The norms which FBI agents operated in accordance with defined the problems and how the agents

[281] Martha Finnemore, *National Interests and International Society*, Ithaca, NY, (1996), p. 29.
[282] Ann Swidler, 'Culture in Action: Symbols and Strategies', *American Sociological Review*, Volume 51, Number 2 (1986), p. 273.

would respond to those problems in addition to creating the identities of the FBI agents as government officials who arrested criminals and took them off the streets to make the streets safer. The FBI agents within the Bureau saw themselves as criminal investigations who were responsible for collecting evidence to support the prosecution of individuals for the commission of a crime. The same norms that functioned to develop this identity also created the FBI agents' frame of reference about "others" who were responsible for intelligence. The FBI's resistance to the acceptance of its intelligence function is not due to any lack of effort by FBI officials or ill-intent by any FBI employees. Rather, it is the result of a well established and deeply ingrained organizational culture of the FBI that was developed because of its long established criminal investigative mission rather than an intelligence mission. This topic is revisited in Chapter Five.

"New" Institutionalism: Progress with Culture

Within institutional theory, there has been the emergence of the "new" from the "old" institutional theory. In contrasting "old" with "new," DiMaggio and Powell describe the "new" institutionalism as taking a new view toward cultural explanation.[283] This progress in the field is significant in the development of theories that can more accurately attempt to explain institutional behavior. Two particular perspectives among the new institutionalists are critical to the development of the understanding of the role of culture -- the historical and the sociological institutionalists. Both of these groups of scholars focus on culture and its impact on institutional behavior. The historical

[283] Walter W. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, Chicago: University of Chicago Press (1991).

institutionalists focus on culture as a part of an institution that will affect institutional behavior from within. The sociologists present the components of organizational culture as coming from the environment of an organization, which they define in functional terms as organizational fields that exist at the boundaries of industries or professions. For the sociologists, it is the interaction between actors within these professions that create and can change the culture of an organization. Both of the historical and sociological approaches within new institutionalism are important to understanding how culture affects the institutions that operate within the U.S. national security system. The sociologists of new institutionalism go beyond even what constructivists contributed to the discussion of culture and identify where culture comes from; the institution's environment. This insight has important ramifications for the reform of the FBI's culture. If, as the sociologists within new institutionalism argue, culture comes from the environment, then changing the FBI culture will entail changing its environment.[284]

As strategic studies scholars like Kier and constructivists like Katzenstein have argued, institutions are conceived as operating within a national environment and, therefore, organizational culture exists within a national historical experience. For an institution like the FBI, its history has had a tremendous impact upon how the institution operates today. Chapter 5 of this study traces doctrinal change in how the FBI operates within the United States to the organization's reaction to domestic political developments, namely, the investigations of the FBI by the congressional committees in

[284] Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI*, New York: Free Press (2004).

the 1970s (and the committees published reports) and the drafting of the Attorney General guidelines that resulted from those investigations.[285] Chapter 5 demonstrates how the FBI was shaped by norms that emerged after intense domestic political conflict in the 1970s over the role of the FBI in domestic intelligence activities.

The history of an institution sheds light on why an institution should behave in a certain way as well as providing insights into whether and how an institution can reform. The norms, rules, and habits of the Bureau have developed over time as the Bureau has evolved. That history is part of the story of the FBI's culture today and has been largely responsible for the FBI's success as criminal law enforcement organization. The challenge, today, is determining whether that same organizational culture can be effective in supporting the FBI's intelligence mission. And, if not, can that culture be changed and how. These are the questions that the 9/11 investigations left unanswered and that this study, specifically with its focus on the role of culture, seeks to address.

According to the historical institutionalists, history is critical to understanding the current behavior of an institution. For these scholars, the concept of "path dependency," is an important concept in the review of an institution's behavior and

[285] U.S. Senate, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Congress, 2nd Session, April 26, 1976 ("Church Committee Report"); U.S. Congress, House, Select Committee on Intelligence, Recommendations of the Final Report of the House Select Committee on Intelligence, House Report No. 94-833, Washington, DC: Government Printing Office (1976) ("Pike Committee Report")(Because of disagreement over the Committee's insistence on including classified information within its report, the formal report of the committee was never formally published. This is the recommendations section of the report); *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, May 30, 2002 (these guidelines are unclassified); *The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*, October 31, 2003 (these guidelines have been partially redacted).

capacity for reform. The concept of "path dependency" is based on the idea that "outcomes at a 'critical juncture' trigger feedback mechanisms [negative and positive] that reinforce the recurrence of a particular pattern into the future."[286] This concept highlights the role of "historical causation" in which forces are triggered by an event or a process at one point in time and reproduce themselves, even in the absence of the recurrence of the original event or process.[287] In other words, path dependence means that the history of an institution matters and cannot be ignored. "We cannot understand today's choices . . . without tracing the incremental evolution of institutions."[288]

For institutional sociologists, institutions like the FBI and individuals like FBI agents are seen as reacting to their embedded settings. In other words, the Bureau and the agents within it are a function of its operational environment. The institutional sociologists have pointed out that certain "cultural fields," which define concepts such as justice, efficiency, equality and democracy, influence organizational choices and behavior.[289] These cultural fields themselves serve to offer a variety of different symbolic and cultural systems from which organizations choose from. Their choices are then reflected in the specific structures, functions, rules and goals of the organization, as well as in the decisions of individuals within the institution. Actors within a particular field then gradually develop understandings of appropriate

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[286] Paul Pierson and Theda Skocpol, "Historical Institutionalism in Contemporary Political Science," in Ira Katznelson & Helen V. Milner, eds. , *Political Science: State of the Discipline*, New York: W.W. Norton, (2002), pp. 665-6.
[287] Arthur L. Stinchcombe, "Tilly on the Past as a Sequence of Futures," in C. Tilly, ed., *Roads from Past to Future*, Lantham, MD: Rowman & Little Field, (1997), pp. 387-409.
[288] Douglass C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge, UK: Cambridge University Press, (1990), pp. 100.
[289] Richard W. Scott, John W. Meyer, and associates, eds., *Institutional Environments and Organizations; Structural Complexity and Individualism*, Thousand Oaks, CA (1994).

organizational form and the appropriate behavior required of them. Importantly, these cultural fields that are organizational and professional are the root for the development of norms. In this way, norms encourage actors operating within the same organizational fields to act in the same, predictable way.[290]

This "new" sociological stream of new institutionalism has caused some complications for the general theory of new institutionalism. Based upon the arguments about cultural fields that these sociologists have made, institutions are no longer depicted as independent variables but at best they are intervening variables. Aside from some of the theoretical challenges these scholars have created within the field, making the theory more complex, their insights into the role of culture and cultural fields provide a very useful framework for analyzing the impact an organization's history and environment will have upon the choices the organization will make and its behavior. If cultural fields are a source for the development of norms which dictate behavior then these fields become very important for those interested in understanding how norms and culture develops within an organization. Furthermore, for those interested in knowing how the culture of an organization can be changed these fields are important. Chapter 3 examines CIA and the innovative steps the agency took prior to 9/11 to address the threats the U.S. faced. That chapter examines the locus of CIA's culture of innovation being developed and sustained at the periphery of the institution. The idea of cultural fields is important to the development of the understanding of CIA's organizational

[290] Paul DiMaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional isomorphism and Collective Rationality,' in Walter w. Powell and Paul J. DiMaggio, eds., *The New Institutionalism in Organizational Analysis*, Chicago, IL, (1991), p. 64.

culture. Chapter 5 focuses on the FBI and its performance in conducting intelligence collection activities within the United States. In order to assess the Bureau's performance (and potential for effective improvement), the insights from new institutionalists on the impact of history and environment is critical to the analysis of the Bureau's effectiveness as an intelligence organization.

In defining organizational/cultural fields in functional rather than national terms, new institutionalists focus attention on historical developments that are profession-wide. In applying their insights to the FBI, they can explain a tremendous amount about the FBI's culture as a criminal investigative organization, behaving in a similar fashion to other criminal investigative professions. Since its creation, the FBI has had to operate within the political environment of the United States -- its laws, courts and legislative branch -- all which emphasize the protection of civil liberties and frowns upon any appearance of intrusive activity by the FBI into activities that are considered private. The FBI also has had to operate, since its creation, as part of another institution, the Department of Justice (DOJ), which entails following those guidelines that DOJ has set out limiting the activities of the Bureau. The environment the FBI is embedded within and its historical experiences function to create certain cultural fields that influence the FBI's behavior.

How Can Political Science & Organizational Theory Help

Although neither organizational theory nor political science, in general, provide a simple and readily available explanation of effective institutional reform, together they proffer useful foundations for a general framework for institutional reform of U.S.

national security institutions. By providing an understanding of how an instititution's history and environment impacts its culture and therefore its behavior, these theories are useful in understanding how and why institutions operate in certain ways and thereby can provide building blocks for those interested in determining what changes and reforms could be the most effective in bringing about the desired improvements in institutional behavior. Furthermore, the theories of new institutionalism and constructivism have much to offer to each other's disciplines. Particularly in the most recent work done by new institutionalists in the area of organizational cultural fields, scholars argue that the 'rationalized modern environment' has rapidly developed at the world level producing 'worldwide isomorphism in organizing.'[291] In other words, the norms that are developed within these cultural fields lead to those within the fields acting in the same fashion. This in turn can lead to the organization acting in a predictable fashion based upon those norms. Because the fields are based on professional groups of actors, other similar professional groups will act in similar ways because the behavior is seen as legitimate and professional. These groups will "mimic" each other. For example, military organizations within different state systems will mimic each other in their forms and practices like training and operations when they see the other institution within the same cultural field – legitimate and professional. Although not the focus of this study, the insights from new institutionalist gained by examining the domestic institutional level have direct relevance for those within

[291] John Meyer, 'Rationalized Environments', in W. Richard Scott, John W. Meyer, and Associates, eds., *Institutional Environments and Organizations; Structural Complexity and Individualism*, Thousand Oaks, CA, (1994), p. 31.

international relations who examine state to state behavior and are interested in how states model their different national security systems for effectiveness as well as for those interested in the potential for a world-level model of networks and norm creation.[292] The recent move within theories like new institutionalism and constructivism to examine culture as part of the context of a domestic institution as well as a cause of institutional behavior is helpful not only to the analysis of the domestic U.S. national security system but also to those interested in international relations. By illustrating how the role of culture can inform the discussions about intelligence reform, it is hoped that this study will effectively bring culture back into broader discussions of state behavior as well.

Theory of Culture in a Complex System

Given the differences among theoretical schools of thought, how are we to bridge these gaps and apply various social science theories to U.S. national security institutions? The debates over the past forty years in the social sciences are those with which the U.S. national security world is now grappling as it deals with international threats from terrorists and the proliferation of WMD and how it should reorganize the U.S. government to respond to these threats. Debates over how government organizations and agencies think and behave are critical for the U.S. national security establishment to understand if they are to accomplish their mission to protecting the security of the United States. The issue for the U.S. national security leaders is how to transform the social science debate into an integrated format that allows for an

[292] Martha Finnemore, 'Norms, Culture, and World Politics: Insights from Sociology's Institutionalism', *International Organization*, Volume 50, Number 2, (1996), pp. 325-47.

analytical methodology and framework to analyze culture within the national security system.

Several social scientists have integrated their definitional and methodological approaches into the analysis of cultures and society by using a multi-theoretical, multi-disciplinary framework. In his research on the current state of intercultural knowledge, Stephen Dahl conceptualizes culture as:

> A shared set of basic assumptions and values, with resultant behavioral norms, attitudes and beliefs which manifest themselves in systems and institutions as well as behavioral patterns and non-behavioral items. There are various levels to culture, ranging from the easily observable outer layers (such as behavioral conventions) to the increasingly more difficult to grasp inner layers (such as assumptions and values). Culture is shared among members of one group or society, and has an interpretive function for the members of that group. Culture is situated between the human nature on the one hand and the individual personality on the other. Culture is not inheritable or genetic, but culture is learned. Although all members of a group or society share their culture, expressions of culture-resultant behavior are modified by the individuals' personality.[293]

Dahl's definition recognizes the various units of analysis and how they influence one another. He acknowledges the interplay of cognitive, behavioral and relational processes. In addition, he recognizes how these dynamics impact decisions, actions, institutions and other material constructs, while also understanding how outcomes and material constructs impact cognitive, behavioral and relational processes.[294] This is important for the U.S. national security system reform especially because the typical

[293] Stephan Dahl, *Intercultural Research: The Current State of Knowledge*, Middlesex University Business School Discussion Paper, (2004), retrieved online 13 August 2007 from http://stephan.dahl.art/research.pl, p. 5-6.
[294] Ibid.

approaches to reform have tended to either ignore culture or address culture only on one level, without understanding the complex, fluid dynamics on the ground.

Another example is the work done by political scientist Lisa Wedeen. She discusses the importance of attempting to conceptualize culture such that it moves away from the argument that culture does not matter because it is too difficult to empirically measure. She correctly argues that static or rigid categories or units of analysis do not allow for change over time, or for variations within the meso- or micro-levels. Wedeen recommends an approach that provides for descriptive causal and explanatory variables. In addition, she recommends including the effects of structural constraints operating in a person's or group's environment. Her arguments point to the importance of understanding the combination of dynamics and how they impact the current situation on the ground.

Some of the present focus on structural fixes to disasters can obscure the significance of culture to a functioning organization. Building upon Perrow's system work, Diane Vaughan recently sought the answer to one of America's most famous technological tragedies: the Challenger shuttle launch disaster. In her ethnographic study, *The Challenger Launch Decision: Risky Technology, Culture and Deviance at NASA*, Vaughan uses ethnographic "thick description"[295] to examine the culture of

[295] The thick description methodology stems from Clifford Geertz and his essay "Think Description: Toward an Interpretive Theory of Culture," *The Interpretation of Culture*, Chapter 1, New York: Basic Books (1973). According to Geertz, ethnography is by definition "thick description." He uses the act of "winking" to describe what thick description means. Geertz explains that in order to distinguish the winking from a social gesture like a twitch, we must move beyond the action to both the particular social understanding of the "winking" as a gesture (the state of mind of the winker), the winker's audience, and how they construe the meaning of the winking action itself. "Thin description" is the winking. "Thick description" is the meaning behind it and its symbolic import in society or between communicators.

NASA and concludes that, unlike the majority of investigations' conclusions (including the presidential commission) into the shuttle disaster, the cause of the disaster was not faulty O-rings or incompetent and reckless managers at NASA; rather the root cause of the accident, according to Vaughan, was the NASA culture – "a culture which normalized deviance" (deviance in the sense of the unexpected or nonstandard occurrence) – thus leading to a series of decisions culminating in the accident.[296]

These social scientists can provide the U.S. government keys to understanding culture and its role or influence on individuals, groups, agencies and organizations and even states. With such understanding, those responsible for the redesign of the U.S. national security institutions can better understand how culture affects the work of individuals and the institutions that comprise the U.S. national security system. In order to do this, culture cannot be expressed as a monolithic or static unit of analysis. The assessment of culture should be thought of in terms of degrees or on a continuum. One must avoid the position that culture is everything because than it is, in effect, nothing. This is a circular argument that does not allow for empirical study. The conceptualization of culture must also allow for analysis at different levels. An appropriate approach to the conceptualization of culture would be one based on a systemic level approach. As noted by Perrow, a system is considered a fluid and dynamic complete unit that is made up of interconnected and interdependent parts, all

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Geertz's point is that social actions are larger than themselves, they speak to larger issues. It is the job of the scholar (for Geertz the ethnographer) to see the deeper meaning behind those social acts.

[296] Diane Vaughan, *The Challenger Launch Decision.*

interacting with one another.[297] A systems theory approach to culture would focus on the complexity and interdependence of relationships and would provide a framework within which to analyze various units in the context of their natural setting. This would allow those that need to think about reform to examine the various complex cultures between and within the different institutions of the national security system.

The system approach to culture adopted for this study has received much acceptance, particularly in anthropology.[298] This approach focuses on the shared assumptions of a group of people -- their understanding about the way the world works or should work -- and the meaning they attach to these assumptions. It involves the fundamental shared values of people in an institution, as well as their shared beliefs about why that institution exists. Culture shapes the thought and actions of people within an institution. It also alters the particular mindset through which the people in the institution view others as well as themselves, and how they interpret events. Culture involves norms of behavior that dictate how members of the institution will behave toward each other and toward outsiders to their institution. Culture is a very powerful feature of an institution, as it acts as the social motivation and control system for members of the institution.

Institutional culture operates at several levels, ranging from cognitive and behavioral dynamics at the micro, meso- and macro- levels to relational processes at the

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[297] Charles Perrow, *Normal Accidents*, p. 64-66.
[298] David Elkin and Richard Simeon, "A Cause in Search of Its Effect, or What does Political Culture Explain?" *Comparative Politics*, Volume 11, (1979), pp. 127-146; Young Kim, "The Concept of Political Culture in Comparative Politics," *Journal of Politics*, Volume 26, (1964), pp. 313-336; Edgar Schein, *Organizational Culture and Leadership*, San Francisco: Jossey-Bass (1985).

meso- and macro- levels. Culture includes the more observable outer layers of an institution such as the specific obvious acts of its members. Culture also includes the harder to identify inner layers within the institution – the day to day internal interactions between members of the institution that are not necessarily visible from the outside. Culture serves many functions that allow humans to adapt and to survive. Culture acts as an interpretive lens, which provides for various levels of identity (at the individual, group, national, regional, and universal levels), leading to meaning and patterns of relationships, depending on the context or situation. Culture is shared influences, and is shaped by members of a group, community, institution and the environment. Culture is also transmitted and reinterpreted generationally, based on the specific context or situation.[299]

Looking at culture from a complex system approach allows for a common framework at various levels of analysis using a multi-theoretical and multidiscipline methodology. Applying such a systems analysis approach to culture and the study of the U.S. national security system gives rise to a descriptive, explanatory and patterned analysis and assists a decision-maker with problems of identifying, influencing or controlling a system or parts of the system, while taking into account multiple objectives, constraints and resources. A systems approach allows for general awareness of interests, actions and intended and unintended consequences which arise from the

[299] Johnston (1995);Weaver (2000); Clifford Geertz, *The Interpretation of Cultures*, New York, NY: Basic Books (2000); Wedeen (2002); Wiktorowicz (2004); Helen Altman Klein, Chapter 9: Cognition in Natural Settings: The Cultural Lens Model, in Michael Kaplan's (editor) *Cultural Ergonomics: Advances in Human Performance and Cognitive Engineering Research*, Volume 4, pp. 249-280, Elsevier Press, Ltd (2004).

fluid dynamics, complex relationships and multiple variables. Such a systems approach towards culture and the U.S. national security system applied to the redesign of the national security institution of the U.S. can improve the United States' ability to operate more successfully across the range of threats that its government faces.

Encouraged in part by the economic success of Japanese companies, organizational theorists began studying how the culture of an organization affects organizational behavior and decisions.[300] Those organizational theorists in management theory came to the realization that an understanding of an organization's culture(s) could be a major step on the road to changing or controlling the direction of that organization. Edgar Schein, a prominent theorist of organizational culture, defined culture as follows: "A matter of shared basic assumptions that the group learned as it solved its problems of external adaptation and internal integration, that has worked well enough to be considered valid and therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems."[301] In other words, as institutions evolve over time, they confront two basic challenges: integrating individuals into an effective whole and adapting effectively to the external environment in order to survive. As groups find solutions to these problems over time, they engage in a kind of

[300] Terrence E. Deal and Allen A. Kennedy, *Corporate Cultures*, Reading, Mass.: Addison-Wesley (1982); Andrew Pettigrew, "On Studying Organizational Cultures," *Administrative Science Quarterly*, Volume 24, December, (1979), pp. 570-82; Edgar Schien, "Coming to a New Awareness of Organizational Culture," *Sloan Management Review* Volume 25, Number 2, Winter 1984, pp. 3-6. For and application of this concept to security studies, see Jeffrey Legro, *Cooperation Under Fire: Anglo-German Restraint During World War II*, Ithaca: Cornell University Press, (1995) and Elizabeth Kier, *Imagining War: French and British Military Doctrine between the Wars*, Princeton, NJ: Princeton University Press (1997).

[301] Edgar Schein, "Organizational Culture and Leadership" in *Classics of Organization Theory*, Jay Shafritz and J. Steven Ott, eds., Fort Worth: Harcourt College Publishers (2001).

collective learning that creates the set of shared assumptions and beliefs we call "culture." Members of a group culture can also belong to subcultures within an organization. Since organizations have a shared history, there will normally be at least some values or assumptions common to the system as a whole. But sometimes, as in the various intelligence agencies, subcultures have different experiences over time, and their group learning produces very different sets of basic assumptions.

The culture of an institution shapes its members' perceptions and affects what they notice and how they interpret it; culture screens out some parts of "reality" while magnifying others. Members of an institution interpret the behavior and language of others through their own cultural biases. Each member's set of beliefs, values and assumptions becomes their unquestioned "reality;" they then perceive behavior inconsistent with their own biases as irrational, or even malevolent. Looking at these conflicts through the organizational culture model, they can be rightly seen as a product of different sets of experiences. According to organizational theorists like Schein, the process of creating culture and management is the essence of leadership.[302] Other theorists, such as like Gideon Kunda, describe culture to be that which embodies both the implicit and explicit rules and behavior of a particular group of people and the conscious efforts of management to "engineer" the culture to its own goals.[303]

[302] E.H. Schein, *Organizational Culture and Leadership*, 2nd ed., San Francisco, CA: Jossey-Bass (1992).
[303] G. Kunda, *Engineering culture: Control and commitment in a high-tech corporation*, Philadelphia, PA: Temple University Press (1992).

In this regard, Keesing speaks of culture as "shared in its broad design and varying between individuals in its specificities."[304] For Keesing culture involves a "code" being followed or the game being played in the society. Geertz's view of culture is related to Keesing's understanding of culture. For Geertz culture is "a set of control mechanisms – plans, recipes, rules, instructions (what computer engineers call 'programs') – for the governing of behavior" rather than behavior itself.[305] In a similar vein to how Elizabeth Kier described culture, it is not the specific action that is prescribed but rather a "tool kit" that provides the mechanism through which action takes place. Culture, for these scholars, thus excludes behavior but includes perceptions of behavior – what the member of the institution believes to be appropriate behavior, how he sees himself and his institution. It is a collective understanding and exists independently of any particular individual members of an institution. It, however, would not exist, except in artificial forms, if there were no people within the institution.

Culture is an important explanatory variable; it exerts an influence on behavior that cannot be accounted for by the impact of coercion, structures, laws, economic rationality and other such influence. It is an acquired knowledge that people use to interpret their experiences and guides certain general behavior. Cultural patterns are routine, largely unexamined or analyzed options followed by most people most of the time within the institution. Yet they are more than habit. Scripts and culture are

[304] David Elkins and Richard Simeon, "A Cause in Search of its Effect or What does Political Culture Explain?" *Comparative Politics*, (1979), p. 129.
[305] Ibid. at 129.

"knowledge structures, not merely response programs."[306] Culture provides the "script" when opportunity and information costs suggest restricting effort.

A Case Study on Culture: The U.S. Forest Service

In *The Forest Ranger*, Kaufman provides an excellent example of the role that culture plays in the operations of individual members of an institution. In his book, Kaufman, describes how the rangers, operating far from headquarters, "could conceivably go off in many directions, running their districts in widely varied and totally unrelated fashions."[307] Yet, the rangers did not deviate from the standards procedures for all rangers because, according to Kaufman, the rangers operated on a shared philosophy of forest management. This shared understanding resulted in a uniform way of working and internal stability throughout the Service. The rangers did use their discretion to adapt the philosophy to the situation when necessary, but they always acted in the spirit of the official Forest Service policy of resource management.

The amount of unity of action that Kaufman found in the U.S. Forest Service was significant given the multiple forces under which large public bureaucracies typically operate. Most large public bureaucracies, like the national security system, are characterized by fragmentation and a lack of unity of effort. In fact, this was one of the criticisms the 9/11 investigations had about the functioning of the intelligence community – a lack of united effort. This phenomenon is well studied by students of public administration. According to those that study public administration, the

[306] Robert F. Adelson, "Psychological Status of the Script Concept," *American Psychologist*, Volume 36, pp. 715-729 (1981).
[307] Herbert Kaufman, *The Forest Ranger: A Study in Administrative Behavior*, Washington, D.C.: Resources for the Future, (1960), p. 64.

administrative deficiencies of organization and environmental changes impose strict limits on the capacity for those responsible for the bureaucracies to govern them.[308] Interestingly, the same set of problems that beset the government agencies that make up the national security system beset the U.S. Forest Service. And yet the Forest Service overcame these fragmentary forces and was able to create a high degree of administrative unity.

Kaufman concludes that it was no accident that the U.S. Forest Service was able to function in a unified manner. Kaufman argues it was the concerted efforts by the leaders of the Forest Service to create and sustain a strong sense of a common mission or culture which lead to the successful operations of the Service. The leaders of the Service accomplished this by putting in place an intricate set of administrative principles and practices that held the large organization together. They also concentrated on hiring and training the right people with the right backgrounds that would work within the culture that they were trying to develop.[309] In his study, Kaufman suggests that other large scale organizations could be just as effective as the Forest Service in institutionalizing a shared sense of culture that could overcome external and internal forces in order to create a unified institutional approach to tasks. Few, if any, of the 9/11 investigators appear to have keyed into the insights regarding the impact that culture has on the performance of organizational tasks.

[308] C.C. Hood, *The Limits of Administration*, London: John Wiley (1976).
[309] Wilson, *Bureacracy*.

The Fit: Strategy-Design-Environment

The performance of an institution depends on its strategy, its organizational design, and the environment in which it operates. There may be more than one appropriate strategy, as well as more than one way in which to design an institution. The key to maximizing the performance of an institution, however, is to design an institution in such a way that it matches the particular environment and strategy for operation. The key, then, is finding and establishing a fit amongst strategy, design of the institution, and its environment and then maintaining that fit over time in the face of change. In other words, as the environment changes, one must consider the necessity of readjusting the design of an institution and possibly the strategy which is to guide an institution. In order to successfully implement strategy, one must constantly examine in detail particulars of the institution's design -- all of its features; the people, the structure, the routines and processes and the culture. Structure is only one feature of an institution's organizational design. Often it is the only feature on which people focus as they think of organizational charts and ignore people, processes and routines and culture. Structure is usually overemphasized because it affects status and power, and it is most likely to be seized upon and reported in the press. However, in the changing threat environment of today, structure may be less important, while processes, rewards and people may be the more important.

Traditional public administration theorists argued, for example, that interagency coordination should be forced upon agencies through reorganization and interagency committees. Today, top-down attempts to consolidate the bureaucracy tend to be seen

as symbolic actions or struggles for political control rather than as instrumentally effective means to coordinate agency activities.[310] Evidence suggests that the merging of agencies does not lead to increased coordination unless the fundamental tasks, financial resources and career rewards within the agencies are changes.[311] Interagency committees are another way that government agencies are compelled to coordinate from the top down. Yet they often do not appear to be successful. As Harold Seidman and Robert Gilmour have opined, "Interagency committees are the crabgrass in the garden of government institutions. Nobody wants them, but everyone has them. Committees seem to thrive on scorn and ridicule and multiply so rapidly that attempts to weed them out appear futile."[312] In short, compelling agency officials to sit on committees does not perforce mean they will cooperate. In a similar vein, creating centers for structural reorganization does not necessarily mean that individuals will share information. Beyond structural changes within the intelligence community, a much deeper analysis needs to done with respect to the role that other features of an institution -- notably culture -- play in affecting institutional behavior.

Conclusion

Designing and redesigning institutions is not new. Moreover, as the various theories in this chapter have highlighted, the options for institutional design are multiple. No one design is necessarily the perfect design. Much about the effectiveness

[310] James G. March and Johan P. Olsen, "Organizing Political Life: What Administrative Reorganization Tells Us About Government," *American Political Science Review*, Volume 77, pp. 281-296 (1983).
[311] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*. New York: Basic Books (1989).
[312] Harold Seidman and Gilmour, Robert, *Politics, Positions and Power: From the Positive to the Regulatory State*, 4th ed. New York: Oxford University Press (1986), p. 226.

of an institution's design will dependent upon the particular bureaucratic environment in which the institution is situated as well as the embeddedness of constraints built into the design of an institution. The realities of the environment within which an institution falls, that institution's culture and the tradeoffs involved in choosing structural options are all factors that must be taken into consideration to design or redesign an institution. In other words, no one blueprint for institutional design works at all times for each desired outcome. In fact, as theoretical implications suggest, rarely is there anything like a blueprint. What is required in designing an institution is an understanding of the complexities involved in making changes to that body and sensitivity to the trade-offs involved between any choices undertaken for a new design.

Chapter 3

Institutional Innovation

> We believe the 9/11 attacks revealed four kinds of failures: in imagination, policy, capabilities, and management.
>
> - The 9/11 Commission Report[313]

> Organizational adaptation almost always meets with defeat, becomes watered down, or gets shelved for another day, when the next crisis erupts.
>
> -Amy Zegart [314]

Introduction

During the Cold War the U.S. intelligence community's primary target was a foreign government -- a great power -- that was an observable and relatively accessible adversary. The Soviet Union was an enemy that could be clearly defined within its territories and the countries where it operated. Since the end of the Cold War, however, the intelligence community has operated on a new playing field of threats from the international environment where its targets are not readily observable, move more easily and secretly across national borders and are not tied to national governments. As one former intelligence official described, "During the Cold War, the world was relatively static where we were focused almost exclusively on the Soviet Union for most of that time. Our resources were devoted to the Soviet threat as well as the majority of our

[313] The 9/11 Commission, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, New York: W.W. Norton (2004), p. 339.
[314] Amy B. Zegart, *Spying Blind: The CIA, the FBI and the Origins of 9/11*, Princeton: Princeton University Press (2007), p. 60.

time. As terrorism emerged, we knew that it represented something very different than what the Soviet threat was for us."[315]

In its report, the 9/11 Commission provided a detailed narrative of how the threats America faces today have changed since the Cold War when the U.S.' main adversary was the Soviet Union. The majority of the threats that the U.S. faces today are from undefined enemies who wage war in unconventional ways. During the Cold War, the U.S. could rely on facing a clearly defined enemy, fighting a conventional war, and defeating the enemy through a combination of political will and military strength. Shortly after the end of the Cold War, however, the U.S. government was forced to confront the threats posed by a new enemy – terrorists. The United States could no longer rely on the traditional methods for confronting these new enemies.

In many ways these new threats are far more daunting for the intelligence community to counter then the threats posed by the Soviet Union. Unlike the Soviet Union, terrorists, their organizations and the territories from which they operate are not clearly recognizable. These traits of the new enemy, in addition to its use of tactics of "asymmetric warfare," significantly reduce the advantages the U.S. once possessed against its enemies based upon its superior military forces. In the face of an enemy that is seemingly impossible to identify, or local with any precision, the traditional means of warfare employed by the United States appear to be of limited usefulness. For the tank commander, the artillery sergeant or the fighter pilot, if an enemy is everywhere, then it is nowhere. Terrorists who use suicide bombers against non combatants and shed

[315] Interview with Paul Frandano, August 31, 2007, lunch in McLean.

military uniforms have rendered the traditional U.S. military use of force inadequate in confronting and defeating the new enemy. As the threat from terrorist rose after the Cold War, rendering traditional military force less effective, intelligence played an increasingly more important role in countering the new threats.

The challenge for the U.S. national security establishment, and the intelligence community as a part of that establishment, has always been to organize in such a way to enable those government agencies responsible for countering threats against the United States to operate swiftly and effectively in the face of, at times, very dynamic and deadly threats. Whether prior to, during or after the Cold War, U.S. government institutions needed to be able to respond in dynamic ways to the different threats that they faced from abroad or domestically. For an organization to have this ability, requires that the bureaucratic institutions themselves must have the capacity to change and adapt in the face of changing threats. As former CIA officer and former chief of Alec Station Michael Scheuer noted, "The conditions of looking for human intelligence are so different from the Cold War that just more money and more people doesn't guarantee you anything."[316]

This chapter posits that innovation is the cornerstone of institutional adaptability to changes developing outside of the institution, including the emergence of new threats. Furthermore, this chapter illustrates how people, the institutions themselves that are the collective groups of people, and the culture of the institution are factors that determine an institution's ability to operate in an innovative manner (or in the words of

[316] Quoted in Siobhan Gorman, "Fewer Better Spies Key to Intelligence Reform, Former Official Says," *National Journal*, March 18, 2005.

the 9/11 Commission "with imagination"). From this proposition it follows that to foster innovative behavior by an institution, there needs to be a certain belief in individual autonomy and discretion within the institution and by those involved in creating and establishing the rules and procedures for the institution. This chapter illustrates that much of innovative activity entails a reshuffling of already existing materials, capabilities and structures rather than a "pure" creation of something new. Innovation is not only about implementing a new program or a new technology. Rather, it involves an organization altering the very way that it sees its tasks. This chapter discusses how shifts in the institutional environment of the CIA (changes in the threats it faced) created opportunities for individuals at the CIA and the institution of the CIA to seize upon existing capabilities and tools to subvert existing ways of accomplishing a task and bring about new forms or organizing and new ways of carrying out functions.

The 9/11 investigations and some critics argued that the intelligence agencies failed to adapt to the rise of terrorism after the Cold War ended.[317] As the Joint Inquiry concluded, "The Intelligence Community was neither well organized nor equipped, and did not adequately adapt to meet the challenge posed by global terrorists focused on targets within the domestic United States."[318] There is, however, a great deal of evidence that prior to 9/11 some agencies, specifically the CIA, did adapt to the newly emerging threats the U.S. faced both from terrorism and other more conventional threats. This chapter reviews some of the evidence of the adaption by the CIA to the

[317] Amy Zegart, "September 11 and the Adaptation Failure of U.S. Intelligence Agencies," *International Security*, Volume 29, Number 4 (Spring 2005), pp. 78-11; *The Joint Inquiry Report*; *The 9/11 Commission Report.*
[318] *The Joint Inquiry Report*, p. xv.

numerous threats the U.S. faced over the years since 1947 when it was originally established.

The first section of this chapter will examine the academic literature from organizational theorists and political scientists on organizational change and learning. The second section of the chapter provides detailed examples of adaption by the CIA drawing upon the insights from the theories in order to draw conclusions about the reasons for the CIA's ability to adapt to changing threats. The chapter argues that much can be learned about the institutional attributes that will support and sustain adaptive and innovative behavior within an organization like the CIA from the insights from these theories. An institution's culture and organizational structure are elements of an institution that will impact the institution's ability to adapt to new changes in its environment. The chapter concludes by arguing that some of the reforms that have been made to the intelligence community and the CIA since 9/11 may have actually subverted the very attributes that this chapter identifies as critical to institutional adaptability.

The Call for Imagination

During the rise of terrorism, the U.S. government recognized the new and growing threats that the country faced and attempted to address those threats by various means -- adopting a new U.S. national security strategy, leveraging diplomatic pressure of foreign countries to operate against the terrorists within their countries, increasing the intelligence communities operations against terrorists to include the CIA and the FBI taking steps to arrest and detain individual terrorists and increased efforts to leverage

relationships with foreign intelligence services in order to disrupt terrorist cells in other countries.[319] As the threats from terrorism increased during the 1990s, the U.S. government initially responded in 1994 by issuing Presidential Decision Directive 35 giving the intelligence community "its new marching orders."[320] The directive called upon the intelligence community "to concentrate its intelligence collection on transnational issues such as the proliferation of weapons of mass destruction (WMD), drug trafficking and international criminal enterprise, and, increasingly, states that supported terrorism."[321] A second Presidential Decision Directive, PDD-39, was issued in 1995 declaring terrorism a matter of national security and assigning responsibilities to various agencies.[322]

Although a new U.S. security strategy was emerging that recognized the significance of the terrorist threats, critics argue that this strategy, as reflected in the presidential decision directives, failed to develop an integrated plan for counterterrorism for the entire U.S. government.[323] Further, there was no recognition within the strategy that the government institutions that were designed for the Cold War threats were out of date and needed significant changes in order to implement the new strategy against the

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[319] Samuel Berger, "Counterterrorism Policy," testimony before the 9/11 Commission eighth public hearing (transcript), March 24, 2004, p. 69, http://www.9-11commission.gov/archive/hearing8/9-11Commission_Hearing_2004-03-24.pdf; George Tenet, "Activities of the Intelligence Community in Connection with the Attacks of September 11, 2001," testimony before the Joint Inquiry, 107thcong., 2d sess., October 17, 2002; George Tenet, written testimony before The 9/11 Commission, eighth public hearing, March 24, 2004, http://www.9-11commission.gov/hearings/hearing8/tenet_statement.pdf; George Tenet, written testimony before The 9/11 Commission, tenth public hearing, April 14, 2004, http://www.9-11commission.gov/hearings/hearing10/tenet_statement.pdf.

[320] Frederick Hitz, p. 104; Presidential Decision Directive 35, "Intelligence Requirements," March 2, 1995, see http://www.fas.org/irp/offdocs/pdd.35.htm.

[321] Ibid.

[322] President William Clinton, "U.S. Policy on Counterterrorism," Presidential Decision Directive 39, June 21, 1995, redacted and declassified January 24, 1999, http://www.fas.org/irp/offdocs/pdd39.htm.

[323] Amy Zegart, *Spying Blind*, p. 143; *The Joint Inquiry Report*, p. 235.

new threats. Rather, the U.S. national security strategy was silent on changes necessary to be made to the government agencies such as the FBI and the CIA that were critical in the intelligence function to implement the new strategy.[324] Although the government recognized the growing threats from terrorism, critics argue, there was no significant changes made to how the government functioned against the new threats as distinguished from the threats posed by past enemies like the Soviet Union.[325] The government organizations responsible for countering the threats operated in the same fashion as they did against the Soviet Union – the FBI worked abroad and domestically to collect evidence against the terrorists in order to bring them to trail in the United States, the Department of Defense waited orders to strike a military target, and the CIA collected intelligence overseas and provided analysis on the terrorist threat.[326]

The 9/11 Commission concluded that this failure was a failure of "imagination" by the U.S. government and more specifically by the intelligence community in how it carried out its mission. Based upon its investigation, the 9/11 Commission concluded that government agencies had failed to recognize that they needed to act differently in the light of the new threats America faced. Through its recommendations, the Commission sought to institutionalize imagination within the intelligence community, largely by suggesting changes to the structural and procedural aspects of the intelligence community (i.e., creating the position of the Director of National Intelligence and

[324] Interview with Dick Clarke, former national coordinator for counterterrorism at the NSC during the Clinton administration, August 30, 2007, by phone from Georgetown University.
[325] Zegart, *Spying Blind*, p. 143.
[326] Interview with John MacGaffin, March 2006, Center for Strategic & International Studies.

establishing the National Counterterrorism Center where agencies would send their terrorism threat information to be analyzed).

Doing New Things

This idea of "doing new things" -- organizational innovation or adaptability -- within the U.S. government has always been encumbered by certain constraints that are common, in general, to organizations and, in particular, to U.S. democratic institutions. The fact that organizations tend to resist innovation should not be surprising for they were established in order to reduce the likelihood of change and replace uncertain expectations and activities with the stability of organized relationships.[327] Standard of operating procedures are the essence of organizations.[328] For years, organizational theorists have described how organizations and government institutions are less likely to change and adopt new ways of doing things as compared to corporate firms that must conduct business differently if they want to survive and not lapse into bankruptcy. One reason that government institutions are more likely then private firms to resist change and encourage routine practice is because government agencies can more easily enforce equity and fairness within their organizations. And these government organizations are often called upon by outside constituents to do just that. If one case is treated differently from another case, there will likely be questions asked about why that occurred. Members of government organizations realize that it is much safer to

[327] James Q. Wilson, Bureacracy.
[328] Morton H. Halperin, *Bureaucratic Politics and Foreign Policy*, Washington, DC: The Brookings Institution, (1974), p. 37.

establish standardized procedures and apply them in a consistent manner. In the public sector, doing things differently can get people into trouble.

In his book, *Bureaucracy*, James Q. Wilson examines the relationship between an organization's structure and management and its performance.[329] He describes how public sector organizations are intentionally structured to resist precipitant change.[330] While Wilson examines public sector organizations in general other scholars like Amy Zegart examine national security organizations more specifically. Similar to Wilson, Zegart finds that the performance of national security agencies is influenced by their structural design. Furthermore, the specific structural designs of these agencies can inhibit innovative behavior.[331] Zegart argues that after the Cold War the intelligence community failed to reorganize itself which left it unable to deal with the terrorist threats that emerged after the Cold War.[332] It was specifically the decentralized structure of the intelligence community that Zegart faults for this failure.

The 9/11 Commission argued for the need for new and innovative ways for the U.S. government to address the terrorist threat – emphasizing the necessity for imagination within the U.S. government to foresee the emerging threats. Relying mainly on the findings of *The 9/11 Commission Report*, one scholar, Amy Zegart, argues that the CIA and the FBI failed to adapt to meet the new threats that had emerged after the Cold War and because of this failure the United States was

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[329] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Basic Books (1989), pp. 221-226.
[330] Ibid.
[331] Amy B. Zegart, *Spying Blind: The CIA, the FBI and the Origins of 9/11*, Princeton: Princeton University Press (2007).
[332] Zegart, Spying Blind.

unprepared for the 9/11 attacks.[333] Zegart's general model of adaption attributes the failure of security agencies to reform to three systemic factors: the nature of organizations which, Zegart argues, make internal reform difficult; the self-interest of individuals like Presidents, legislatures and government officials who, Zegart argues, intentionally work against reform efforts; and the fragmented structure of the federal government which, Zegart argues, operates against reform efforts.[334]

Others, both inside and outside of the government, however, have suggested that the intelligence agencies do adapt and did, in fact, adapt when confronted by the new threats from terrorism.[335] The suggestions made by these people that the intelligence agencies, at least some of them, did adapt and use imagination against the terrorist threats directly challenge the conclusions of the 9/11 Commission and Zegart's arguments. In examining the CIA's efforts since its creation to counter treats, this chapter provides a substantial amount of evidence to support the argument that organizational innovation by government institutions is possible. It shows how innovation was, in fact, implemented on a number of occasions by the CIA in order to address new threats. This chapter demonstrates how the CIA took steps prior to 9/11 and throughout the Cold War to adapt to newly emerging threats, including terrorism.[336]

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[333] Ibid.
[334] Amy B. Zegart, *Flawed By Design*; Zegart, *Spying Blind.*
[335] Paul R. Pillar, "Intelligent Design? The Unending Saga of Intelligence Reform, *Foreign Affairs*, March/April 2008; Joshua Rovner and Austin Long, "Correspondence: How Intelligence Is Intelligence Reform?" *International Security*, Volume 30, Number 4, Spring 2006, pp. 196-208.
[336] Ibid.

A Theory of Adaptation Failure

In her most recent book on intelligence reform, *Spying Blind*, Amy Zegart develops a theory to support her position that the CIA and the FBI failed to adapt to the terrorist threats as they emerged after the Cold War and failed to prevent the attack on 9/11.[337] Her theory of adaptation failure attributes the failure to three main factors: the nature of organizations, the rational self-interests of national security officials, and the decentralized structure of American federalism.[338] While the core of her argument rests on a presumption that structural changes are necessary for an organization to adapt to new threats, she also recognizes that "the inability of U.S. intelligence agencies to adapt to the terrorist threat also stems from organizational routines and cultures that are highly resistant to change."[339]

In an effort to support her theory of adaptation failure, Zegart argues that the CIA failed to place two known terrorist suspects (Khalid Mihdhar and Nawaf Hazmi) on the State Department's watch-list before 9/11 because the agency was not "in the habit" of doing so.[340] Zegart argues that this specific case of inaction supports her theory that the CIA had failed to change how it carried out its functions in the face of the terrorist threat from al Qaeda. In fact, however, contrary to Zegart's statement, the CIA officers within the Counterterrorism Center had passed information to the State Department to place suspected terrorists on the watchlist on numerous occasions when the CIA believed there was an increased threat from al Qaeda and the CIA had

[337] Amy B. Zegart, *Spying Blind*.
[338] Amy Zegart, 'September 11 and the Adaptation Failure of U.S. Intelligence Agencies," pp. 78-111.
[339] Ibid. at 110.
[340] Ibid. at -

sufficient biographical information for the State Department to place the individuals on the list.[341]

In citing the failure to watchlist these two terrorists as a missed opportunity to prevent the attacks of 9/11, both the 9/11 Commission and Zegart fail to examine the many opportunities that the CIA did act upon in its efforts against threats, in general, and terrorists and al Qaeda in particular. Although, the 9/11 Commission and Zegart suggest similar causes for 9/11, Zegart disagrees with one conclusion of the 9/11 Commission Report -- that the U.S. policymakers were not aware of the seriousness of the threat posed by the jihadist movement and al Qaeda prior to 9/11. In *Spying Blind*, Zegart provides a persuasive argument, supported by substantial evidence, that, in fact, the policymakers were aware of the threats from al Qaeda. She notes that "as early as 1994, the director of central intelligence began identifying terrorism as a major national security danger in his annual threat assessment to Congress."[342]

Zegart, however, does not proffer an explanation beyond threat assessments as to how the policymakers became aware of the threat. In fact, the policymakers were aware of the threat mainly because the CIA had briefed the most senior White House officials about the agency's concerns about the growing threat on numerous occasions.[343] There were multiple mechanisms used by the CIA on a number of different occasions where the CIA conveyed the seriousness of the terrorist threat directly to the policymakers. According to Paul Pillar, a former CIA counter-terrorism

[341] Interview with CTC officers, May 2002, while serving on the Joint Inquiry Staff; *The 9/11 Commission Report*, pp. -.; Pillar, "Intelligent Design?"; *The Joint Inquiry Report*, p. -.
[342] Zegart, *Spying Blind*, p. 25.
[343] Zegart, *Spying Blind*; Tenet, *Center of the Storm*; Pillar, "Intelligent Design?"

analyst, the avenues the CIA provided the threat information to the policymakers included "briefings of the most senior officials; special memos from the CIA director; countless discussions in the interagency Counterterrorism Security Group, chaired by the NSC's Richard Clarke; and the assessment portions of covert-action findings."[344] Significantly, Zegart and the 9/11 Commission do not mention the number of occasions the CIA briefed the policymakers nor do they mention the different channels that the CIA used (outside of the formal intelligence estimates) to report on the imposing threat.

In her book, Zegart demonstrates that, prior to 9/11 there had been more than 340 recommendations for intelligence reform suggested by previous commissions and studies.[345] Of these recommendations, she notes, "only 35 recommendations were fully implemented, and these were mostly insignificant changes."[346] Zegart concludes that almost all of these recommendations were unheeded by the intelligence community and were, therefore, not acted upon. She argues that in failing to implement the recommendations, the national security agencies failed to adapt to new challenges from terrorism. A number of presumptions made by Zegart, however, raise questions about her conclusions. First, Zegart assumes, without providing supporting evidence or analysis, that all of the recommendations were well founded and would have, if implemented, improved U.S. security. Second, Zegart assumes that the national security agencies, like the CIA, did not act internally on any of these recommendations without public pronouncements about changes made. Zegart assumes that since there

[344] Paul Pillar, "Intelligent Design? The Unending Saga of Intelligence Reform," p.
[345] Zegart, *Spying Blind.*
[346] Ibid. at

were no visible public changes that implemented the recommendations in their complete descriptions that the agencies must not have made any changes at all based on the recommendations. In short, Zegart, provides no data on the changes that agencies like the CIA made over the years to adapt to new threats – changes that were innovative and imaginative.

Similar to the 9/11 Commission, Zegart presents a performance measurement of the intelligence community based on "missed opportunities" and argues that the CIA failed to prevent the attacks because the agency did not adapt.[347] In her analysis, Zegart bases her argument solely on "missed opportunities," but ignores the opportunities that were acted upon and the real innovations that were made. This approach for evaluating failure is questionable. Using this approach, in assessing the performance of the CIA and the FBI, Zegart defines opportunities for action as only the chances that were missed, failing to account for the opportunities that were successfully acted upon by the organizations. Ironically, some of the missed opportunities that Zegart mentions developed only because of the action that was taken by the CIA. For example, in mentioning the missed opportunity to watch list two terrorists, Zegart fails to mention that the only reason that the U.S. government even knew about the terrorists and their travel intentions to the United States was because the CIA had followed up on a NSA intercept and began tracking the two overseas.[348] The CIA successfully initiated and ran a multi-national effort overseas involving numerous liaison services to follow these

[347] Zegart, *Spying Blind*, pp.
[348] *The 9/11 Commission Report*, p.

suspected terrorists as they traveled abroad.[349] Zegart fails to account for this opportunity that the CIA acted upon. Unfortunately, by relying only on "missed opportunities," Zegart and *The 9/11 Commission Report* fail to develop an effective model for evaluating the performance of an organization and neglect an opportunity to provide useful recommendations for reform. This approach, however, of relying only on missed opportunities to gauge performance does provide the basis for a conclusion of a "100 percent failure" rate for adaptation.[350] Not surprisingly, this is exactly what Zegart concludes in her book.[351]

This chapter shows that, prior to 9/11, the CIA acted in innovative ways on a number of occasions related to both terrorist and non-terrorist threats. The chapter argues that to analyze an organization's capacity for change, its ability to adapt and operate innovatively, one must examine both the missed opportunities as well as the seized opportunities of the organization. In providing analysis on both the opportunities missed and the opportunities taken, one can then develop useful insights about organizational innovation and the factors that may inhibit as well as enhance adaptive behavior.

One lesson from the events of 9/11 is that in order to fight the war against terrorism and the future threats that will emerge to threaten the United States, the U.S. government will need to organize itself in a way that allows it to act flexibly and dynamically as it faces the challenges of the future. Today, this research area on the

[349] Ibid.
[350] Zegart, *Spying Blind*, p.
[351] Ibid.

adaptability of government organizations is, arguably, one of the most critical areas for empirical research related to organizational performance. If, for example, as most terrorism experts argue, the terrorist threats will continue to change and challenge the U.S. government's ability to counter them, there will be a continuing need for the U.S. national security agencies to adapt and innovate in light of the future changes. Furthermore, in light of the criticisms about the conclusions of the 9/11 Commission and scholars like Zegart, it is important to continue to study the facts of the events prior to 9/11 and the nature of the intelligence community, before and after the 9/11 reforms, in order to ensure that the U.S. maintains a national security system that can adapt in light of new challenges. Through such constant review and assessment, we can arrive at some conclusions about what organizational changes that have already been made are supportive of innovative organizational behavior and what changes may still be necessary. Examining the underlying factors that affect such agencies' ability to operate in an innovative fashion is critical to appreciating what reforms may be necessary within those agencies, not just to fight terrorism, but for the future security of the Untied States in general as well.

Explaining Institutional Failure to Innovate: Structural and Cultural Factors

The purpose of this chapter is to provide some explanations for why some organizations fail to change and adapt in the face of new challenges. The chapter focuses on why in some organizations or institutions there may not be any innovation in the first place or the innovation may not survive and proliferate. In other words, why do some institutions fail to learn how to learn and therefore remain ineffective? Typical

explanations revolve around vague concepts of "resistance to change" or "human nature," or failures of "leadership." Researchers of organizational innovation suggest that factors related to the "formal" organization such as, organizational size, structure and resources influence the ability of an organization to adopt an innovation.[352] These findings focus on structure factors and are deficient in explaining organizational innovation.

Other organizational theorists, on the other hand, suggest organizational culture contributes more to the ability of an organization to adopt innovative ways than "formal" factors of the organization.[353] These scholars argue that the idea that structure dictates innovative actions of an organization is incomplete and it is an organization's informal element – its culture – that is critical to the analysis of organizational innovation.[354] Although most of the formal/structural variables of an organization have been studied in organizational innovation studies, the concepts related to culture have not been empirically developed.[355] Most of the studies of innovation mention culture in passing rather than investigating the impact of culture on the innovative performance of the organization.[356] The primary purpose of this chapter is to explore the influence of both the structural and cultural factors that impact a national security agency's ability to

[352] P. Blau and W. Scott, *Formal Organizations: A Comparative Approach*, San Francisco: Chandler Publishing (1962).
[353] C. Christensen, *The Innovator's Dilemma*, Massachusetts: Harvard Business School Press (1997).
[354] P. Blau and W. Scott, *Formal Organizations: A Comparative Approach*, San Francisco: Chandler Publishing (1962).
[355] N. King, "Innovation at Work: The Research Literature," in M. West and J. Farr, eds. *Innovation and Creativity at Work*, pp. 15-61, New York: John Wiley and Sons.
[356] Ibid.

learn and adopt innovative ways to operate in order to improve the security of the United States.

This chapter proffers two possible factors that contribute to an organization's failure to learn and adapt – structural and cultural deficiencies. These factors, together, this chapter argues, will impact an institution's ability to learn and act innovatively. Every institution has a structure which entails both formal and informal aspects; the formal aspects illustrated by the amount of centralization or decentralization of decision making authority and the informal structure consisting of the routines and procedures operating within the institution. Every institution also has a culture; "a pattern of basic assumptions that a group has invented, discovered or developed in order to address the problems of external adaptation or internal integration that the group faces."[357] Often, institutions or organizations will have more than one culture, in other words, the institution will have multiple subcultures. Some scholars argue that culture is the primary issue that will impact an organization's adaptability.[358] Following these scholars who have examined the impact of both structure and culture on an institution's innovative capacity, this chapter recognizes that if the institutional elements of culture and structure are not in alignment with each other (and the institution's threat environment) the institution is likely to fail to learn and therefore not exhibit innovative behavior.[359]

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[357] Edgar Schein, *Organizational Culture and Leadership* (1985), p. 45.
[358] Ibid.
[359] Schein, "Innovative Cultures and Organizations," in *Information Technology and the Corporation of the 1990's: Research Studies*, eds. Thomas J. Allen and Michael S. Scott Morton, Oxford University Press, New York, (1994), pp. 125-146.

This chapter advances an understanding of how organizational culture and structure influence innovative behavior of an institution. It stresses an institutional perspective on innovation that is largely "constructivist." In a constructivist sense, while most of the innovative practices by institutions are purposeful and deliberate, it is not necessarily intentional that the specific practices take place. As the goals and the missions of institutions like the CIA are developed, reshaped and contested by policy leaders and legislatures, institutional members often will realize that their interests and preferences are formed and reformed "on the job" as the members of the institution work with each other and others to complete their tasks.

From a theoretical perspective, this chapter contributes to the understanding of organizational innovation for researchers who are interested in gaining knowledge about the antecedent factors associated with organizational innovation. In taking a constructivist approach in the examination of domestic institutions, looking inside the "black box" of government bureaucracies, this chapter moves beyond the traditional theoretical approaches that emphasize the "fixity" of institutions and individual preferences and interests. This constructivist approach applied to the role of culture within institutions and its impact on institutional innovation represents a fundamental theoretical shift in the understanding of individuals and institutions as actors. Furthermore, in using the constructivist approach to examine domestic government institutions, this chapter further develops concepts and applies them to an area of study, domestic institutions, that traditional constructivist approaches have not addressed.

This chapter examines a number of examples of innovative behavior by the CIA that led to institutional changes and improved performance. In examining these innovative actions that were often purposeful but not always intentional, this chapter pays close attention to the CIA's existing institutional structures, historical factors and cultural characteristics. Beyond the contribution this chapter makes to theoretical development, it also provides, to those individuals responsible for intelligence reform, a better understanding of aspects of national security institutions that impact on their ability to reform and act innovatively. Hopefully, these insights can assist in the formulation of more effective reform measures.

Institutional Change: When & Why

It has been noted by many commentators that institutions like the United Nations, the World Trade Organization and the International Monetary Fund are not optimally efficient and because of that they would not be created today in their current form. However, they persist. Why? The same question can be asked about the intelligence community. After an "intelligence failure" like 9/11, why do the institutions within the intelligence community continue to exist and, for the most part, in the same form as they did prior to 9/11? Many reasons have been suggested as to why institutions persist and rarely change. In some cases, the answer may be a matter of "sunk costs" making it cost effective to continue involvement with an old institution. Path-dependence theorists argue increasing returns account for this persistence. Organizational theory literature is filled with discussions of organizations that become wedded to habits, thinking, routines, values, norms, ideas and identities that make

change difficult.[360] Charles Perrow, in his "normal accident theory," argues that considerations of power and status are the more significant factors that explain institutional persistence rather than any particular function performed by the institutions.[361] In politics, where institutional innovators advocating changes may be punished, existing institutions may have the additional advantage of avoiding blame. Even in Congress, "it is risky to try to change institutional arrangements in a manner adverse to the interests of those currently in control."[362] Alternatively, it may be that institutions rarely change because of the generally accepted proposition that "people resist change."

Why Change is Not Easy or Frequent

This conventional wisdom, however, that "people resist change" is oversimplified and misleading. Furthermore, conventional wisdom often leads leaders and manages to use two tactics that are not productive in trying to make changes in organizations: (1) convincing people with the institution that any attitude that they have resisting changes is wrong and they need to change their attitude and (2) what is referred to as "shock and awe" – establishing powerful rewards and punishments tied to behavior change. Recently, both of these approaches have been utilized in the intelligence community to ensure that critics of some of the 9/11 reform measures were silenced.

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[360] Michael T. Hannan and John Freeman, "Structural Inertia and Organizational Change," *American Sociological Review*, Volume 49 (1984), p. 151; Levitt and March (1988)
[361] Charles Perrow, *Normal Accidents: Living with High-Risk Technologies*, Princeton, NJ: Princeton University Press (1999), p.
[362] Kenneth A. Shepsle, "Studying Institutions: Some Lessons from the Rational Choice Approach," *Journal of Theoretical Politics*, Volume 1, (1969), pp. 131-147.

In at least one instance, in order to support efforts to stand-up the National Counterterrorism Center that had been created by post-9/11 legislation reform, CIA employees were forced to leave their current positions at the CIA officials after CIA officials objected to the move. According to individuals that were involved in the dispute between the Office of the Director of National Intelligence and the CIA, Negroponte, the DNI at the time, had requested that the CIA transfer some of its most experiences counterterrorism analysts from the CIA's Counterterrorism Center to the National Counterterrorism Center, the new analytical unit established by the post-9/11 reform legislation as the principle government entity responsible for analyzing counterterrorism intelligence reporting.[363] When the CIA resisted, arguing that removing these analysts would significantly degrade the CIA's ability to prevent terrorists from executing another terrorist attack against the United States, the ODNI announced that if the CIA officers did not move from CTC to NCTC they would be fired.

Many individuals thought that the CIA's position was correct, especially in light of some of the recent successes the CIA was having in the use of the predator drone UAV in neutralizing specific terrorists. These operations were led by CTC. The CIA argued that it was the nature of the organization of CTC that enabled CTC to effectively operate against the terrorist targets. At CTC, operations officers, working closely with terrorism analysts and targeting officers, were able to locate, track and act against the

[363] Mark Hosenball, "'Foot-Dragging' Administration sources claim that one of Porter Goss's top deputies stonewalled efforts to reform U.S. intelligence gathering," Newsweek Web Exclusive, October 16, 2007, http://www.newsweek.com/id/47822/output/print.

terrorist targets. The CIA argued that by taking some of the best, most experienced terrorism analysts from CTC, the CIA would lose the ability to "remove the terrorists from the streets."[364] These strategies, however, are incomplete and potentially damaging to the morale and motivation of the workforce that is critical to institutional performance. In addition, these strategies are short-sighted in that they fail to take into consideration the significance of what the political scientists, James March and J.P. Olsen, describe as "socialization" which takes place within institutions and can influence the performance of the institution.[365] Such strategies also miss insights from organizational theorists, like James Q. Wilson, who describe the relationship between how an institution is managed and its performance.[366]

While many organizations and people seek to carry out their tasks based upon the way that they have done things in the past (what path dependency tells us), following institutional scholars like March and Olsen, this chapter recognizes that social arrangements have a significant impact on how institutions and their members operate including how these arrangements can make change happen. By ignoring the role of "socialization" (maybe because it is too complicated) those that advocate change "by force" have limited the strategies that are available to policymakers and leaders of institutions to facilitate change within institutions. Social arrangements within institutions include not only those people who are against change but also those that are supportive of change. The key is to locate the constituency for change and capitalize on

[364] Ibid; Interview with James Pavitt, February 11, 2006 at Scowcroft Group offices.
[365] J.G. March and J. P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, New York, NY: Free Press (1989).
[366] James Q. Wilson, *Bureaucracy*.

those people as they relate to the detractors for change. Firing those that disagree with change, an example of the "shock and awe" approach is not the most sensible way to support positive change. And trying to bully those that disagree with the ideas for change will often just backfire on any positive hope for change. Instead of short sighted strategies for forced changes, this chapter argues that alternative options are available within the design of the institution itself. This chapter revisits the concept of socialization in the section below dealing with the learning process of the an institution that provides for innovative behavior.

Why Change is Necessary: New Threat Environment May Call for A New Structure

Organizational scholars have focused on the critical relationship between an organization and the environment in which it operates. Organizations are viewed as "open systems" that are shaped by their environments.[367] One of the key management tasks of any organization, public or private, is to create policies and processes that will enable it to achieve its goals given the constraints, risks and opportunities that exist within its environment.[368] That environment can be either international or domestic. The U.S. national security organizations operate within an international environment comprised of different threats as well as a domestic political environment. By re-evaluating the organization's strategy and making adjustments the organization is able

[367] James D. Thompson, *Organizations in Action*, New York: McGraw-Hill (1967).
[368] Paul Lawrence and Jay Lorsch, *Organizations and Environment*, Cambridge, MA: Harvard University press (1967); Hannah and Freeman, p. 151.

to adapt to the changes in its own environment.[369] One of the most important ideas of this notion of strategic choice is the idea that "structure follows strategy."[370]

Like any organizational, the design that is created for a national security organization will depend on the strategic goals that have been set out for the organization in light of the demands from the environment. After the Cold War, the U.S. government started to alter its U.S. national security strategy to deal with terrorism because it recognized the emerging threats from terrorists that were developing in the international setting. The Soviet Union had disappeared as an adversary but in its place had developed a new and different threat – terrorism. Theses changes in the international system called for a strategic reassessment by the U.S. government. In 1999, the U.S. Commission on National Security/21st Century had warned of a "new world coming" in which the United States would be challenged by the global reach of ambition, and increasing technological sophistication of terrorist organizations.[371] The Gilmore Commission considered a chemical, biological, radiological, and nuclear attack on the United States to be a matter of "when, not "if."[372] What was missing, however, was an organizational reassessment to follow the strategic changes that were made. The U.S. national security strategy called for a different strategy to address the new threats from terrorist but there were no changes made to the organizational design of the U.S.

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[369] John Child, "Organizational Structure, Environment, and Performance: The Role of Strategic Choice," *Sociology*, Volume 6, Number 1, pp. 1-22.
[370] Alfred Chandler, *Strategy and Structure*, Cambridge, MA: MIT Press (1962), pp. 11-14.
[371] U.S. Commission on National Security/21st Century, *New World Coming: American Security in the 21st Century*, Washington, DC: Government Printing Office (1999).
[372] Gilmore Commission (Advisory Panel to Assess the Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction), *First Annual Report to the President and the Congress, Assessing the Threat*, Washington, DC: Government Printing Office (1999).

national security system and the institutions and agencies that comprised that system in order to meet the new threats. After the Cold War, the intelligence community should have reorganized and reengineered itself but it did not. One factor that may have contributed to this failure was the inability of policymakers to clearly articulate national security interests at the time.[373] The 9/11 attacks, however, would serve as a mandate for change.

Institutional Theory of Innovation

Before addressing institutional adaptation, one needs to take into account the nature of the institutions themselves. As chapter 1 outlines, institutions are comprised of three major elements: people, structure (which includes rules, procedures and routines) and culture. According to Max Weber's well-known administrative theory, an institution operates like a bureaucratic organization, that is to say, by a set of principles designed to promote efficiency.[374] As such, institution possess a clear division of labor, a hierarchical authority, a hiring process based on technical qualifications, and a system of written rules and procedures and a merit-based system of compensation and promotion.[375] While fostering efficiency, according to Max Weber, these attributed of an institution also have a tendency to foster bureaucratic inertia and rigidity.[376] Based upon Weber's understanding of how organizations like institution function, therefore, rather than fostering an environment receptive to innovation and change they are more

[373] Mark W. Lowenthal, *Intelligence: From Secrets to Policy*, 3rd ed, Washington, DC: CQPress, (2006), p. 232.
[374] Max Weber, *The Theory of Social and Economic Organizations*, New York: Oxford University Press (1947).
[375] Ibid.
[376] Ibid.

likely to create constancy and stability. And yet, we know that some organizations and institutions do change while others resist change. This chapter focuses on how institutions can be innovative and change in the face of their changing environment. It borrows insights from new institutionalism, organizational theory and constructivism and draws conclusions about the design of institutions like the FBI and the CIA.

Institutional Imagination & the 9/11 Commission

The 9/11 Commission recognized four systemic failures of the intelligence community: imagination, policy, capabilities and management.[377] *The 9/11 Commission Report* concluded that there was a lack of imagination across the U.S. government which contributed to the United States' inability to prevent the attacks of 9/11. In recommending the use of imagination within the intelligence community, the Commission's final report cautiously noted, "Imagination is not a gift usually associated with bureaucracy."[378] In its report, the 9/11 Commission argued it was this lack of imagination that made it impossible for U.S. policymakers and intelligence analysts to gauge the threat that the terrorists posed. If only the intelligence community had used imagination when predicting what kinds of threats would confront the U.S., the Commission argued, policymakers could have taken steps to minimize the likelihood of 9/11. The implication is that because the intelligence community lacked imagination, it was unable to "connect the dots" that would have potentially unraveled the terrorist plot. If the intelligence community had had imagination, the policymakers would have had sufficient information to take more aggressive steps in protecting the homeland and

[377] *The 9/11 Commission Report*, p. 339.
[378] Ibid.

attacking al-Qaeda. If only the intelligence agencies had been more visionary and been able to predict the attacks. If the intelligence community could have seen what was not there, in between the dots, if they could have imagined it, then the dots could have been connected.[379]

The 9/11 Commission Report was accurate in that if there had been a way to predict the future the intelligence community could have provided the policymakers with details about the future attack which could have empowered the policymakers to act more forcible against al Qaeda in the months leading up to 9/11. *The 9/11 Commission Report* however misses a critical point about how intelligence functions. Intelligence is not about reading minds or predicting the future. Rather, it is a process involving collection of arguably incomplete information and the analysis of that information to make the best sense out of the information collected. Unfortunately, in criticizing this process as lacking imagination, *The 9/11 Commission Report* does not provide the reader with a definition of "imagination" nor does it describe how the intelligence community should be reformed to specifically address the perceived deficiency of imagination. In fact, in providing 41 different reform recommendations for change within the intelligence community, the 9/11 Commission fails to relate any of them to imagination.[380] In a number of interviews conducted by the author of former intelligence officials, the officials were asked what they thought the Commission

[379] *The 9/11 Commission Report*, pp. 339-348.
[380] Joshua Rovner and Austin Long, "The Perils of Shallow Theory: Intelligence Reform and the 9/11 Commission, *International Journal of Intelligence and Counterintelligence*, Volume 18, (2005), pp. 609-637.

meant by the word "imagination." A common response was "We failed to think like the terrorists were thinking."[381]

Defining Institutional Imagination as Innovative Behavior

It is useful in assessing the performance of institutions like the national security agencies to look at how well the institutions adapted or acted innovatively in light of the environments they faced. In short, for an institution to have imagination, it will change how it accomplishes its tasks, based upon changes that have occurred outside of the institution. In altering how it functions, an institution may alter its structure, its rules and procedures and its culture depending upon what it necessary in order to accomplish its objectives given the changes from outside. This may mean that the institution will alter its formal structural arrangements or develop new processes or technologies that will enable it to reach its goals. It may also mean that the imaginative institution will change its very practices of how its members work within the institution. This study accepts this definition of "imagination" in analyzing the recommendations of the 9/11 Commission and the behavior of the institutions of the FBI and the CIA. Based upon this definition, this chapter examines the concept of innovation in light of institutional theory and draws conclusions from the theory about the status of intelligence agencies like the CIA as innovative institutions.

The Road to Institutional Innovation: A Process of Learning

Most of the studies of institutions within the social sciences examine the stability and persistence of institutions and what that means for the effectiveness of

[381] Interview with Mark Lowenthal, February 20, 2008, Georgetown University.

those institutions rather than the creation or transformation of institutions.[382] Considering that the stability of institutions is viewed as a benefit to creating institutions in the first place, providing predictability and security, it is not surprising that the "fixity" aspect of institutional life is the primary focus of the social sciences.[383] The persistency of institutions has the benefit of providing to both those that create the institutions and the members working within the institutions with an understanding of what to expect in the future, reducing the level of uncertainty. In defining institutions, scholars have proffered a broad range of options to describe an institution ranging from legal regimes, to rules of the game, and to shared understandings. As diverse as these definitions are, "most social science research assumes that these institutions are all relatively stable and settled."[384] For the most part stability, predictability and longevity are considered positive attributes and therefore may explain why the social scientists focus most of their attention on them.

The work done on the stability of institutions, however, neglects other important attributes of institutions, including institutional change and learning. By avoiding questions about the transformation of institutions, the literature fails to deal with the more difficult questions related to an institutions effectiveness which is linked to the organization's ability to change in innovative ways. In order for an institution to operate effectively, and survive in uncertain environments, the institution must have a

[382] Hokyu Hwang and Walter W. Powell, "Institutions and Entrepreneurship," Chapter 9 in *Handbook of Entrepreneurship Research: Disciplinary Perspectives* by Sharon A. Alvarez, Rajshree Agarwal an Olav Sorensen, eds., New York, NY: Springer Publishers (2005), pp. 179-210, 182.
[383] Ibid.
[384] Ibid. at 182.

capacity to learn. "To remain viable in an environment characterized by uncertainty and change, organizations and individuals alike depend upon an ability to learn."[385] For scholars studying the effectiveness of institutions, therefore, it is important to examine not only an institution's stability but also its capability to change as the environment changes.

While stability at times has benefits, rigidity, in the face of an altered environment can be disastrous for the survival of the institution. Whether that environment is the corporate market composed of new technology and competitors or the global environment in which terrorists operate outside the laws of war and where weapons of mass destruction have proliferated, an institution must be able to change in accordance with changes within that environment or risk failure. For example, if a firm fails to change in light of new competition in the market place it risks bankruptcy. In the same vein, if the United States' national security institutions fail to adapt in line with new threats from terrorists, the national security agencies risk being ineffective and the United States risks its very security.

Defining Institutional Innovation as Organizational "Sense-making"

Changes or transformations in institutions are usually physically visible through the innovative practices by the institution or segments of the institution. While the actual practices of innovation may be easy to detect, the process which allowed the institution to "learn" how to change may be more difficult to know. Importantly, how an institution learns to innovate is critical to understanding the process by which

[385] A. Edmondson and B. Moingeon, "From Organizational Learning to the Learning Organization," *Management Learning*, Volume 29, (1998), pp. 5-20, 9.

institutions can change, become more effective in their missions and improve their performance. By "innovative behavior" (or institutional imagination), this study means institutional adaptation based upon deliberative reflection and a new level of individual and collective "sense-making" by the institution.[386] It does not mean just any change in an institution's general behavior or practice. The process of learning that an institution goes through as part of the innovative process entails the organization reexamining itself and the changes emerging in its environment to "make sense" of the new situation the institution finds itself operating within. In other words, innovation is not just about adopting new technologies or reorganizing itself. Rather, the organization begins to redefine how it carries out its tasks in the face of a changing environment.

This type of innovation is defined as "change that creates a new dimension of performance."[387] Such institutional sense-making "begins with either the action or the outcome and results in alteration of beliefs to create a sensible explanation for the action of the outcome."[388] In other words, innovation is change based on a process of interactive learning by the institution (between members and non-members of the institution) that allows the institution to change in ways that will make it more effective in the face of uncertainties about the environment. Such learning will improve the ability of the institution is solve the challenges that it faces in carrying out its mission or purpose.[389]

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[386] Karl Weick, *Sensemaking in Organizations*, Thousand Oaks, CA: Sage (1995).
[387] Peter F. Drucker, *Innovation and Entrepreneurship*, Oxford: Butterworth-Heinemann, Ltd. (1994).
[388] Karl Weick, *Sensemaking,* p. 168.
[389] Donald F. Kettl, "Learning Organizations and Managing the Unknown," paper presented at the Conference on Rethinking Public Personnel Systems, April 16-17, Washington D.C (1993).

As the institution's environment changes and becomes less stable, the institution will engage in the process of sense-making in order to manage the uncertainty. As circumstances change, the normal "script" which dictates how the institution would operate is no longer sufficient. When the script no longer fits, individuals must interact to create new meaning.[390] For the corporate firm sense making, or innovation, allows a firm to create wealth, develop profits and outwit its competitors in the free market. For the national security institutions, organizational learning will provide the means to outsmart those individuals, groups or states that strive to do harm to the United States.

For the purposes of this discussion, innovation means more than just a new program or the use of a new technology that facilitates the achievement of the organizational objectives. Rather, innovation refers to the use of technologies, designs or programs that may or may not be new but involve "the performance of new tasks or a significant alteration in the way that existing tasks are performed."[391] In this way, innovation by an organization will change operator tasks and managerial controls in some manner.[392] It is not surprising then that most organizations tend to resist innovation because such change alters the tasks of the organization and impacts the role and power of certain constituents of the institution.

In 1986, in response to the emerging threat from terrorist groups like al Qaeda, DCI Casey and CIA operations officer Dewey Clarridge established the first intelligence community, multi-jurisdictional and multi-disciplinary center at the CIA –

[390] Ibid.
[391] Wilson at 222.
[392] Ibid.

the counterterrorism center. For the first time, personnel from throughout the intelligence community, from different agencies, were brought together in one location, both analysts and operators, to address the same problem. The center was a Director of Central Intelligence entity but it was funded and run out of the Directorate of Operations at the CIA. This meant that the DO was responsible for funding the center as well as providing the majority of the staff to work within the center. Most of the employees within CTC were CIA employees because CIA employees were the one category of intelligence officers the DCI had actual authority over and could transfer them to the center unlike the other intelligence agencies employees that the DCI had little to no authority over in terms of directed them to serve within the center. At first the DO resisted the creation of the center. The DO viewed the center as an enterprise that would cost the DO money, money that could otherwise be provided to the area divisions within the DO. It also was a drain on personnel resources for the DO.

The establishment and continued operation of CTC is an example of innovation within the CIA. The center was a new and unprecedented entity that drew upon already existed resources. It was an organizational innovation in the sense that it brought together for the first time individuals from across the intelligence community, joining operators and analysts together who had previously worked separately (at one time the DO and DI officers even ate in separate lunch cafeterias and maintained locked doors between their office suites). This new entity required the analysts and the operators to alter how they performed their tasks. Within the center they were expected to work side-side in a joint effort against the target. The different chiefs of CTC worked very

closely with the DCI on a regular basis. This was a dramatic change from the past where the Deputy Director of Operations would normally be the person who had direct and close access to the DCI. With the creation of the center, the role of the DDO was diminished in some ways vis-à-vis the Chief of CTC who now had direct access to the DCI. This at times caused frustration within the DO. The center resulted in a significant alteration of power within the DO and between the DO and the center. As the power of CTC was elevated the power of the DO appeared to be diminished.

There is a bias within organizations towards maintaining existing task definitions. This can lead organizations at times to adopt new programs or technologies without understanding their significance. For example, the establishment of CTC was viewed by some as a more efficient way of performing a traditional task of combating an emerging threat. By bringing analysts and operators together in one place they would work for efficiently in processing the intelligence and acting upon it. The true innovation occurred when members of the DO and the DI saw that having operators and analysts collaborate and share information instantaneously within the center was not just a convenient way to assemble desks together but rather it was a wholly new way of operationalizing intelligence against a threat. It was out of the center that a new job function was developed – targeting officers. As the operations officers and the analysts worked together since tracking the finances of bin Laden and then individual members of al Qaeda it became apparent that there was a need for a new job function. The new task of tracking terrorists overseas became the responsibility of the targeting officers within CTC. Targeting officers were part of the new way to leverage intelligence in

waging a war against terrorists. The rest of the CIA saw this and today, the positions of targeting officers had been established across the CIA in the different directorates and country/area divisions against different targets beyond terrorists. The innovation of the establishment of the center developed into other innovative practices that were eventually migrated into other core parts of the organization.

The organizational bias in favor of existing definitions of tasks and constituents makes all the more remarkable the success of the creation of the CTC which redefined how intelligence would operate against terrorists and in the process altered the power relations between the DO and CTC. In the face of resistance from the DO and in the face of the oft-cited inertia of organizations it is remarkable that this innovation occurred. In creating the center, the DCI had given the center a form of organizational autonomy to operate together with the center. Over time plans were drafted, operations were launched and, just prior to 9/11, strategic analysis was beginning to emerge from the center.

With energetic officers, surveillance operations against al Qaeda were launched overseas, renditions were conduced of al Qaeda from other countries, al Qaeda cells were brought down in other countries, and exercises were conducted as trail runs for any "take down" operation that might be authorized against bin Laden. By 1999, the CIA was on its way to being transformed with respect to how it operated against al Qaeda. By September 2001, with the authority of the President, CIA, mainly through CTC, was ready with the armed Predator drone and rapid deployed teams of paramilitary officers, operations officers, and technicians to be the "first in" in

Afghanistan and take down al Qaeda and the Taliban with the help of the Northern Alliance.

In arguing that the national security agencies failed to provide U.S. policymakers with adequate terrorist threat analysis because the agencies lacked imagination, the 9/11 Commission concluded that organizational reform was necessary and attempted to institutionalize imagination within the community by recommending a centralized organizational structure with the creation of the ODNI and the position of the DNI. This chapter demonstrates that the 9/11 Commission's conclusion that the CIA lacked imagination in performing its mission was wrong. The chapter provides a number of examples that illustrate how the CIA, on numerous occasions prior to 9/11, acted in innovative ways in the face of a changing and uncertain environment.

Before providing the CIA case studies of innovative institutional behavior, this chapter seeks, first, to explain why some organizations are successful at innovation, engaging in a process of organizational sense-making and why other organizations are not successful. Relying on organizational theory and a constructivist approach, the next part of this chapter addressed the following questions about institutional innovation and learning: What is it about the institution of the CIA that enabled it to implement innovative practices? Where does an institution's ability to innovate come from? Can a capacity for institutional sense-making and innovation be built into the design of an institution? .

The Role of Institutional Structure and Culture

In the past, both practitioners and scholars have underestimated the importance of culture, both in analyzing the stability of the institution as well as the ability of the institution to change. Rather then analyze the complicated concept of culture, when organizational theories and practitioners have witnessed cultural impediments to "organizational health," they have simply called for organizational leaders to change the culture of the organization in order to improve the organization. These scholars and practitioners, however, place too much weight on the ability of leaders to effectuate change in an organization's culture. They overlook that institutional norms can be sticky. They fail to "grasp that norms held tacitly across large social units were much more likely to change leaders than to be changed by them."[393] In failing to understand the role of norms within an organization's culture, the 9/11 reformers, as well as some scholars, failed to recognize that organizational culture is one of the most powerful and stable forces operating within institutions.

An institution's culture is related to an institution's potential to innovative in that the culture of an institution will either allow for innovative practices or inhibit innovative practices within the institution. "Organizational culture is a key factor in determining if imagination will be encouraged or even allowed" within an institution.[394] In addition, an institution's structure is also related to an institution's ability to innovate

[393] Edgar Schein, "Culture: The Missing Concept in Organizational Studies," *Administrative Science Quarterly*, Volume 41, Number 2, June 1996, pp. 229-240, 231.
[394] Stephen Giugni, "Nurturing Imagination: Introducing Creativity to Organizational Environments," in Australian Institute of Management, eds., *Innovation and Imagination at Work*, Sydney: AIM: McGraw Hill, 2001.

because the structures of an institution will influence the institution's ability to learn as well as its culture. An institution's structure, for instance, can either promote an innovative culture within the institution or inhibit such a culture. The architectural organization of an institution will have an impact on the ability for individuals within the institution to interact, exchange ideas and learn. The idea of a climate within an institution that fosters experimentation and innovation has been referred to as a developmental climate by organizational theorists. This developmental climate allows the people within an organization, and therefore the organization, to act quickly to new situations as they arise.[395] The organizational structure of an organization, however, will dictate the extent an institution will possess a developmental climate.

As Charles Perrow describes, a system that is designed based on a centralized command and control structure will lead to an increase in the "tight coupling" of the interactions within the system and reducing any slack within the system.[396] According to Perrow, an increase in "tight coupling" may improve the ability for coordination and accountability from the top but the reduced slack will also inhibit experimentation within the workforce.[397] In short, a centralized, hierarchical structure inhibits innovative behavior.[398] Centralized authority accompanied with a standardization of procedures will not encourage innovation within an institution rather it will encourage

[395] R. F. Zammuto and J.Y. Krakower, "Quantitative and Qualitative Studies in Organizational Culture," *Res. Organizational Change Development*, Volume 5, (1991), pp. 83-114.
[396] Charles Perrow, *Normal Accidents*
[397] Ibid.
[398] Eleanor Glor, *The Innovation Journal: Challenges to Innovation in the Public Sector*, http://www.innovation.cc/articles/challen.htm, February 16, 2001.

conformity and accountability.[399] In this way, a centralized organizational design would not support a developmental climate. Such a climate of imagination requires a decentralized organizational structure in order for the organization to be able to react quickly to new events and opportunities as they arise.

With complex systems that face constantly changing environments the systems themselves must ultimately be able to change or alter their structures in order to match the changes in its environment.[400] And, importantly, changes in structure must be done at a corresponding pace to the changes in the environment. The challenge for the intelligence community that comprises a large part of the U.S. national security system is not only to determine the best structure that will allow for adopting changes in light of the changing threats from the environment but also to effectively alter that structure as necessary in order to keep pace with the environment while maintaining a structure that supports innovative practices. The next section of the chapter addresses the question: what kinds of organizational structures facilitate change and innovation in governmental institutions.

Need for Coordination

As organizational theory has illustrated, the coordination of complex activity in an efficient manner is a critical benefit that organizations, business and governmental, provide.[401] As problems get more complex, the institutions created to address those

[399] Ibid.
[400] Herbert Simon, "Public Administration in Today's World of Organizations and Markets," *PSOnline*, www.apsanet.org, December 2000.
[401] Chrisanthi Avgerou, "IT and Organizational Change: an institutional perspective," *Information Technology & People*, Volume 13, Number 4, 2000, pp. 234-262.

problems are getting more complex in the way they are organized and operate. One of the most important goals for U.S. homeland security and one of the highest hurdles to achieve is the coordination of tasks by dozens of agencies at the federal, state and local level to prevent another 9/11 attack. Organizational theory has also taught us that such coordination is costly and imperfect and must be managed by those that design organizations.[402] In designing a government institution the need to coordinate as well as the costs of coordinating must be considered. Both the goals of the organization and the particular structure of the organizations will dictate just how much coordination is necessary within the organization. In other words, an organization's design is about balancing the gains and the costs of coordination. The first step in designing an organization is to determine what kinds of interdependencies are necessary within its activities that will benefit coordination.

As Perrow's normal accident theory illustrates, the goal should be to minimize the amount of coordination required by partitioning activities in such a way that a lower rate of interaction exists between the subunits of an organization.[403] Building in slack between the different subunits at any level within the organization is central to reducing the negative aspects of the design characteristics of the system that could lead to system failure. Building in such slack will reduce the "tight coupling" of the interactions within the system.[404] According to Perrow, by reducing the tight coupling and building in slack, there is more time for coordination to take place at a much more leisurely time

[402] Ibid.
[403] Charles Perrow, *Normal Accidents*, p.
[404] Ibid. at -

scale.[405] In organizational theory this is the familiar division of labor. According to the idea of the division of labor, high rates of rapid communication are required among members of the workforce who perform activities that are highly interdependent while much less frequent communication is required among those members carrying out activities that are independent. It follows that depending upon the nature of activity that institutional members are involved with, the level of coordination necessary within the institution will vary. Based on Perrow's theory, if little coordination among members is necessary within an institution then, Perrow argues, a loosely coupled institutional design and a decentralized hierarchy would be optimal in order to reduce the likelihood of a system failure. In short, the choice of the design of an institution's structure must be considered with the nature of the activities of the institution in mind along with the varying costs and benefits involved in the different design options.

The Process of Learning through Socialization

Innovation is about the organization, the people, ideas, and a learning process. The learning process takes place both at the individual level as well as the systemic, organizational level. The learning process at both the individual and organizational levels entails a similar phase of information processing –information is collected, analyzed, and retained. The learning, however, differs between these levels in that there are different structures involved in the learning process and at the organizational level there is an additional phase to the learning process – dissemination – that is necessary. At the organizational level there needs to be a transmission of information and

[405] Ibid. at -

knowledge (the sharing of information) among different persons and organizational units within the institution in order for the learning process to be complete. This additional phase required in the learning process of an organization, naturally makes learning and innovation more difficult within an organization as compared to an individual. The insights from theories of organizational learning and socialization, however, provide the basis for an understanding of how learning at the organizational (through interaction and a sharing of knowledge) is possible and how that process takes place. These concepts and ideas can then be applied to institutions like the CIA to examine and explain the innovative behavior that is exhibited by that institution. This application is the focus of the latter part of this chapter.

In examining the innovation within the intelligence community this chapter focuses on innovative action by the CIA at both the organizational and individual levels. As the learning process involves both structural and social aspects, this chapter takes a structural and cultural approach to institutional learning and innovation. The chapter argues that organizational learning is likely to be innovative (productive and beneficial to improving the ability of the institution to perform its mission) if the organizational structural and procedural arrangements that are part of the learning process of the organization are embedded in an appropriate culture within the organization. In other words, there needs to be a "fit" between the mechanisms that foster institutional learning (procedures and structure) and the culture of the institution to produce productive learning which leads to innovative action.

Through the mechanism of socialization, the members of the institution work with each other and outsiders to the institution in a group fashion (actual or virtual) to solve problems in completing their tasks, operating under specific accepted norms that will lead to the development or redevelopment of member identities.[406] Through this interactive socialization process a culture is developed, reaffirmed or even subverted.[407] As the culture or cultures developed within the workforce of an institution become critical to the accomplishment of the institution's goals so also is the socialization process that influences the cultural aspect of the institution.[408]

This chapter argues that these two components of an institution's design -- its structure and culture -- are the keys to an institution's ability to engage in the process of learning that will enable innovation and effective institutional performance in an environment change and uncertainty. It follows from this that in order to channel innovative behavior within an institution; the design of the institution (both its formal structure as well as its culture) must be considered in the context of the goal to harness the benefits of innovation within an institution.

Defining Institutional Learning

"Organizational learning in complex, unstable environments becomes a central requisite for the structuring of organizations, the development of interorganizational

[406] Julian Orr, *Talking About Machines: An Ethnography of a Modern Job*, Cornell University Press (1996)
[407] March and Olson, *Discovering Institutions.*
[408] James Q. Wilson, *Bureaucracy*; Morton Halperin, *Bureaucratic Politics and Foreign Policy*, Washington, DC: Brookings Institution (1974), pp. 26-62.

collaborative capacity, and knowledge creation."[409] The capacity for organizational learning is what will enable the organization to "make sense of unknown complex and ambiguous situations."[410] The more complex and uncertain the environment is, the more difficult the job of learning will be – yet the more important it becomes.[411] The learning occurs through solving problems, experimentation and socialization with members and non-members. The experimentation is the cornerstone for innovation. Members of an institution, therefore, must be given the time and support to experiment, to look around and try different ways of solving the problems, in order to develop the learning that leads to innovation. This support must include an acceptance by the institution and its leaders that mistakes will be made in the process of learning and failures may result in experimentation.

Organizational theory scholars view institutional learning as "routine-based, history-dependent, and target-oriented."[412] In other words, learning happens within an organization through practice within the workforce take is focused on solving a particular problem. The lessons that are drawn upon by the members of the institution are retrieved from the past. The organizations that engage in such learning are seen as learning by "encoding inferences from history into routines that guide behavior."[413] "Procedural memory," or craft-based learning, within an organization is how the

[409] James March and Johan Olsen, *Rediscovering Institutions*, 1989, p. 231.
[410] David R Schwandt, "Implementing New Policy: A Knowledge-Creation Process," paper presented at the National Academy of Public Administration Conference on Managing Federal Wildland Fire Policy, June 21, Washington D.C (2001).
[411] Donald F. Kettl, "Learning Organizations and Managing the Unknown," paper presented at the Conference on Rethinking Public Personnel Systems, April 16-17, Washington D.C (1993).
[412] Barbara Levitt and James G. March, "Organizational Learning," *Annual Review of Sociology*, Volume 14 (1988), pp. 319-340.
[413] Ibid. at p. 319

members of the organizations will master a skill that is necessary for the performance of tasks that the organization exists to accomplish. Through this process of craft-based learning, or on-the-job training, members will display far more skill in their hands-on behavior than they can verbalize or explain.[414] Such "localized knowledge" in experienced employees often resides outside the bounds of officially sanctioned procedures.[415] In other words, the members of an organization that are working in the field face circumstances where the institution's formal guidelines and procedures, including the official doctrines of the institution, do not cover the specific situation that they must confront and address. In facing these situations the members of the organization will develop "work arounds" or "noncanonical practices" which become the actual practices of the members that determine (more then the institution's officially sanctioned practices) the success of failure of the organization.[416]

Following on the work of Julian Orr and his detailed studies of service technicians who try to solve problems in carrying out their work tasks,[417] this chapter draws upon his insights about organizational work and applies them to the claims made by Brown and Duguid in their work on organizational learning and "communities-of-

[414] Michael D. Cohen, "Individual Learning and Organizational Routine: Emerging Connection," *Organization Science*, Volume 2, Number 1, Special Issue: Organizational Learning: Papers in Honor of (and by) James G. March (1991), pp. 135-139.
[415] John E. Brown and Paul Duguid, "Organizational Learning and Communities-of-Practice: Toward a Unified View of Working, Learning, and Innovation," *Organization Science*, Volume 2, Number 1, Special Issue: Organizational Learning: Papers in Honor of (and by) James G. March (1991), pp. 40-57.
[416] Ibid. at 41.
[417] Julian Orr, *Talking About Machines: An Ethnography of a Modern Job*, Cornell University Press (1996); Julian Orr, "Sharing Knowledge, Celebrating Identity: War Stories and Community Memory in a Service Culture," in D.S. Middleton and D. Edwards, eds., *Collective Remembering: Memory in Society*, Beverly Hills, CA: Sage Publications (1990).

practice."[418] In *Talking about Machines*, Orr describes the work of technicians who are photocopier-repair technicians at Xerox facing the problem of a machine failure.[419] In this work, Orr provides an ethnographic study using thick description of how technical representative and specialists of a company working in the field collaborate to fix a malfunctioning machine.[420] He describes the members of the organization who are acting at the periphery, outside the formal guidelines of the organization, trying to solve unanticipated problems and complete tasks by learning as part of a group.[421] The noncanonical group "ignores precedent, rules, and traditional expectations" and break conventional boundaries.[422] The group acts in a proactive and highly interpretive manner.[423] Not only does the group respond to its environment, but also, in a fundamental way, it creates many of the conditions to which it must respond.[424] Orr's group of technicians and the larger organization are innovative in the sense that:

> These organizations construct their own environments. They gather information by trying new behaviors and seeing what happens. They experiment, test, and stimulate, and they ignore precedent, rules, and traditional expectations.[425]

Based on the work of these scholars, this study recognizes that the approach that an organizational member uses to resolve a situational problem in his daily job will be highly improvisational and based upon what the member has learned over time as a

[418] Brown and Duguid, "Organizational Learning and Communities-of-Practice: Toward a Unified View of Working, Learning, and Innovation."
[419] Julian Orr, *Talking About Machines: An Ethnography of a Modern Job*, Cornell University Press (1996).
[420] Ibid.
[421] Ibid.
[422] Brown and Duguid, "Organizational Learning and Communities-of-Practice: Toward a Unified View of Working, Learning, and Innovation," p. 40.
[423] Orr, *Talking About Machines*.
[424] Ibid.
[425] Ibid. at 288.

member of the organization and not necessarily from the formal training or written procedures of the organization.[426] The members of the organization that must solve the problem they face, with no directive documentation available, will work together to come up with a solution to the immediate dilemma they face.[427]

In working together to solve problems, members effectively communicate with each other to resolve the problem and thereby form an identity related to how they see themselves as solving problems. In solving the problem, the members of the organization construct a shared understanding out of conflicting and confusing data about the circumstances they face.[428] This constructed understanding reflects the members' shared view of the world and their shared view of how they solve certain problems. Based upon their interactions, the members of these groups develop a model of the actions they can use to solve similar problems in the future. The model developed for behavior is based on the interactions of members and others as they try to solve a problem rather than any "canonical" practices that have been set out by the organization for these "canonical" practices have proven to be unhelpful to the members as they seek to resolve problems in the field.[429]

[426] Brown and Duguid, "Organizational Learning and Communities-of-Practice: Toward a Unified View of Working, Learning, and Innovation," p. 50.
[427] Orr at - .
[428] Ibid. at 46; Orr at 187.
[429] Brown and Duguid, "Organizational Learning and Communities-of-Practice: Toward a Unified View of Working, Learning, and Innovation," p. 50.

Explaining How Socialization Leads to Institutional Learning

In social organizations like institutions, learning is a socially constructed concept.[430] From this perspective, the members of the institution who are participating in the process of learning and the work of the institution "construct their understanding out of a wide range of materials that include ambient social and physical circumstances and the histories and social relations of the people involved."[431] This constructivist perspective allows one to understand learning within an institution as something distinguished from the limited view of learning as a method of education through technical formal training.[432]

The type of formal training that is typical of organizations will be provided to all new members of an organization. For instance, at the CIA all new employees recruited into the clandestine services participate in extensive formal training at the "Farm" before they begin their tours as operational officers. This training is conducted either in the classroom or outside the classroom in field exercises and involves extensive time spent reviewing and learning the guidelines and rules that will regulate the activities of the officers. Similarly, at the FBI, newly hired agents go through training at Quantico, Virginia, where they received over 100 hours of classroom and field exercises in subjects ranging from fire arms to computer forensics. Both the CIA and the FBI employees receive briefings on the authorities and legal limitations that are set out in

[430] J. Lave and E. Wenger, *Situated Learning: Legitimate Peripheral Participation*, Cambridge, England: Cambridge University Press (1991).
[431] Brown and Duguid, p. -.
[432] Ibid. at -.

E.O. 12333 as well as the organizations' additional internal guidelines that control the behavior of the organizational members.

Employees of organizations are typically thought of as performing their jobs according to the formal training and guidelines of the organization in addition to their specific job descriptions. Evidence, however, indicates that members of organizations, in their actual practice, regularly make "tricky interpolations between abstract accounts from formal training and situated demands" that they face in practice.[433] The canonical practices that the organization teaches the members through its formal training does not usually contemplate the dilemmas, inconsistencies and unpredictability of everyday life of organizational members trying to solve problems.[434] For those members who must solve the current problem *in situ*, because the canonical practices or guidelines did not provide instructions for the particular situation, they must "construct a coherent account of the problem out of the incoherence of the data and formal documentation."[435]

While the process of socialization is assumed to occur over time and involves actions on the part of the individual members of an institution and others, direct, ongoing observation of the socialization process is a challenge for those who try to study the process from the outside of the institution.[436] In an effort to explicate this process this chapter uses process tracing to illustrate the socialization activity within the

[433] L. Suchman, *Plans and Situated Actions: The Problem of Human-Machine Communication*, New York: Cambridge University Press (1987); P. Bourdieu, *Outline of a Theory of Practice*, Cambridge: Cambridge University Press (1977).
[434] Brown and Duguid, p.
[435] Ibid. at -
[436] E. W. Morrison, "Longitudinal Study of the Effects of Information Seeking on Newcomer Socialization," *Journal of Applied Psychology*, Volume 78, Number 2, (1993), pp 173-183.

institution of the CIA in order to discuss its innovative behavior. Similar to other research efforts on the socialization process, this study focuses on individuals who co-exist in a face-to-face context.[437] The concepts developed in this chapter, however, can be extended to other areas of socialization, for example, within virtual groups.

Some recent work on virtual groups and the socialization process has provided some valuable insight in this area.[438] Especially in light of the fact that today members of an institution may be geographically dispersed through the globe (i.e., members of national security agencies in particular tend to be), the study of virtual groups and the socialization process that takes place in those groups will add insight to how institutional learning can develop within those institutions whose members are not necessarily working face-to-face.

To provide some of the foundation for studies of groups like virtual groups, the following section builds upon the concepts provided by organizational theories, using a constructivist perspective, and describes some recent empirical research on institutional social networks, referred to as "communities-of-practice" and how the group processes of these communities influence the members of the groups and alter the attitudes and identities of the institutional members through a socialization process within the community.

The Institutional Locations for Innovation: "Communities of Practice"[439]

[437] D.R. Comer, "Organizational Newcomers' Acquisition of Information from Peers," *Management Communication Quarterly*, Volume 5, Number 1, (1991), pp. 64-89; Ibid.
[438] Manju K. Ahuja and John E. Galvin, "Socialization in Virtual Groups," *Journal of Management*, Volume 29, Number 2, (2003), pp. 161-185.
[439] John Brown and Paul Duguid, "Organizational Learning and Communities-of-Practice."

This area of the research on "communities of practice" deals with emerging groups of institutional members that are "formed through a process of activity developed around attempts to solve unanticipated problems rather than set tasks to accomplish."[440] The central question posited by this work is not the design of structures for these groups to work within but rather the detection and the support of these emerging or existing groups or communities of institutional members because, according to the learning theories, these groups are "significant sites of innovation" for an institution.[441] The member of these groups are not necessarily organized in a typical canonical entity (i.e., organizational division, department or office) within the organization rather they are often "non-canonical groups" that have formed based upon the need to resolve problems that arise as the workforce tries to carry out the tasks to support the general mission of the organization.[442] Often, these groups of institutional members and non members are not even recognized by the official organization.[443] The aspect of the group not being recognized, or known, by the core organization may become a liability for innovative action if the organization, in reorganizing itself, restructures or reforms in ways that jeopardize the existence of these groups. One conclusion of this study is that in reorganizing the intelligence community, and in not taking into consideration these types of communities within the community, by legislating a centralized and consolidated structure the reformers potentially destroyed

[440] Ibid. at 49.
[441] Ibid. at 41.
[442] Ibid. at 43.
[443] Etienne Wenger, *Communities of Practice, Learning, Meaning and Identity*, Cambridge: Cambridge University Press (1998).

the very site of innovation within the intelligence community. Ironically, it was innovation that the intelligence reformers argued was vital to preventing the attacks of 9/11.

Defining Communities of Practice: Why & How They Develop

These "communities of practice" are defined as "groups of people who share a concern, a set of problems, or a passion about a topic and who deepen their knowledge and expertise in this area by interacting on an ongoing basis."[444] Based upon this "practice based theory of learning," learning takes place in "legitimate peripheral participation" in "communities of practice."[445] These communities develop spontaneously as the organizations members seek to carry out their mission and need to solve particular problems as they arise. These "communities-of-practice," arise and develop "in the field" where members of the institution are trying to solve problems that develop and have no readily available solutions. In other words, the institution itself (the core or official part of the organization) has not provided any specific guidelines for the specific problem that the members face.

To illustrate how members of a community-of-practice operate together by exchanging information and learning how to alter their behaviors (and the behavior of the organization), the following example of institutional behavior by the CIA is provided. On November 20, 1979 the U.S. embassy in Islamabad was attacked by rioters in a similar fashion to the U.S. embassy in Tehran that had been attacked just

[444] E. Wenger and R. McDermott and W.M. Snyder, *Cultivating Communities of Practice*, Boston: Harvard Business School Press (2003).
[445] J. Lave and E. Wenger, *Situated Learning: Legitimate Peripheral Participation*, IRL Report 90-0013, Palo Alto, CA: Institute for Research on Learning (1990).

weeks before.[446] While the rioters stormed the embassy killing one Marine and taking over the building the U.S. employees at the embassy and the CIA officers there sought safety in the CIA's third floor code room vault. This group of people (military, CIA and State department personnel) worked for hours on trying to figure out a way to escape from the vault. Without any "official" instructions or guide explaining what to do under the circumstances, the group improved and developed a plan to confront the rioters. Eventually, the members of the group made it out of the vault without injury.[447] Their stories of how they survived and escaped eventually became part of a lecture course taught to young case officers starting a career within the DO at the CIA.[448] This community-of-practice had figured out a way to solve a problem which no instructive guidelines existed. Within the group, the members exchanged information and ideas and developed a plan to solve the problem.

The Socialization Process

Within these groups, the members will adjust their behavior and adapt to the different environments they face in order to be able to effectively operate and accomplish job tasks. The socialization process that takes place within these groups allows the members to acquire "a variety of information and behaviors to become effective organizational members."[449] This process entails a "process of learning the

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[446] Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and bin Laden from the Soviet Invasion to September 10, 2001*, New York: Penguin Books (2005), p. 29.
[447] Ibid.
[448] Ibid. at 591, fn. 10.
[449] H.J. Klein and N.A. Weaver, "The Effectiveness of an Organizational-level Orientation Training Program in the Socialization of New Hires," *Personnel Psychology*, Volume 53, Number 1, (1985), pp. 47-66.

behaviors and attitudes necessary for assuming a role in an organization" in the face of constantly changing circumstances.[450] Through communication (not necessarily limited to face-to-face communication), the members interact, exchanging information in order to perform their tasks effectively.

In the process of socialization, communication (or the sharing of information) is key because "communication if the glue that holds the group structure together; it is the enzyme that allows the group process to function. Without communication, groups could not exist; without communication, people could not interact."[451] Through this process of socialization, norms are created, reaffirmed and, potentially, replaced. In addition, through this process identities are created and maintained (and possibly changed). As information is exchanged between members of the group by some exchange mechanism (face-to-face or otherwise), the members begin to learn behaviors and attitudes that will improve their ability to function socially within the group and carry out the necessary tasks.[452] This process of socialization is critical to the development of the norms and identities (which comprise an institution's culture) and also to the learning process of an institution.

Generally, the information or knowledge that is shared within these groups can be characterized as either "technical" information or "social" information.[453] Technical

[450] E. W. Morrison, "Longitudinal Study of the Effects of Information Seeking on Newcomer Socialization," p. 173.
[451] R.L. Applbaum, E.M. Bodaken, K.K. Sereno and K.W.E. Anatol, *The Process of Group Communication*, Chicago, IL: Science Research Associates, Inc. (1974), p. 9.
[452] D.R. Comer, "Organizational Newcomers' Acquisition of Information from Peers," *Management Communication Quarterly*.
[453] Ibid.

information typically relates to the skills and knowledge that members need to complete specific tasks – i.e., work schedules, instruction manuals, job assignments.[454] On the other hand, "social information" relates to knowledge about the principles, expectations, and norms of the group members – i.e., member beliefs and views about the nature of their work, how members seen themselves vis-à-vis outsiders to the institution. Technical information is more visible and more easily exchanged between members through formal training or documents published by the institution.

Learning theorists point out how the content of technical information is less ambiguous and therefore more easily exchanged between members and more visible to outsiders who study the socialization process of institutions.[455] On the other hand, social information which is generally more difficult to communicate than technical information is often learned by members through observation as a member of the group. This makes the exchange of social information during the socialization process much more ambiguous and much more difficult to detect (especially by outsiders).[456] This information tends to be more informal and tacit in nature (learned by "on the job" training rather then through written documents). One way in which social information can be communicated within the groups is through the sharing of war stories and lessons learned by other members. Through these stories member of the group effectively pass knowledge from one generation to another and across the boundaries of

[454] Ibid.
[455] R.L. Draft, R.H. Lengel and L.K. Trevino, "Message Equivovality, Media Selection and Manager Performance: Implications for Information System," *MIS Quarterly*, Volume 11, Number 3, (1987), pp. 355-366.
[456] D.R. Comer, "Organizational Newcomers' Acquisition of Information from Peers," *Management Communication Quarterly*.

the institution as the members of the institution work with others outside of the institution.[457]

While technical information may be exchanged outside the group itself, it is highly unlikely that social knowledge will be effectively exchanged unless the members maintain some form of exchange between them. It also follows that social information is more difficult for outsiders to experience unless they spend sometime within the institution. These insights about how different information is communicated within these groups has implications both for the researchers who want to study the process of how norms and identities can affect the behavior of institutions as well as intelligence practitioners who seek to understand how institutions like the CIA and the FBI develop certain cultures within their institutions.

Structural Impediment to Learning: Specialization

As organizational theorists have pointed out, organizations tend to specialize, dividing work into sub-units that become proficient at specific tasks. This specialization, however, tends to prevent the transfer of knowledge within an organization in important ways. The deeper the specialized knowledge of some members of an organization the more likely is it that the other members of the organization, in another part of the organization, will not possess the expertise or knowledge to understand their fellow members. With more specialization, there is usually less communication or exchange of information with less information being

[457] Julian Orr, "Sharing Knowledge, Celebrating Identity: War Stories and Community Memory in a Service Culture," in D.S. Middleton and D. Edwards, eds., *Collective Remembering: Memory in Society*, Beverley Hills, CA: Sage Publications (1990).

shared between members and managers. The typical solutions to these problems, however, will usually result in subverting learning and innovation. For example, in order to better manager across these different communities of practices within an organization, often routine reporting procedures and standardized operating procedures will be imposed upon the different units. These measures, however, often week out ideas and inhibit innovations that will not fit nicely into existing forms.

Implications for Researchers and Practitioners

For the researcher, the insights from these theories of socialization, learning and innovation raise questions about the ability to exchange social information outside of these groups. This suggests that more research on how institutions can seek to maintain these "communities-of-practice" is necessary. For the intelligence reform practitioners within the intelligence community, where the sharing of information is a key for improving institutional performance, they may want to consider certain implications that can be derived from this chapter. First, one implication for intelligence practitioners is that since the exchange of social information (which is a key factor in the culture of an institution and an institution's ability to learn and act innovatively) is traditionally obtained through observation and peer interaction of some sort, one way to promote learning of this information might be to establish formal relationships (on-the-job peer mentoring) between the junior and senior members of the institution. A second, implication is that because these groups are important sites of learning and innovation, any intelligence reform efforts should be examined with the preservation of these groups specifically in mind. Especially for the intelligence community

institutions for which information and information sharing is critical to their successful performance, these communities are important to maintain because that is "where knowledge is created, shared, organized, revised, and passed on."[458]

Based on the insights from the institutional learning theories presented above as they relate to social organizations there are at least to implications that are relevant to the design of the institutions within the intelligence community: (1) looking only at canonical groups within the intelligence community will not provide a complete or adequate picture of how learning is organized and accomplished within the intelligence community and how information is shared, rather it will provide only an understanding of the "dominant assumptions of the organizational core,"[459] and (2) there is the potential that post-9/11 reorganization of the intelligence community workplace focused on only "canonical" groups (such as the NCTC or the ODNI) can wittingly or unwittingly disrupt the highly functional "noncanonical" groups throughout the intelligence community that serve as the site for innovative learning. The process of learning (which supports institutional innovative behavior and exists within these communities) needs to be understood in terms of the communities it takes place within and not in terms of the pre-designed, pre-ordained constructs such as "teams" or "tasks forces" that are artificially introduced into the workforce.

In reaction to 9/11, the 9/11 Commission approached its reform efforts based on an a presumption that it is the natural tendency of an organization's members, unless they receive impetus from leaders, to arrange themselves as individuals operating within

[458] John Brown and Paul Duguid, "Organizational Learning and Communities-of-Practice," p. 44.
[459] Ibid. at 49.

separate worlds and to resist the transfer of knowledge (sharing of information) beyond themselves. Based on the presumption, the 9/11 Commission introduced a common solution to what the Commission perceived to be problems of resistance to information sharing particularly by the CIA: the introduction of "national centers." The 9/11 Commission's recommendation, enacted in legislation, to create a National Counterterrorism Center and other centers to enhance learning and information sharing was not revolutionary or uncommon in organizational redesigns. The introduction of similar organizational groups such as "teams," "work groups"and"task forces" into the workforce of organizations has been utilized in the past in efforts to increase information sharing among the workforce members. The recent research done on organizational learning within communities-of-practice, however, suggests that the members of organizations can and do work and learn collaboratively within groups – exchanging both technical and social information among selves and with outsiders. Furthermore, as the research demonstrates, without direction from centralized decision-makers (often times the decision-makers do not even know about the existence of these groups), these communities are continually being constructed and reconstructed by their members.

The organizational learning theorists argue that there is a misguided assumption by some organizational reformers that any institutional resistance to organizational reform is based on a general resistance to change or information sharing.[460] What the reformers neglect to see, according to the learning theorists, is the resistance to change

[460] John Brown and Paul Duguid, "Organizational Learning and Communities-of-Practice," p. 44.

may stem from a group or community-of-practice's efforts to preserve the very nature of the community which serves as the location for learning, socialization and innovation. As one scholar described it:

> The process of working and learning together creates a work situation which the workers value, and they resist having it disrupted by their employers through events such as a reorganization of the work. This resistance can surprise employers who think of labor as a commodity to arrange to suit their ends. The problem for the workers is that this community which they have created was not part of the series of discrete employment agreements by which the employer populated the work place, nor is the role of the community in doing the work acknowledged. The work can only continue free of disruption if the employer can be persuaded to see the community as necessary to accomplishing work.[461]

As the next part of this chapter demonstrates, by creating the NCTC and effectively compromising the work of the CIA's CTC, the 9/11 reforms failed to recognize the innovative behavior of the CIA and reacted to the 9/11 attacks with reforms that demonstrated an inadequate understanding of the development of innovative behavior.

Not only does these communities-of-practice provide a useful service to their members but they also provide to the larger organization a model and a means for the entire organization to reassess the effectiveness of the core organization's view of the world as well as the specific activities the organization performs as a whole. These groups can serve as a driver of innovative behavior not only within the group but across different aspects of the organization. These groups, by altering behave and attitudes serve as examples to the entire organization of the different opportunities for innovative activities and the benefits of trying something new.[462] The danger, however, is that the

[461] Ibid. at 48.
[462] Edgar H. Schein, "Organizational Culture," *American Psychologist*, volume 45, number 2, (1990), pp. 109-119.

larger organization may not recognize these groups for their value or will see them as "mavericks" who are rule-breakers and threaten the existence of the organization.[463] The result could be that the larger organization in not recognizing the groups will not support their exist and may reorganize in a way that effectively destroys the communities or the larger organization, in thinking of the communities as rule-breakers only, may intentionally work to break up these communities. The potential for innovation, however, is lost to an organization that ignores the importance of noncanonical practice.

A Constructivist Perspective: Culture & Identity Within Institutions

From organizational learning scholars like Lave and Wenger, who developed a view of institutional learning as social construction,[464] this study recognizes that innovative institutions have the ability to construct and reconstruct the identity of the organization through the learning process that takes place within communities or groups of individuals. Within these communities the reality of the group's need to address and solve problems in their daily practice requires that the individuals within the groups constantly interact among themselves, sharing information and knowledge and constantly reevaluating the environment in which the operate within. Through the process of socialization, the identity of the group members are constantly being assessed and altered in light of how the members perceive them themselves vis-à-vis the environment, the work and others. The members of the group that are part of the

[463] Brown and Duguid, p. 44.
[464] Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation*, Cambridge: Cambridge University Press (1991).

learning process are "learning to function in a community" and this entails that the members learn the "community's subjective viewpoint."[465] The members become "enculturated" into the community.[466] From this constructivist perspective, at the individual level, the members of the group can reconstruct their identities. By extension, at the organizational level, it is through the work of these communities that the identities of the organization can be reconstructed as well.

For an organization, an identity is an image of itself that it holds and projects out to others.[467] For the leaders of an organization, it is a means of maintaining a sense of coherence among the members of the organization.[468] For the members of the organization, it is what they believe to be central, enduring and distinctive about their organization.[469] From a constructivist approach, organizational identity is initially developed through certain "constitutive" norms or rules. That identity, however, can be modified over time through the interactive relations with "others."[470] In other words, an organization's identity is mutually constructed and can continue to evolve overtime through interaction with its environment.[471] Innovative organizations constantly reconstruct their identities as the environment in which it must operate changes. Indeed, innovative organizations are constantly asking themselves, who are we? What

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[465] Brown and Duguid, p. 48.
[466] J. Brown, A. Collins and P. Duguid, "Situated Cognition and the Culture of Learning," *Education Researcher*, Volume 18, Number 1, (1989), pp. 32-42, 34.
[467] James Q. Wilson, *Bureaucracy*, p.
[468] Ibid.
[469] S. Albert and D.A. Whetten, "Organizational Identity," *Research in Organizational Behavior*, Volume 7, (1985), pp. 263-295.
[470] Ronald L. Jepperson, Alexander Wendt and Peter J. Katzenstein, 'Norms, Identity and Culture in National Security' in Katzenstein, ed. *The Culture of National Security: Norms and Identity in World Politics*, Columbia, SC (1996), p. 54.
[471] Ibid. at 54.

is it that we do? How must our practices change to keep pace with the changing environment?

An Illustration of Institutional Identity & Culture: The CIA

Individual and institutional identities are established and regulated by norms. Generally, there are two types of norms within an organization that operate together to establish expectations about who the actors will be in a particular environment ("constitutive" norms) and about how these particular actors or organizations will behave ('regulative" norms).[472] Given a specific identity then, norms will create expectations about the proper behavior for that given identity. First, looking at the constitutive function of norms involved in establishing the identity of the CIA one could look to the original legislation that created the CIA as an organizational entity. For example, the CIA's legal charters (the National Security Act of 1947 and the Central Intelligence Act of 1949) passed by the Congress when the CIA was first established, describe the CIA as a foreign intelligence organization. The National Security Act of 1947 gave the CIA control over foreign counterintelligence and left the FBI responsible for catching spies within the Untied States. The CIA was allowed to conduct counterintelligence activities domestically if it coordinated its efforts with the FBI. After the Aldrich Ames spy case demonstrated that the consistent tension between the two organizations had contributed the Ames' being able to get away with spying for

[472] Peter J. Katzenstein, *Cultural Norms and National Security: Police and Military in Postwar Japan*, Ithaca, NY: Cornell University Press (1996).

over a nine-year period,[473] a presidential decision directive (PDD-24) and congressional legislation in 1994 eroded the CIA's autonomy in counterintelligence.[474] In this sense these formal rules constitute the identity of the CIA because these laws specify the types of actions by the CIA that allow others to identify the CIA as a foreign intelligence organization.

As for the "regulative" norms that dictated the expected behavior of the CIA one can look to other formal and institutionalized rules related to the CIA. For example, both the legislation under which the CIA was created and presidential executive order 12333, which came later on, describe certain the authorities and limitations under which the CIA operates. Two such prohibitions are (1) the prohibition against collecting through signals intelligence domestically within the United States and (2) the prohibition against operating as a law enforcement organization (it has not arresting or subpoena authority). These rules, or norms, generate expectations about how the CIA's identity as a foreign intelligence service will shape the behavior of the CIA in various circumstances (i.e., when acting domestically the CIA will not use SIGINT collection capabilities and CIA will not operate domestically in a law enforcement fashion but will defer to the FBI). They both constitute the identity of the CIA and regulate its behavior.

[473] For a detailed overview of the historical antagonism and conflict between the CIA and FBI, see mark Riebling, *Wedge: The Secret War Between the FBI and the CIA*, New York: Alfred A. Knopf (1994).
[474] Office of the Press Secretary, The White House, *Statement of the Press Secretary on U.S. Counterintelligence Effectiveness*, May 3, 1994; U.S. Congress, *Counterintelligence and Security Enhancements Act of 1994*, 103rd Cong., 2d sess. Public Law 103-359, Sec. 811.

Norms can change and evolve over time which in turn can alter the identity of an organization.[475] Those communities that operate at the periphery of the organization solving problems daily are forging their own and their community's identity in order that they may be able to break free from formal descriptions of their work that may restrict them in solving problems. The formal descriptions of their work do not necessarily provide them the information they need to solve the problems they face in practice. So the members in these communities construct alternative "shared understandings" or expectations of how they operate to solve problems. By creating these new norms the group creates new identities as required to address the challenges of changing practice. If the traditional options that an organization outlines for its members through formal guidelines does not work for the group then the members of the group will develop new "shared understandings" about how they solve the problem. These "self-constituting communities" will break free from the "ossifying tendencies of large organizations" in order to make sense out of the challenges it faces from its environment and to alter behavior in order to meet those challenges.[476] In acting innovatively, these groups, "ignore precedent, rules, and traditional expectations" and may break conventional boundaries established by the core organization.[477] In their flexible approach to practice and construction of identities, these "maverick" communities can serve as an innovation model for the larger part of the organization.[478]

[475] Katzenstein, *Cultural Norms*.
[476] Brown and Duguid, p. 50.
[477] Orr, *Talking About Machines*; Brown and Duguid, p. 51.
[478] Ibid.

Rituals, like identity are part of the culture of an organization. Similar to story telling in the practice of Orr's technicians and Brown and Duguid's "communities of practice," rituals are a mechanism through which members of a group can communicate with each other passing from member to member and generation to generation information and knowledge. In a similar vein, like story telling, rituals of an organization can serve an important means for members of these communities to assert their identities. For example, in presenting their annual awards in recognition of outstanding employee performance, the FBI's has routinely presented the awards only to criminal agents while FBI employees who carry out non-criminal tasks for the Bureau typically have not been recipients of this award.[479] In bestowing the award on the criminal agents, the FBI is asserting its identity as an institution that honors, appreciates, is dedicated to and is proud of its criminal investigative work. "The awards provide a useful gauge of FBI culture, of what it meant to be a star FBI agent, what kinds of work the bureau valued."[480]

Together, institutional practice, rituals, and norms creating certain expectations for behavior function to develop specific identities for individuals as well as institution. Similar to the FBI, the CIA possesses certain identities which dictate how the organization and its members behave and how they accomplish their job tasks. These identities form part of the culture of the CIA. For example, the CIA has historically taken great steps to protect the identity of its intelligence sources preventing any disclosure that would compromise a source's identity. The protection of secrets is a

[479] Amy B. Zegart, *Spying Blind*, p. 149.
[480] Ibid.

norm that guides the behavior of the CIA. In following this norm, all CIA employees are expected to handle classified information in a certain manner, following the protocols required by security procedures. As former DCI Tenet has stated, "Secrets are the necessary currency of the intelligence profession and protection of confidential sources and special methods is a solemn duty of every CIA officer."[481] The practice of following security procedures that are at times extraordinary in order to protect source identity and classified information reflects how the CIA, particularly the operational cadre, views itself as a clandestine intelligence organization. Intelligence sources are vital to the operational success of the DO and the CIA. The CIA's practice of vigorously and consistently protecting source identity is a gauge of what the CIA values and what is considered central to the work of the CIA.

The core mission of the CIA is to clandestinely collect and analyze information. A significant aspect of that mission is that the task of the CIA is foremost to operate clandestinely. For any clandestine intelligence service, therefore, the cornerstone of its work will be its ability to operate in secrecy, beyond the public's view. This is part of the identity of the CIA. The early stages of development of this identity can be traced back to the original legislation that establishing the CIA as a clandestine service. As part of the culture of the CIA, with an identity developed over the years as a clandestine service, it is not surprising that the CIA makes every effort to keep from the public eye the work that they so as a clandestine service. Secrecy is a core tenet of the culture of any intelligence service.

[481] George J. Tenet, "Foreword," in *Spycraft: The Secret History of the CIA's Spytechs From Communism to Al-Qaeda* by Robert Wallace and H. Keith Melton, London, UK: Dutton (2008), p. xii.

At times, the behavior of the CIA, as it seeks to operate in secrecy, far away from public exposure, has invited criticism from those who argue for more transparency and oversight of the CIA. For example, most recently, the Directorate of Operations (DO) (renamed the National Clandestine Service after 9/11), has come under criticism from many outsiders for its apparent unwillingness to have outsiders investigate or reprimand its officers. Rather, the DO has argued that it recommended keeping any investigation of the DO and any reprimands in-house. Recently, Jose Rodriquez, the former Director of the National Clandestine Service (NCS) has been under investigation for the destruction of the video tapes of CIA interrogation sections. The news accounts report that Jose destroyed the tapes without the permission of his superiors at the CIA.[482] Jose Rodriquez has not spoken publicly about his reasons for destroying the tapes but one could argue that the destruction of the tapes was the DO (NCS) asserting its identity as an organization that will take great steps to protect the secrecy of its operations – a task that it was charged by law to do. At times this has been described as the "maverick" culture of the Directorate of Operations.

In his book, *Ghost Wars*, Steve Coll describes a similar story about the DO "maverick" culture.[483] It was 1983 and the CIA station chief in Islamabad had become more concerned about the ability of the Pakistani intelligence service, ISI, to honestly broker the deals that the U.S. was making; "some diplomats within the U.S. embassy in Islamabad had begun to worry that the CIA's dependence on ISI was creating disunity

[482] Mark Mazzetti and Scott Shane, "Jose Rodriguez, Center of Tapes Inquiry, was Protective of his CIA Subordinates," *International Herald Tribune*, February 20, 2008.
[483] Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and bin Laden, from the Soviet Invasion to September 10, 2001*, London, England: Penguin Books, (2005), p. 65-68.

within the Afghan resistance."[484] The U.S. had been providing weapons and money to the Aghan tribes for them to fight the Soviets in Afghanistan. The CIA station chief at the time, Howard Hart, "had gotten close to Abdul Haq," the Afghan rebel commander that the U.S. had been working with and decided one day that he wanted to "see Afghanistan for himself."[485] Coll describes Hart's action as not being sanctioned by the CIA's headquarters, "Hart knew he would be reprimanded or fired if he was caught, but this was the sort of thing a proper CIA station chief just up and did on his own. It was part of the D.O.'s culture."[486]

Hart's behavior, as described by Coll, would appear to fit the "maverick" culture that organizational learning theorists like Orr talk about in the context of institution members working within communities and going against established rules in order to accomplish the job task.[487] It turns out that Hart's tenure as the CIA station chief in Islamabad is considered to be a great success by the CIA in the U.S. fight against the Soviets (even in light of his apparent insubordination).[488] Ambassador Dean Hinton praised Hart in an evaluation letter he sent to Langley stating, "Howard's relations with General Akhtar are close and productive concerning Afghanistan."[489] Hart's career would get a "lift from [this] excellent report card." [490]

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[484] Ibid. at 68.
[485] *Ghost Wars*, p. 68.
[486] Ibid. at 68.
[487] Orr at 48.
[488] Coll at 68.
[489] Ibid.
[490] Ibid.

At times, specific actions of CIA officers, like Hart's, (and maybe Jose's destruction of the tapes) appear to be reckless; these actions are appropriately characterized as "maverick" and in line with a "maverick" culture of the DO. It is in the same vein that Orr describes the actions of members of the communities of practice as acting in order to solve the problems that their environment presents them. The "maverick" characterization of the DO, at times, may be the most appropriate description of the behavior of the DO as a community of practice and a site for innovative action.

In line with the insights from the organizational scholars and learning scholars, the next section of this chapter revisits this issue of innovative practices of the CIA and the DO over the years prior to 9/11. As the next section demonstrates, it is this culture, constructed and reconstructed within the community of the DO and other groups within the CIA (i.e., DS&T) that serves as the repository for innovation and institutional adaptation. It is here that scholars and practitioners must look to identify the cultures necessary for the institution to be effective and from there try to support but not "subvert" the learning process that occurs within these groups.

An Illustration of Institutional Identity & Culture: the FBI

Careful attention to these communities will also shed light on why certain institutions seem to resist innovation. *The 9/11 Commission Report* provides some examples of resistance to innovation as "missed opportunities" by the FBI to put together pieces of information related to the terrorists' plot. In 2001, FBI agent Kenneth Williams, who was assigned to a counterterrorism job at the FBI Pheonix field

office, had noticed that there were a number of Islamist extremists enrolling in Arizona flight schools. After interviewing one of the subjects and conducting more research, the FBI agent was concerned that what he saw was a concerted effort by UBL "to send students to the United States to attend civil aviation universities and colleges."[491] He wrote his findings out in a memorandum that he sent to FBI headquarters and the FBI's New York Field office. In the memo he listed the subjects by name that were of concern and requested that the Bureau begin to compile the name and any other information regarding visa information of foreign students who were attending flight schools. He also recommended that FBI headquarters discuss the issue with other intelligence agencies so that they could gather additional information.[492]

The FBI headquarters failed to act upon Williams recommendations. The memorandum was not even shared with other intelligence agencies. In fact, Williams eventually closed the investigation he had opened on one of the suspects (who turned out to have a connection with Hani Hanjour, one of the 9/11 hijackers) because the suspect was outside of the United States. Agent Williams did this because once a suspect was outside the United States (a suspect that had not committed a crime) that person was someone else's responsibility.[493] An organization like the CIA, that conducts foreign intelligence collection mainly overseas, would normally be concerned

[491] Kenneth J. Williams, Phoenix Memo, July 10, 2001, in appendix 2, "Phoenix EC," United States Department of Justice, Office of Inspector General, A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks, November 2004, redacted and unclassified June 2005, p. 1.
[492] Kenneth J. Williams, Phoenix Memo, July 10, 2001, p. 2; *The Joint Inquiry Report*, p. 326.
[493] Joint Inquiry Staff Statement, "The FBI's Handling of the Phoenix Electronic Communication and Investigation of Zacarias Moussaoui Prior to September 11, 2001," September 24, 2002, supplemented October 17, 2002, p. 8; Morning session of HPSCI, SSCI Joint Inquiry hearing, "Events Surrounding September 11," 107th Cong., 2nd Sess., September 24, 2002.

with such individuals. But no one had passed the information or the suspects name to the CIA.[494]

The work of the FBI agent Williams was innovative. As a field agent he was trying to solve a problem that he had perceived while carrying out his work: it appeared that a large number of radicals associated with UBL (someone known to be a threat against the US) training in the United States to fly planes. In testimony before Congress, the FBI Director Mueller noted, the memo . . . should have been disseminated to all field offices and to our sister agencies and it should have triggered a broader analytic approach."[495] Yet, the memorandum was not shared with other intelligence agencies and was not accepted by the core organization of the FBI as something useful in performing its tasks.[496] It generated "little or no interest" at the FBI's headquarters and the New York field office.[497] In a statement to the Joint Inquiry staff, agent Williams explained, counterterrorism and counterintelligence were considered the "bastard step children" of the FBI because they did not generate the arrest and conviction statistics that criminal programs did.[498] In fact, agent Williams testified that he expected that his memo would go to "the bottom of the pile," because it dealt with analysis on counterterrorism which was not a priority for the FBI.[499] FBI headquarters had not rejected the facts as inaccurate when they received the memorandum; they just

[494] George Tenet, *At the Center of the Storm*, Harper Collins (2007).
[495] *The Joint Inquiry Report*, p. 330.
[496] "Threats and Responses in 2001," 9/11 Commission Staff Statement Number 10, April 13, 2004, p. 9; *The Joint Inquiry Report*, p. 80.
[497] *The Joint Inquiry Report*, p. xiii.
[498] Eleanor Hill, "The FBI's Handling of the Phoenix Electronic Communication and Investigation of Zacarias Moussaoui Prior to September 11, 2001," statement before the HPSCI and SSCI Joint Inquiry, 107th Congress, 2nd Session, September 24, 2002, p. 5.
[499] Quoted in *The Joint Inquiry Report*, p. 330.

were not interested in it. In fact, later on, during testimony, Director Mueller praised the memorandum for the good analysis that it contained and stated that it should have been used by the Bureau. But at the time, the larger organization of the FBI did not see a use for it. They saw the memorandum and the actions agent Williams recommended as having no role in the Bureau practice. What failed to happen was a reconceptualization of the identity of the FBI and its environment when it came to threat from terrorists in the homeland. The FBI saw itself as a law enforcement organization that followed leads and prosecuted individuals, including terrorists, for violations of crimes. The Bureau had learned from its historical experiences that it was to focus on law enforcement and not intelligence. And FBI agents over the years had learned "in the process of experiencing the consequences of their actions" in the past that they should stay within the law enforcement arena.

There was no FBI practice towards which the memorandum's suggestions would have been helpful to be put to use; it was just information with no relevant value for law enforcement purposes. The FBI officials at headquarters and the New York field office dismissed the memorandum because it did not provide any information related to current investigations that they were conducting.[500] What the larger FBI organization failed to see was that the information that Agent Williams suggested to be collected (information about foreigners in the U.S. with links to terrorists who were training to flight planes) was valuable intelligence (non law enforcement information) that might have been helpful in unraveling a developing threat to harm the United States. The

[500] Zegart, *Spying Blind*, p. 167.

Phoenix memo is an example of the larger organization of the FBI failing to reconceive its identity as well as its environment in order for it to see the value of the information within the memorandum and act upon it.

One conclusion that could be drawn from this example is that the FBI agents failed to learn and adapt to the new way of countering terrorism that their Director had identified for them. Another way to see this though is that the FBI had changed and adapted back in the 1970s when their experiences with the Congressional investigations taught them that intelligence activities was not something that they should be thinking about. In 2001 the agents were operating according to the identity that have been created and developed starting with the leadership of the FBI under Hoover and more deeply codified after the Congressional investigations during the 1970s and the passage of the Attorney General guidelines after those investigations.

The process of seeing the world in a different manner allows organizations reciprocally to see themselves anew and to overcome discontinuities between their environment and their structure. The act of "enacting" and innovating by an organization can be understood as the process of "sensemaking" and identity-building activities that may occur at the periphery of the organization. Innovation does not have to be something radical. Innovation can be done within an organization through incremental improvements.[501] Incremental learning and innovating does not have to lie, and often does not since canonical parts of the organization are less likely to think and act outside of the rigid descriptions of work, in the core parts of an organization.

[501] S.R. Barley, "Technology, Power, and the Social Organization of Work: Towards a Pragmatic Theory of Skilling and Deskilling," *Research in the Sociology of Organizations*, Volume 6, (1988), pp. 33-80.

Alternative world views are distributed throughout organizations within numerous different communities that are trying to accomplish their specific tasks. So, to be innovative, an organization does not have to create some high level strategic plan or formal large organizing structure to consolidate and bring things together. Innovation does not necessarily come from headquarters but rather from those communities of member and non members of the organizations that work within the context of the problems and who have to adapt daily in order for them to accomplish their tasks. If an organization either ignores these innovative activities in various parts of the organization or curtails them, the organization risks its own survival by threatening the learning practices by which the organization survives and by depriving the core organization of potential innovation that arises within these parts of the organization. The FBI, in the Phoenix memo example, ignored the innovative ideas of a field agent and it failed to reconceptualize its own identity in the face of the terrorist threat at its own peril. This example can be compared with an example of an organization welcoming innovation; CIA and its establishment of In-Q-Tel.

Flaws in Zegart's Assessment of Innovation at the CIA and the FBI

Amy Zegart has suggested that a major failure prior to 9/11 was the inability of the intelligence community to adapt its structure and focus to the emergent threat of terrorism in the post-Cold War world.[502] In her most recent book on intelligence reform, Zegart argues that there were inherent traits within the intelligence community, similar to any large organization, which prevented it from adapting to new challenges

[502] Amy Zegart, "September 11 and the Adaptation Failure of U.S. Intelligence Agencies," *International Security*, Volume 29, Number 4 (Spring 2005), pp. 78-11.

and new missions.[503] She points out that only 35 of the 340 recommendations from the dozen or so major commissions on intelligence reform were ever implemented; no action was taken on 80 percent of the recommendations. Because the intelligence community failed to make changes according to the recommendations from such commissions in the past, Zegart argues, that the intelligence community was not able to adapt to meet the new threats which ultimately caused the U.S. government to be unable to prevent 9/11.

In the book, Zegart examines the FBI and the CIA and argues that both agencies failed to adapt to the terrorist threats because of the same deficiencies of structure and culture. While Zegart deserves credit for identifying the importance of theory to the reform question so the intelligence community and for highlighting the significance of culture in the performance of these institutions, some of her conclusions are based upon erroneous facts. The picture that the author leaves the reader with is one where the CIA and the FBI made no changes that "improved the fit between the organization and its external environment" – her definition of adaption.[504] She assumes that any changes that were made at the CIA and the FBI were not adaptive because those changes must not have improved the fit since 9/11 was not prevented.

Her research, however, is limited as she fails to identify a number of unclassified and public examples of innovative changes that were made at least by the CIA during the time period she examines. This is a common problem with commentaries related to intelligence work; identified what is perceived as failures with

[503] Amy Zegart, *Spying Blind.*
[504] Ibid. at 17.

no discussion of successes.[505] The book strains to fit these two institutions within the authors theory of impediments to adaption that are inherent in institutions. These flaws in Spying Blind primarily result from a near total reliance on the analysis and conclusions of the 9/11 investigations without any real questioning of the investigations findings; especially the 9/11 Commission. Zegart uncritically accepts the commission's analysis of the facts as the report describes them without any independent assessment about the effectiveness of its conclusions. In *Spying Blind* there is no real attempt to question the Commission's findings or recommendations for reform. Her unquestioning acceptance is revealed in the discussions of the intelligence community's record prior to 9/11 as well as in her assessment of all prior commissions that investigated the intelligence community. In the book, Zegart identifies over 300 recommendations by prior commissions in regards to the intelligence community that have never been implemented by the intelligence community.

Zegart argues that this is evidence that the agencies' failure to adapt to new challenges like terrorism. She fails to acknowledge or even investigate the possibility that the recommendations might have been misguided or flawed. She makes no independent attempt to assess the effectiveness of the recommended reforms. Further, she does not mention or investigate the possibility that while there is no apparent public indication of changes made pursuit to the recommendations, that there might have been internal changes made to implement some or parts of certain of the recommendations.[506]

[505] Tim Weiner, *Legacy of Ashes: The History of the CIA*, New York: Doubleday (2007).
[506] In an interview with Zegart she acknowledged both of these flaws, December 2007, Georgetown University.

The next part of this chapter will examine three categories of institutional innovation by the CIA's innovation in the years preceding 9/11: Technical Innovation, Operational Innovation and Organizational Innovation. The section will describe six different cases where the CIA acted in innovative ways either organizationally, operationally or technically. Three of the six examples of innovative practice are focused specifically on threat from terrorism while the other three are related to non-terrorism threats that the CIA sought to counter as they emerged. This section demonstrates, contrary to Zegart's arguments, that prior to 9/11, the CIA adapted in the face of challenges/threats from its environment. In applying the concepts and ideas developed from organizational theory and learning theory, this section of the study sheds light on some of the institutional features that allowed the CIA as an institution to act in adaptive and innovative ways.

An Illustration: Institutional Innovation by the CIA

Technical Innovations

Example 1: The U-2 & A-12 Aircrafts: CIA, Air Force and Industry

As former DCI Tenet stated, the "U-2 was, indeed, one of the CIA's greatest intelligence achievements."[507] The U-2, however, demonstrates much more then just one intelligence success story for the CIA. Both the U-2 and its successor, the A-12, are examples of the type of innovative actions that the CIA has taken since its establishment. In both of these projects, the CIA with the help of private contracting companies and the military, "drew ideas, information and strengthen from a variety of

[507] George J. Tenet, "The U-2 Program: The DCI's Perspective," *Studies in Intelligence*, Winter 1998-1999, Washington DC: Center for the Studies in Intelligence, pp. 1-4, 1.

disciplines and from each other."[508] This approach was started with the development of the U-2 but was continued with the development of the A-12 almost a decade after the U-12.

Significantly, these specific examples of innovation are not limited to only individual incidents of change. They are a reflection of the innovative process that the CIA has identified itself with as an institution. These projects illustrate the CIA's culture that supported experimentation and risk taking as the agency sought to adapt to the new threats in its environment in order to confront them. They also highlight the role that structural organization plays in supporting innovative behavior. The history of these programs serves to provide a window into how the CIA learned as an organization and acted innovatively. This culture would persist and lead to other CIA ventures like In-Q-Tel after the Cold War.

In 1947 when the CIA was established its primary mission was to provide U.S. leaders with strategic warning of attack by the Soviet Union. The CIA's collection and analytic mission would be central in detecting and preempting, if necessary, a nuclear surprise attack by the Soviet Union. The Soviet Union, however, proved to be a difficult target for traditional human collection through espionage. The U.S. needed an alternative way to identify the Soviet's military capabilities within the Soviet Union. The CIA recognized that the information that could be obtained from inside the Soviet Union through covert means was limited and that without other means to see inside the

[508] David Robarge, *Archangel: CIA's Supersonic A-12 Reconnaissance Aircraft*, Center for the Studies of Intelligence, September 2007, p. 4; Ben R. Rich and Leo Janos, *Skunk Works: A Personal Memoir of My Years of Lockheed*, New York: Back Bay Books (1996).

Soviet Union, the CIA could not effectively carry out two of its important functions: "to warn the President against surprise attack from the Soviet Union and to provide him with the intelligence he needed to make difficult national security decisions."[509]

In 1954, based on the advice of a White House task force that had been created to "examine ways of enhancing the nation's intelligence capabilities through technology,"[510] President Eisenhower decided that the CIA would lead the effort to establish and direct the U-2 program that would allow the U.S. to use unconventional aircraft to "provide hard intelligence on the growing Soviet strategic threat."[511] The task force, chaired by Dr. James Killian of MIT and included Dr. Erwin H. Land, a future Nobel laureate and the investor of the Polaroid camera, began to study ways in which the U.S. could prevent surprise attacks. In the course of their study they became aware of a program that the Air Force had "turned down" that involved plans for a "new high-altitude reconnaissance plane."[512] This plane would eventually become known as the U-2. In recognizing the need for aerial photography in assessing the threats to the U.S., the task force sent a letter to DCI Dulles urging the DCI and the CIA "to assert your right to pioneer in scientific techniques for collecting intelligence" and to take advantage of the "opportunity for aerial photography."[513]

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[509] David Robarge, *Archangel*, at 2
[510] Rhodri Jeffreys-Jones and Christopher Andrew, *Eternal Vigilance?: 50 Years of the CIA*, p. 83.
[511] Central Intelligence Agency, Press Release & Statement, "CIA, NRO, and Air Force Celebrate the U-2: A Revolution in Intelligence," September 28, 1998, http://www.cia.gov/news-information/press-releases-statements/press-release-archive-1998/index.html.
[512] Christopher Andrew, *For the President's Eyes Only*, p. 221.
[513] Dino A. Brugioni, *Eyeball to Eyeball: The Inside Story of the Cuban Missile Crisis*, New York: Random House, 1991, p. 7, pp. 15-18.

By 1954 the CIA had accepted the task from President Eisenhower that had been rejected by the Air Force to develop a novel plane that would serve as an aerial reconnaissance asset for the U.S. against the Soviets. The CIA began by bringing together the best talent from academia, industry and the military; individuals like James Killian from MIT, James Baker from Harvard, Edwin Land of Polaroid and Kelly Johnson from Lockheed Corporation. The task was daunting; to design, build and fly a photographic reconnaissance plane that could fly over the Soviet Union at a higher altitude than any plane had flown before. The CIA officer, Richard Bissell, who ran the project, described the task that his team faced, "nobody had really worked out how anything was to be done; nobody knew where it would be developed, where flight-testing could be done, where people could be trained or by whom, who could fly it or anything."[514] The CIA faced a task that the agency had never dealt with before and that others like the Air Force had abandoned; there were no blueprints for how such a program was to be run nor was there a blueprint for the problems the program would face during development. To develop the plane, the CIA entered into a partnership with the Air Force and Lockheed Martin. The CIA would be responsible for "overseeing production of the airplane and its cameras, for choosing the bases and providing security and for processing the film,"[515] the Air Force would ultimately hire the pilots to fly the plane and provide "mission and weather planning and run the daily base

[514] George J. Tenet, "The U-2 Program," p. 2.
[515] Ben R. Rich and Leo Janos, *Skunk Works: A Personal Memoir of My Years of Lockheed*, p. 130

operations."[516] And Lockheed Martin would "design and build the airplane and provide ground crews for the basses and a cover for the pilots."[517]

Within eighty-eight days, the CIA, with Lockheed's Advanced Development Projects component named "Skunk Works," had developed the first U-2 prototype.[518] It had been developed on time and under budget at $3 million.[519] Over the next 15 years the U-2 would fly over 15 missions over the Soviet Union.[520] The photographs that the U-2 collected over the Soviet Union were critical to the U.S. because they assured the president that there was no real bomber gap and no missile gap with the Soviet Union, thereby preventing an escalation of military armaments and potentially a world war. In his memoirs, in referring to the U-2, President Eisenhower stated, "[It] provided proof that the horrors of the alleged 'bomber gap' and the later 'missile gap' were nothing more than imaginative creations of irresponsibility."[521] In addition to the intelligence information collected, in providing evidence contrary to any theory of a missile gap, the U-2 prevented the U.S. from wasting millions of dollars on military escalations to counter the Soviets, sparing the world "a major escalation in the nuclear arms race."[522]

The challenges that the CIA faced did not end with the development of the plane. Once the plane was developed, the CIA was in charge of hiring the pilots to fly

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[516] Ibid. at 131.
[517] Ibid. at 131.
[518] Ben R. Rich and Leo Janos, *Skunk Works*
[519] United States Congress, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities* [Church Committee]. U.S. Senate, 94 Cong., 2 Sess., Report no. 94-755, April 26, 1976, book 4, p. 59.
[520] Ibid. at 59.
[521] Dwight D. Eisenhower, *The White House Years: Waging Peace, 1956-61*, London: Heinemann Publishers, 1966, p. 547n.
[522] Christopher Andrew, *For the President's Eyes*, p. 243.

the plane. Normally the Air Force would have been the organization to find the qualified pilots for such a project but President Eisenhower had "cut out the Air Force from the U-2 program on the basis that the CIA was better at keeping secret a very classified program."[523] The commander of the Strategic Air Command, Curtis LeMay, was "furious that his own organization was not running the program" and that the president had "allowed the CIA to start up its own air force." To satisfy the Air Force's concerns, the CIA developed a way to allow the Strategic Air Command to hire the pilots to fly the U-2 but also maintain U.S. government deniability for running the program by having the pilots resign from the Air Force and go to work for Lockheed as civilian contract employees under false identities. Through this process the CIA increased the likelihood that the role of the U.S. government could be hidden since "even the KGB might have a tough time tracing any of those pilots back to the military."[524]

In order to maintain the planes overseas the CIA had decided that it would hire the Skunk Works mechanics and maintenance people rather than the usual Air Force crews because Skunk Works "held the monopoly on knowledge and experience on the workings of the U-2, and on these critical missions over Russia there was no margin for any mechanical failure." The CIA would use its special government funds from the agency's Contingency Reserve Fund for the salaries and use of these Skunk Works crews. Ultimately, $54 million was allocated from these funds by the CIA to Skunk

[523] Ben R. Rich and Leo Janos, *Skunk Works*, p. 142.
[524] Ibid. at 143.

Works to run the U-2 program.[525] Without these special funds appropriated by Congress outside the normal appropriation process the U-2 program would not have been able to be funded.

For twenty years the CIA ran the U-2 program until the Air Force took it over in 1974. To this day the U-2 technology provides vital intelligence to U.S. policymakers. For organizational learning, however, this one program was more significant because from it the CIA drew "important lessons from their experience" with the U-2 program that has continued to allow the CIA to adapt to the new threats that emerged after the Cold War. At a conference celebrating the success of the U-2 program former DCI Tenet stated, "[T]he legacy of the [U-2 program run by CIA] is in action today."[526] Without going into details about the specific ways this is occurring today, the former DCI listed the threats that the intelligence community faced in the post Cold War, "proliferation, terrorism, regional crises, the fallout of humanitarian disaster," and described the necessary characteristics of the intelligence community in addressing these threats; being bold, smart and agile; working across disciplines (collection and analysis); coordinating with military; and partnering with private industry.[527] There were all lessons learned from the U-2 program that the CIA would go on to rely on in the future. In running the U-2 program, the CIA and its partners were able to "think big and think different and take risks."[528]

[525] Ibid.
[526] DCI statement
[527] DCI statement
[528] George J. Tenet, "U-2 Program," p. 4.

At the time of the U-2 program the partnership that the CIA forged with Lockheed and the Air Force was "unprecedented in the annals of the military-industrial complex"[529] but this would not be the last time that the CIA would use an innovative partnership to meet the security challenges the United States faced. The actions by the CIA in running the U-2 program were all the necessary elements of innovative behavior and organizational learning. That program, however, would not be the only time that the CIA actively adapted to a changed environment. In September 2007, many of the details of a classified program were declassified. The description here is based upon a report written by CIA Chief Historian, David Robarge, entitled, *Archangel: CIA's Supersonic A-12 Reconnaissance Aircraft*,[530] about that program.

By 1956, the CIA had recognized that the U-2 was of limited value. The CIA's original estimate about the U-2 ability to fly undetected over the Soviet Union turned out to be too optimistic; "the Soviets tracked the U-2 from its first mission" over Soviet territory on July 4, 1956.[531] The Soviets filed a formal protest to the State Department within days of the first overflight over Soviet territory and privately threatened the Germans with an attack if they did not stop allowing the U.S. to use a base in West Germany as the location for the program.[532] The CIA recognized that it was going to need to develop an even better aircraft, one that could not only fly at extremely high speeds and altitudes but one that could carry state-of-the-art technology for radar

[529] Ben R. Rich and Leo Janos, *Skunk Works*, p. 130.
[530] David Robarge, *Archangel: CIA's Supersonic A-12 Reconnaissance Aircraft*, Center for the Studies of Intelligence, September 2007, p. 4; Ben R. Rich and Leo Janos, *Skunk Works: A Personal Memoir of My Years of Lockheed*, New York: Back Bay Books (1996).
[531] Ibid. at
[532] Ben R. Rich and Leo Janos, *Skunk Works*, p. 149.

absorption and deflection in order to avoid detection by the Soviets. Once again Lockheed worked with the CIA to develop the aircraft that was necessary. By 1960 it became very obvious how important the success of the A-12 would be to U.S. national security: "With U-2 overflights of the Soviet Union no longer possible after Francis Gary Powers's aircraft was shot down on 1 May 1960, the reliability of the new CORONA satellite still undetermined, and no other aerial or space vehicle considered feasible for the mission," the A-12 was the US' only hope of getting vital intelligence on its principal Cold War adversary.[533]

The challenge to build the A-12 was especially daunting as it was to be four times faster than the U-2, go almost three miles higher, and have the smallest possible radar cross section in order to minimize the likelihood of detection. In order to meet the requirements for the A-12 the team needed to develop "new structural materials, tools, and fabrication techniques and special fuels, fluids, lubricants, sealants, paints, plastics, electronics, cables, windshields, fittings, fixtures, and tires."[534] Nothing could be sued off the shelf. Furthermore, no assembly line techniques could be employed every aircraft was essentially handmade."[535] The program went over time and the costs went way over budget. But by the 1960s, production of the A-12 was at its peak, "nearly 8,000 workers were delivering an A-12 or a variant each month." By early 1967, the A-12 was flying over North Vietnam in order to provide President Johnson with vital information about the Vietnamese military capabilities as well as the locations of

[533] David Robarge *Archangel*, p. 5.
[534] Ibid.
[535] Ibid.

civilians in order to minimize the civilian causalities when it came time for Johnson to choose targets.[536] On January 26, 1968, the A-12 also demonstrated its superiority as a rapid reaction collection platform when it flew over North Korea in order to verify the location of the US Navy ship Pueblo that has been seized by the North Koreans on January 23, 1968.[537]

The A-12 was a success. The CIA was able to develop with the help of its partners "a reconnaissance aircraft that could fly at unprecedented speeds and heights for unequaled ranges and was essentially invulnerable to enemy attack."[538] The A-12 program, described by many as a "pioneering accomplishment in aeronautical engineering" resulted in "innovations in aerodynamic design, engine performance, cameras, metallurgy, use of nonmetallic materials . . . . . and helped lay the foundation for future stealth research."[539] In the almost 25 years that the A-12 and its successor, the SR-71, have flown more than 3500 missions over hostile enemy territory, not one aircraft has ever been shot down. The success of the A-12 program has been attributed to "CIA and Lockheed following the best practices from the U-2 project that Johnson and Bissell tacitly referred to: complete trust between customer and contractor, individual responsibility and accountability, start-to-finish ownership of design, willingness to take risks, tolerance for failure, and streamlined bureaucracy with minimal staffing and paperwork."[540]

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[536] Ibid. at 32.
[537] Ibid. at 33.
[538] Ibid. at 34.
[539] Ibid.
[540] Ibid. at 12.

For those that question whether adaptation and innovation is possible in government institutions the U-2 and the A-12 programs serve as useful examples of the factors that contribute to innovation within the government. These examples as well as the other cases discussed below may provide scholars and practitioners insights about how institutions learn and innovate and highlight some of the best practices, institutional structures, and cultural inclinations for the learning and innovation process. Furthermore, for those that argue that the CIA, in particular, has not adapted since the Cold War it serves as a counter example to their argument. In his memoirs Richard Bissell, the CIA's driving force in reconnaissance systems like the U-2 and A-12 aircrafts, described the atmosphere of creativity and innovation at the CIA in running these program and the incredible speed in which the programs were completed. According to Bissell, "The go ahead for the U-2 project was given to Clarence "Kelly" Johnson of Lockheed Aircraft by telephone on December 1, 1954. The first overflight of the USSR took place on July 4, 1956 . . . Two months after the first overflight of the Soviet Union, Col. Jack Gibbs and I started defining a successor to the U-2 . . . In March 1955, influenced by RAND Corporation studies [and others] . . . a general operational requirement for a photoreconnaissance satellite [was issued],thereby initiating a different technical approach to overhead reconnaissance."[541] Bissell was referring to the Corona project run by CIA that would develop the first photographic reconnaissance satellite.

[541] Richard M. Bissell, Jr., *Reflection of a Cold Warrior: From Yalta to the Bay of Pigs*, New Haven, Conn." Yale University Press (1996), p. 92.

Example 2: The Corona Photographic Reconnaissance Satellite: CIA, Air Force and Industry

Just 110 days after Gary Power's U-2 plane was shot down over the Soviet Union, the U.S. had already successfully launched an alternative intelligence collection capability -- a camera-carrying satellite that would fly in a "100 nautical mile polar orbit above the Earth and from there take pictures that ultimately could show objects that were as small as 2 meters."[542] The program that developed this satellite was called the Corona. The Corona project was placed under a joint CIA-Air Force management team -- the same approach that was successfully used in the development and operation of the U-2 and A-12 aircrafts.[543] The purpose of the project was to develop a space platform to acquire photographic intelligence to help satisfy the requirement for the much needed information about denied areas such as the Soviet Union. The engineering that was involved in the project was based on "theoretical concepts that were yet to be demonstrated and used a technology that was based on neither confident data not proven hardware."[544] In other words, the CIA in its joint efforts with the Air Force was asked to build something that had never been built before or even theoretically tested before in order to fill a critical intelligence need.

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[542] Robert A. McDonald, ed., *Between the Sun and the Earth: The First NRO Reconnaissance Eye in Space*, Bethesda, MD: The American Society for Photogrammetry and Remote Sensing, 1997, http://www.cia.gov/library/publications/additional-publications/corona-between-the-sun-and-the-earth-/index.html.
[543] Kenneth E. Greer, "Corona," *Studies in Intelligence*, Supplement, Volume 17, Spring 1973, pp. 1-37.
[544] McDonald, *Between the Sun and Earth*, p. 3.

The Corona program was the "first space program to recover an object from orbit and the first to deliver intelligence information from a satellite."[545] On its first successful mission on August 19, 1960, the film captured from the satellite contained "3,000 feet of film and covered more than 1,650,000 square miles of Soviet territory."[546] In this one captured film, the Corona project had gathered more overhead photographic coverage of the Soviet Union than the U-2 obtained in all of its flights over the Soviet Union.[547] In describing the significance of the intelligence collection from the CORONA satellite then DCI Helms stated, "[T]he intelligence explosion of the century was on, a relentless stream of detailed data which turned analytical work on these so-called 'denied areas' from famine to feast."[548]

Although the CIA was already making use of aircraft to collect photo surveillance through the use of the U-2 aircraft, it recognized the need for further capabilities in the area of satellite collection. As a result, the CIA aggressively pursued efforts to develop an effective satellite collection capability through the successful development of the CORONA project. Often the CORONA project faced moments when its existence would be threatened either because of resistance from the Hill to fund the costly project or because of system failures that occurred. In the 1950s, in the face of a number of early failures in the launch of the CORONA system, however, the CIA and President Eisenhower continued to fund the early tests of the overhead

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[545] Ibid. at 3.
[546] John M. Deutch, "DCI's Address to CSI CORONA Symposium," Speeches & Testimony Archive 1995, May 23, 1995. http://www.cia.gov/news-information/speeches-testimony/1995/index.html.
[547] Ibid.
[548] Richard Helms quoted in J. Ranelagh, *The Agency: The Rise and Decline of the CIA*, New York: Simon Schuster, Inc., 1987, p. 327.

reconnaissance satellites. Even in the face of defeat in failed launches the CIA continued to push hard for the continued development of the system that would ultimately prove extremely worthwhile in terms of its intelligence collection capability.

Operational Innovation

Example 3: The Berlin Tunnel: CIA, Army's Corp of Engineers and the British

In 1954 the CIA, in a joint intelligence operation with the British, began plans to build a 500 meter tunnel from the American sector of West Berlin into the East to tap cables leading to the Soviet military and intelligence headquarters at Karlshorst. The joint operation codenamed "Operation Gold" was pioneering and challenging as no one had ever attempted to build a tunnel in enemy territory in secret.[549] According to a recently declassified CIA report, "No one had ever tunneled under clandestine conditions with the expectation of hitting a target two inches in diameter and 27 inches below a main German/Soviet highway."[550] A number of factors lead to the idea of creating a tunnel to intercept the Soviet and East German communications. According to the CIA report, as early as 1948, the White House and the CIA recognized that due to a loss of a number of sources at the time that had been reporting on the Soviet Union, there was a gap in the intelligence information the U.S. had about what was happening inside the Soviet Union.[551] During this same timeframe the U.S. had become aware

[549] Jeffrey T. Richelson, *The Wizards of Langley: Inside the CIA's Directorate of Science and Technology*, Boulder, Colorado: Westview Press (2001), p. 29; Interview with Richelson, DATE, by phone, Georgetown Univeristy.
[550] CIA's Clandestine Services, Historical Paper, "The Berlin Tunnel Operation, 1952-1956, p. 18, published June 24, 1968, declassified February 2007, http://media.washingpost.com/wp-srv/world/documents/tunnel1.pdf.
[551] Ibid. at.1.

through human sources that the Soviets were utilizing a specific communication device that the Soviets referred to as "VHE CHE" that would effectively "scramble" the high level voice communications. And importantly, the CIA had discovered a "principle which, when applied to target communications, offered certain possibilities."[552] The Berlin tunnel became the opportunity for the CIA to exploit this "principle." These factors "served as additional incentives (above and beyond our normal collection requirements) to focus attention on Soviet landline targets."[553]

In 1951 the British informed the CIA that they had been collecting intelligence on the Soviets by "tapping Soviet cables through a system of tunnels in the Vienna area."[554] The British began sharing the information they collected from these taps. By 1953 the CIA had begun a joint collection effort with the British against the Soviets targeting communications cables in Berlin and began developing the plans to construct the tunnel that would support the collection effort.[555] To do the actual digging of the tunnel DCI Dulles reached out to the Army and Lt. Colonel Leslie Gross, from the Corps of Engineers. Lt. Colonel Gross finalized the engineering plans, hired Corps of Engineers personnel and established a test site in New Mexico where parts of the installation of the tunnel "could be assembled for training for the up-coming real thing."[556]

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[552] Ibid. at 2.
[553] Ibid.
[554] Ibid.
[555] Ibid. at 5.
[556] CIA, "Turning a Cold War Scheme into Reality: Engineering the Berlin Tunnel,"declassified February 2008, p. 3, http://www.cia.gov/offices-of-cia/public-affairs/entertainment-industry-liaison/engineering%20berlin%20tunnel.pdf.

The successful creation of the Berlin tunnel and the intelligence collection gathered from the tapped cables was a truly amazing intelligence feat.[557] There were multiple complicating factors involved with building the tunnel itself. First, to determine the exact cables that the CIA needed to tap the CIA needed to recruit agents to penetrate the East Berlin office of the East German Post and Telecommunications network. Once the target cables were determined the tunnel's location was finalized – it would have to be on the closely patrolled border between East and West Berlin. The challenges were many: how would the diggers avoid the watchful eyes of the East Germans, how would the excess dirt estimated to be approximately 3,000 tons be secretly disposed, how could the noise from the digging be hidden, how would the tunnel be able to withstand the weight of the "Soviet or East German 60-ton tanks riding down Schoenefelder Chausee" directly above the tunnel,[558] what would be the cover story for the facility that would be needed for the construction. Ultimately the CIA came up with the idea of using a warehouse that was an element of the Quartermaster Corps for cover whose purpose was "housing items that should be dispersed for one reason or another in a remote area of Berlin."[559] The warehouse idea solved the dirt disposal problem as the basement of the warehouse was used to store the dirt. As the CIA report noted, they would "dig a hole and put the dirt in it."[560]

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[557] Speech by Dr. -, former DDS& T at the CIA, DATE, Georgetown Univeristy.
[558] CIA, "Turning a Cold War Scheme into Reality: Engineering the Berlin Tunnel,"declassified February 2008, p. 3, http://www.cia.gov/offices-of-cia/public-affairs/entertainment-industry-liaison/engineering%20berlin%20tunnel.pdf.
[559]CIA's Clandestine Services, Historical Paper, "The Berlin Tunnel Operation, 1952-1956," p. 8.
[560] Ibid. at 7.

According to the CIA report, "there were those who manifested certain reservations on the feasibility" of constructing a tunnel under the extreme security conditions required while working within Soviet territory.[561]

Example 4: The Afghanistan Operations: CIA and the Northern Alliance

In the aftermath of 9/11, the CIA enjoyed significant success in getting the agency's teams of officers rapidly into Afghanistan in order to search for Osama bin Laden and other al Qaeda terrorists who were hiding out. The CIA was successful in getting quickly into the country because of its long-term relationship with Northern Alliance warlords dating back to the 1980s when the CIA ran covert action operations in Afghanistan against the Soviets. Because the CIA had maintained a relationship with the Northern Alliance since the 80s, the agency was able to convince the Northern Alliance, with the help of a significant amount of money, to work quickly against the Taliban to bring the Taliban down.[562]

The CIA was able to quickly deploy teams of paramilitary case officers, into Afghanistan immediately after 9/11 in order to reconstitute the relationship that the CIA had with the Northern Alliance and help equip and arm the mujahedin to fight against the Taliban. During the 1990s, the CIA had successfully renewed its ties with the leader of the anti-Taliban Northern Alliance, Ahmad Shah Massoud and worked to develop an armed version of the Predator drone to attack bin Laden.[563] The CIA's ties to Massoud were critical after the U.S. invaded Afghanistan but before 9/11, with little

[561] Ibid. at 18.
[562] Melvin A. Goodman, p. 192; Frederick Hitz,
[563] Coll, *Ghost Wars*, chapters 21-30.

U.S. military support, there wasn't much that the Taliban or the CIA could do. Two recent books, written by paramilitary case officers that led these teams, provide first hand accounts of how the CIA officers gained access into the country, worked with their contacts with the Northern Alliance, convinced the Uzbecks and Tajiks that they were serious about helping them against the Taliban and successfully spearheaded the fall of Kabul and the eventual interim Northern Alliance and U.S. success over the Taliban forces around Kandahar.[564]

The CIA teams were mainly comprised of former military elite force members (Army Rangers, Delta Force, Special Forces, and Navy SEALS) who had left the military and joined the CIA where they were trained in the tradecraft of clandestine operations. This unique mix of experiences of the team members (military techniques, language skills and case officer reporting capabilities) proved to be the critical ingredient for success of these teams in Afghanistan. Because of their military expertise they were able to move around difficult terrain in the remote areas of the Hindu Kush, undetected by the enemy and embedded with the Northern Alliance while providing the U.S. military with the locations of Taliban targets so that B-52s, B-1s and F-18s could remove the targets. On one occasion, in calling in locations, there was a miscommunication by the U.S. military and the CIA teams were almost on the receiving end of one of the U.S. military assaults.[565] The military skills of these CIA officers with

[564] Gary C. Schroen, *First In:An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan*, New York: Ballantine Books (2005); Gary Berntsen, *Jawbreaker*, New York: Crown Books, (2005).
[565] Gary Berntsen, *Jawbreaker*, p. -.

their ability to keep the CIA headquarters up to date on the process being made in the field was a recipe for success in the CIA operations.

According to Gary Schroen and then Gary Berntsen, who led the CIA teams into Afghanistan, the CIA was the "first in" on the ground of Afghanistan after 9/11 mainly because the CIA had spent years cultivating and maintaining personal relationships with individuals with the Northern Alliance. The expertise of the teams coupled with the CIA's long standing relationship with the Northern Alliance provided the speed and agility that was needed for a successful and rapid response to the 9/11 attacks. In the years preceding 9/11, the CIA "was far out in front of other departments of government, particularly the Department of Defense, in anticipating the threat and devising operational plans against the Taliban government and al Qaeda in Afghanistan."[566]

These operational methods employed by the CIA prior to 9/11 were critical to the U.S. effective response to the threats after 9/11. Prior to 9/11, the Pentagon wanted nothing to do with the problem of terrorism, specifically objecting to bombing any targets in Afghanistan.[567] Any recommendations for "more aggressive counterterrorism posture" by the DOD were rejected by Undersecretary of Defense Walter Slocombe as "too aggressive."[568] After 9/11, when President Bush decided to attack al-Qaeda and the Taliban in Afghanistan the Pentagon did not have a plan on the shelf that it could implement – the CIA did. Unlike the Pentagon, "CIA had a strategy for Afghanistan

[566] Melvin A. Goodman, *Failure of Intelligence: The Decline and Fall of the CIA*, New York: Rowman & Littlefield, (2008), p. 174.
[567] Ibid. at. 192.
[568] 9/11 Commission, Staff Statement No. 6, "The Military."

that turned on using cash, guns and rice to buy its way into the tribal community."[569] It took the Pentagon weeks before it could get into the country of Afghanistan with "boots on the ground."[570] The CIA teams were the "first in."

The CIA paramilitary deployment into Afghanistan, called Jawbreaker, illustrated the value added from the CIA's unique mix of officers and the agency's nontraditional military means of maintaining relationships with foreign liaison services and other groups overseas. The military, on the other hand, was unable to move as fast as the CIA in Afghanistan and did not have the mix of skills of the Jawbreaker teams. Certainly, the Pentagon was not in the business of establishing the types of relationships that the CIA routinely does with groups like the Northern Alliance. Because of the relationship the CIA had maintained for years with the Northern Alliance, the CIA was able to (through the Northern Alliance) secure the northern half of Afghanistan and create a passage for supplies from Pakistan.[571] After 9/11, the Pentagon was unprepared to react swiftly to 9/11 because they had failed to think as the CIA had prior to 9/11 in terms of the importance of maintaining close relationships with many different groups abroad.[572] In testimony before the 9/11 Commission, Rumsfeld conceded that prior to 9/11 the Pentagon was not organized or staffed to deal with terrorism.[573] As long as the U.S. may face similar conflicts in the future in countries like Afghanistan, the CIA's unique model may be the best to deploy.

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[569] Goodman, p. 192.
[570] Bob Woodward, *Bush at War*, New York: Simon and Schuster (2002).
[571] Gary Berntsen, *Jawbreaker*, p. -.
[572] Goodman, p. 174.
[573] 9/11 Commission, staff statement no. 6, "The Military," p. 11.

Organizational Innovation

Example 5: In-Q-Tel: Partnership Between CIA and the Private Sector

During the 1990s CIA leadership had recognized that the nature of their enemies was changing in many ways; not only were the non state actors taking on a central role in threatening U.S. interests but these enemies were using modern information technology to carry out their goals. The Director of CIA, George Tenet and the Deputy Director of the Directorate of Science and Technology at CIA, Ruth David, were concerned that the CIA "lacked access to the latest and most advanced technologies at the very time when new intelligence priorities required it to improve its information infrastructure."[574] In order for the agency, and the Directorate of Operations, DO, to protect the nation against threats, the CIA needed to access the most promising innovations in the information technology space. In February 1998, CIA introduced the concept In-Q-Tel to the intelligence community and worked with Congress to establish its operations in support of the operational needs of the CIA. In 1999, In-Q-Tel was established as a unique venture capital enterprise at the CIA.

While established and funded by the CIA, In-Q-Tel was created separate from the CIA in that is operates under a set of rules and guidelines that are established specifically for In-Q-Tel and that are not applicable to the average CIA employee. In-Q-Tel, similar to the communities of practice on the periphery of the organization, was

[574] Josh Lerner, Felda Hardymon, Ann Leamon and Kevin Book, "In-Q-Tel: A Case Study," Harvard Business School, Boston, MA: Harvard Business School Publishing, May 25, 2005, p. 2.

created to operate outside the normal rules of the CIA. Some of the normal rules had made it virtually impossible for the CIA to bring innovative technology into the agency. In-Q-Tel broke through a number of those impediments. For example, as a private, independent, non-profit corporation, In-Q-Tel could use different versions of the standard Federal Acquisitions Regulations (FAR) than what the CIA would normally have to use in entering into contracts with technology vendors. These new rules eliminated the prior lengthy and cumbersome process under FAR of getting new technology into the government. In-Q-Tel was also allowed to take equity positions in private companies. Making such equity investments in private companies with taxpayer money was a completely new way of doing business for the federal government that received resistance from the Hill. It took eighteen months of explaining to the lawmakers but eventually the CIA worked the concerns out with Capitol Hill. In addition, employees of In-Q-Tel were paid based on commercial market salaries rather then the government's pay scale in order to avoid losing some of the best talent from the private sector because of the limited salaries that the government pay scale offered. The employee's annual incentive plan was also tied to the overall performance of In-Q-Tel thereby directly tying the incentives of the employee with the mission of the Agency.

Through this unique collaboration between the government and the private sector, the intelligence community has been able to take advantage of technologies in order to advance its operational needs. While the CIA identifies the problems that it faces in the operational mission, In-Q-Tel with its corporate and academic models and research provides the knowledge and technology to solve these problems. For example,

through In-Q-Tel's funding of a company called SRD, the CIA was able to utilize technology that Las Vegas casinos had been using to identify corrupt and card players and apply it to link analysis for terrorists."[575] The CIA had recognized that the environment was changing and it needed to find a way to keep pace with advances in technology in order to be ahead of the curve with respect to terrorists and other threats that the United States faced. In the sense of Weick's "enacting organization," the creation of In-Q-Tel was an act of innovation.[576] The source of the innovation came from the interface between an organization and its environment. The CIA operatives knew what they were seeing in their environment and realized that they needed to do something differently in order to meet the threats. This process of innovating at the CIA involved actively constructing a conceptual framework, imposing it on the environment and then reflecting on their interaction. Like the exchange of war stories that Orr describes, enacting is a process of interpretive sense making and controlled change.[577] And as in other organizations, the innovation of In-Q-Tel was not some radical revolutionary act of innovation; it was improvement in incremental steps. In fact, Ruth David and others like Jeff Smith, In-Q-Tel's outside counsel, cautioned supporters of moving to fast to bring the concept of In-Q-Tel to the entire intelligence community. Effective innovation does not always mean radical and extensive change.

With the establishment of In-Q-Tel, there was the introduction of a new way of organizing the work activity of the CIA. In the old conception of work at the CIA, the

[575] Tenet, *Center of the Storm*, p. 26.
[576] Karl Weick, *Sensemaking.*
[577] Julian Orr, *Talking About Machines*.

potential of In-Q-Tel could not be realized. In the past, the CIA would have relied on its Directorate of Operations and it Directorate of Science and Technology to support any operational needs of the organization. In this newly conceived understanding of work practice, however, In-Q-Tel could prove highly innovative. Though this new conception could not be achieved without In-Q-Tel, In-Q-Tel could not be fully realized without the new conception by the CIA that it needed access to and a relationship with the corporate world in order to gain advantages of technology to do its job. In this reciprocal fashion, the CIA is like the enacting organizations; instead of waiting for changed practices to emerge and responding, they enable them to emerge, by creating In-Q-Tel, and anticipate their effects, being able to effectively support operations.

Reconceptuallizing an organizations environment is recognized as an important part of what innovating organizations do.[578] And yet, many have pointed out that there are problems with "closure" and "closure-generating structures" of an organization which often act to limit or prevent the adaptation of organizations to current social conditions.[579] The core of an organization will often have a closure-composing boundary of a single world view. Such closure is likely the result of rigid adherence by members of the organization to their formal training and guidelines as well as the formal account of the work that the members are suppose to carry out.

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[578] S. A. Deetz and A. Kersten, "Critical Models of Organizations as Interpretation Systems," E. Pacanowsky (eds.), *Communication and Organizations: An Interpretive Approach*, Beverly Hills, CA: Sage Publishers (1983).

[579] L. L. Putnam, "The Interpretive Perspective: An Alternative to Functionalism," in L.L. Putnam and M.E. Pacanowsky (eds.), *Communication and Organizations: An Interpretive Approach*, Beverley Hills, CA: Sage Publishers (1983); S. A. Deertz and A. Kersten, "Critical Models of Interpretive Research," in L.L. Putnam and M. E. Pacanowsky, eds., *Communication and Organizations: An Interpretive Approach*, Beverly Hills, CA: Sage Publication.

Example 6: The Counterterrorism Center & Alec Station: CIA and other agencies

The U-2 and A-12 programs have demonstrated how CIA adapted to the new challenges arising in the environment. In these two technical arenas, the CIA was able to identify the changes in the environment and adapt in order to meet them. The CIA not only adopted new forms and processes in these projects but managed them not just in one project, the U-2, but in its successor project as well, the A-12. In both of those technical cases, the CIA was not "just doing better at what it already did" rather these programs demanded that the CIA do things it had never done before. This was not a case of an isolated incident of adaptation that was abandoned eventually; it was a true innovation that the CIA successfully managed across institutional boundaries. Like the technical examples of innovation, the CIA crossed institutional boundaries bringing in members from other institutions in creating the Counterterrorism Center at the CIA.

During the Reagan administration, the CIA recognized the growing threat from state sponsored terrorism. In 1986, in an effort to effectively counter these growing threats, the CIA set up the Counterterrorism Center within the CIA as a multidisciplinary center that was comprised of intelligence officers (both collectors and analysts) from all agencies involved in combating terrorism, including law enforcement organizations. The center included "representatives from the CIA, the FBI, Customs, Immigration, Justice, State, DOD, Coast Guard, and others."[580] In organizing terrorist experts from different agencies in this manner -- in one center focused on one threat --

[580] Frederick P. Hitz, *Why Spy? Espionage in an Age of Uncertainty*, New York: St. Martin's Press (2008), p. 143.

the CIA was able to capitalize on the expertise around the intelligence community but still maintain its ability to control and carry out operations against specific terrorists as part of its core functions.

The operations of the CTC led to a number of successes for the intelligence community against terrorists. Working as a team out of CTC, the FBI and the CIA, in cooperation with foreign liaison services and foreign government, were able to render individuals to the U.S. to stand trial for crimes they had committed against Americans.[581] For instance, this collaborative work in CTC led to the successful rendition of Ramzi Yousef to New York to stand trail for the 1993 bombing of the World Trade Center as well as Mir Amal Kansi who shot six CIA employees in 1991 outside of the CIA headquarters, killing three. Since the CIA was by law prohibited from acting as a law enforcement organization, it was the FBI that actually took custody of these individuals that were to be rendered to the U.S. for trial. In the field, however, the FBI and the CIA would work side by side in getting custody of these individuals. Similar renditions took place after the 1998 U.S. embassy bombings in Kenya and Tanzania.

The benefits from the cooperative mix of agencies within CTC continued to lead to further successes after 9/11 such as the rendition of Khalid Sheikh Mohammed (KSM) in 2006 into U.S. custody and the extremely successful CTC management of the Predator unmanned aerial vehicle (UAV) against terrorist targets.[582] The success of the CTC was based on the concept that having operators work shoulder to shoulder with

[581] Ibid. at 144.
[582] Coll, Ghost Wars

analysts against the same target would improve the yield from the intelligence efforts.[583] Further, in having representatives from the different agencies work shoulder to shoulder confronting common problems led to devising solutions or work-arounds to counter the immediate terrorist threats the different agencies faced. Unfortunately, according to some, the creation of the NCTC which separated the analysts from the operators and deprived CTC of much of its analytical capability may be the death knoll for this innovation.[584] The NCTC does not have any operational function while the CIA's CTC has been taken out of the analytical role. Today, the analysis of terrorism and counterterrorism is done at the NCTC which answers to the Director of National Intelligence.

After 9/11 there were some individuals who recognized the CIA's efforts to change in the face of new challenges from the terrorist threats. Even the 9/11 Commission mentioned that the creation of CTC by the CIA was an act of innovation.[585] For instance, one area the CIA changed was in the organizational arena -- allocating resources, launching new programs and creating joint multi agency centers -- to counter the threat. With the establishment of CTC in 1986, the CIA created the first multijurisdictional, multidiscipline, joint operational-analytical intelligence center to marshal resources, expertise and intelligence against the terrorism threat. It was a success.

[583] 9/11 Commission, public hearing, testimony of Cofer Black; interview with James Pavitt, February 2006, Scowcroft Group offices.
[584] Richard Posner, Countering Terrorism;
[585] The 9/11 Commission Report, p.

The center was the idea of a flamboyant DO officer, Dewey Clarridge. In the aftermath of the hijacking of TWA Flight 847 and Abu Nidal's terrorist attacks at the Rome and Vienna airports in 1985, the then-DCI Casey was convinced by Clarridge that such a fusion center of analysts and operators was necessary to counter the rising threat from terrorism.[586] The creation of CTC was an effort to capitalize on both the abilities of analysis and operators from across the intelligence community in order to deal with the threat. The CTC was intended to be a multi agency center from its very creation. Few agencies, however, outside the CIA were willing to provide personnel to the center. Even within the CIA there was resistance from the DO which did not want to provide its sensitive information on sources and methods to the center and the DI which did not want its analysts co-opted by the operators in the center.[587] While the DCI did not have complete leverage and control over other intelligence community agencies to direct personnel to the center, the DCI had a great deal of authority over the CIA; the agency he directed on a day-to-day basis. DCI Casey established CTC and made sure that it was occupied with both DI analysts and DO operators and as many outside agency employees as possible. From its creation, CTC was mainly staffed by the CIA employees from the DI and the DO with a number of employees from other agencies over the years.

For the 15 years since its creation, the CTC was the center of the United States' battle against terrorists. In testimony before the 9/11 Commission former director of

[586] Interview with Paul Pillar, former deputy director of CTC, August 2006, Georgetown University; Melvin A. Goodman, *Failure of Intelligence: The Decline and Fall of the CIA*, p. 185.
[587] Interview with James Pavitt; Interview with Paul Pillar

CTC, Cofer Black described how CTC changed as the threat changed, he stated, "Over the following 15 years we saw the nature of threat evolve. Our approach to dealing with the threat has also evolved. By the time I arrived in the summer of 1999 CTC was ready to take the next step in its evolution to embark on a new, more offensive strategy to deal with the terrorist problem. Our plan had a number of elements."[588] In his testimony Black goes on to describe how CTC sought to counter the threat from terrorists and the specific steps that CTC took over the years to do that; ranging from propaganda operations, renditions, use of the Predator drone, working with the Northern Alliance to take down al Qaeda and the Taliban and creating new organizational units within CTC to deal with the different aspects of the terrorist threat (i.e., Alec Station).[589]

By 1996, the CIA was keenly aware of the threats from al Qaeda and had developed and changed its approach in order to find better ways to stop the threat. In recognition of the growing threat from terrorists like Usama bin Laden, in 1996, former DCI Deutch created the first "virtual station" within the counterterrorism center.[590] As it was first created, the "Terrorist Financial Links" station would have analysts and operators working together on one issue; the financial aspects of al Qaeda. This station focused primarily on tracking the money trail of terrorists. This station was renamed the "Usama bin Laden" (UBL) station as it came to focus more specifically on one

[588] 9/11 Commission, 2004, "9/11 Commission Tenth Public Hearing: Law Enforcement and the Intelligence Community," http://www.9-11commission.gov/archive/hearing10/911Commission_Hearing_2004-04-13.pdf, April 13.
[589] Ibid.
[590] Coll, *Ghost Wars*, p. 319.

individual terrorist and his organization; bin Laden and his organization al-Qaeda.[591] The first chief of this station, Michael Scheuer, renamed the station Alec Station after his son. By 9/11 CTC had approximately 200 personnel working in the Center while Alec Station had between 40-50 personnel.[592] By granting the designation of a station to this unit, the CIA conferred on this office the status equivalent of a traditional station overseas. The agency also had altered how it would fight terrorism. In this case, rather than target a country, the traditional method for countering an enemy, the CIA targeted an individual. The CIA had altered how it would address the threat.

Recognizing the Threat From al-Qaeda

In 1995, the intelligence community had warned the policymakers, in a written National Intelligence Estimate entitled "The Foreign Terrorist Threat in the United States," of the threat posed to the United States from radical Islamists.[593] By November of 1998, after the U.S. embassy bombings in Africa, former DCI Tenet requested "roughly $2 billion more per year for the intelligence budget over the existing FY-2000-2005 budget.[594]" In December of 1998, former DCI Tenet wrote, the now famous, memorandum entitled "We Are at War." In that memo he called for all resources and people to be focused on al-Qaeda.[595] In the memo he tasked his associate deputy director of central intelligence for collection, Charlie Allen, to "immediately push the rest of the intelligence community to make Bin Laden and his infrastructure a top

[591] *The 9/11 Commission Report*, p. 109; Tenet, *Center of the Storm*, p.100; interview with Paul Pillar
[592] *The 9/11 Commission Report*, p. 479, fn. 2.
[593] Ibid. at 479.
[594] Tenet, *Center of the Storm*, p. 117
[595] *The 9/11 Commission Report*, p. 357.

priority."[596] A week later Charlie Allen responded to DCI Tenet in a letter stating, "Senior collection managers assess that overall the Community's capabilities against UBL and his infrastructure are sharply focused."[597]

These examples and many more demonstrate that the intelligence community and the CIA in particular was focused on the terrorist threat to the United States dating back to the early 1990s and had made efforts to notify the most senior policymakers from two different administrations. The intelligence community and the CIA also had taken specific steps to address the threats from terrorism; it had increased funding to address the problem; created centers and stations dedicated solely to the problem and had used the most aggressive tools in the intelligence arsenal -- renditions.

As the Joint Inquiry noted, the most senior officials in the U.S. government were aware of the seriousness of the terrorist threats that the CIA had brought to their attention.[598] Yet, the CIA's focus, innovative actions and hard work was not enough to prevent the terrorist attacks of 9/11. One will never know whether the World Trade Center and Pentagon attacks could have been prevented. It is clear, however, that even in the face of numerous attempts to combat the terrorist threat, the CIA and the intelligence community failed to do just that. One can conclude, based upon the changes that the CIA and intelligence community made, that they alone could not prevent such an attack. This conclusion raises the following questions: (1) whether the changes that the CIA implemented made a difference; and (2) whether the changes that

[596] Tenet, *Center of the Storm*, p. 119; *The 9/11Commission Report*, p. 561-562, fn. 39.
[597] Tenet, p. 119.
[598] Eleanor Hill, "Joint Inquiry Staff Statement, Part 1" SSCI and HPSCI, 107th Cong., 2nd sess., September 18, 2002, p. 12; Zegart, *Spying Blind*.

were called for (and would have made a difference) were changes within the entire national security framework (including other institutions like the DOD and the FBI) and not just the intelligence community as the 9/11 Commission and reform legislation implies.

The difficulty in answering the first question is that many of the successful intelligence operations to deter terrorists cannot be discussed in a public or academic setting. Any effort to highlight the successes would only serve to provide information to the enemy and help them defeat the methods on which the successes were based. This study helps to address the second question of whether there were changes that were necessary beyond the CIA and the intelligence community. Chapter 5 focuses on the changes that should have been made in the area of domestic intelligence collection; changes that have still not been made. The analysis of Chapter 5 highlights the fact that changes are necessary beyond the FBI; changes in institutions outside of the intelligence community like the Department of Justice and even the Congress. One conclusion of this study is that only with those additional changes will the intelligence community have an opportunity to capitalize on the innovations that have been developed over the years.

Those individuals that are responsible for managing the national security system need to address the question: are we making enough of the right and comprehensive changes that are necessary to meet the security challenges of today? The question is not: have we made some changes? Clearly, a comprehensive plan that incorporated the entire national security elements calling for changes across intelligence agencies as well

as non-intelligence agencies was missing prior to 9/11. The question of most importance is whether such a plan is still missing. As the Hart-Rudman commission concluded in January 2001, "The dramatic changes in the world since the end of the Cold War . . . have not been accompanied by any major institutional changes in the Executive Branch of the U.S. government."[599] The external threats to the United States from terrorists were never going to be sufficiently matched by just the CIA or the intelligence community. Change within the entire national security system is critical to address the threats that face the United States. The intelligence community and the CIA may have been sufficient to hold at bay the threats posed during the Cold War but the external security environment has changed and so must the entire national security framework that is to counter threats from the international setting. As the Hart-Rudman commission predicted, the institutional deficiencies left the United States unprotected in the face of the terrorist threats.[600]

Conclusion

The absence of a terrorist attack against the United States since 9/11 does not validate the current strategy of the U.S. government against terrorists nor does it validate the institutional organization of our national security community as created through the reforms and intelligence reform act. There is a lot to be said about fixing the problem that rests with the policymakers and how the strategy is created. This is something the reforms and legislation failed to address. Obviously, blaming the

[599] U.S. Commission on National Security/21st Century [Hart-Rudman commission], *Road Map for National Security: Imperative for Change* (Washington, D.C.: U.S. GPO, 2001), p. X.
[600] U.S. Commission on National Security/21st Century, *New World Coming: American Security in the 21st Century: Major Themes and Implications*, September 15, 1999, p. 138.

intelligence agencies for not working together and lacking imagination when it came to the terrorist threats is a lot easier than blaming policymakers for failing to take preemptive action against the threat. But locating the failures at the level of coordination and imagination within the intelligence agencies suggested that some limited structural reorganization within the intelligence community alone existed to fix the security problems. The false perceptions of an easy fix to U.S. security concerns that the reforms and the legislation acted upon is the true failure of both the 9/11 Commission and the reform legislation.

Although a worthwhile effort could be dedicated to fixing the flaws within the process of the strategy creation which rests at the policymaking level, this study focuses on the agencies and departments of the U.S. government that are responsible for carrying out the strategy as it is provided by the policymakers. The performance of the United States government is measured not only on the basis of the national security strategy but also on the effectiveness of the institutions in carrying out that strategy. The institutional level is where grand strategy of policy makers is translated into operational plans. This study argues that the likelihood of the success or failure of the implementation of strategy is ultimately dependent upon the design of the institutions that are responsible for the implementation. If an institution is poorly designed, it is less likely that the institution will be able to the policy objectives of any strategy. Moving away from the broad aspirational declarations of grand strategy to the implementation of the strategy in practice, even the most important strategic plans can

prove to be inconsistent, inadequate, or incredible based upon how effective the institutions supporting the strategy are.

We all know that certain institutions are more effective at accomplishing the specific strategies that they are given to implement. Why is that? Why is it that certain institutions adapt quickly and easily to radical change in the environment and strategy, while others struggle against change and they respond sluggishly if at all. Three questions orient this study. First, to what extent is the flexibility of an institution in the face of a changing international setting either limited or enhanced by the organizational design of the institution? Second, if the organizational design of the institution does in fact impact the performance and adaptability of the institution, then what key features of the institution's design have the most significant influence upon institutional performance and adaptability? Third, based on the identification of these key features for effective institutional performance how do the recently made intelligence reforms measure up against the likelihood for institutional effectiveness and adaptability? And finally, what additional policy changes could be implemented to improve the performance of the intelligence community.

In seeking to answer these questions the theoretical research in the social sciences is instructive. This research and the concepts and ideas that the theories have developed has been instrumental in conducting this study. In learning by doing on the job, most government officials and practitioners become very adept at analyzing the immediate problems of the day. What they often overlook, however, because they lack the time or detachment, is that present problems often reflect features evident from the

past and comparable cases in different issue-areas may shed light on the immediate problems they face. In this way, academics can be helpful to decisions makers in that they reveal to the decision makers patterns evident at the level of the forest that are obscured when standing in the shadow of a single tree. This study relies on the first hand accounts of a number of practitioners and nationals security officials as well as the thorough investigations concluded after 9/11. Significantly, however, it also is based on much social science theory.

The study concludes that the design of an institution has much to do with its performance. As it is unlikely that there exists one best strategy for the U.S. national security, so also is it unlikely that only one institutional design exists for the effective performance of the intelligence community. And yet, there exists an optimal institutional design that when appropriately matched with the strategy and the international setting or environment within which the institution must function, will improve the overall effectiveness of the institution and therefore increase the likelihood of the successful implementation of the strategy. Today, a good national security strategy is one that secures the safety of the U.S. homeland. An effective intelligence community is one designed (structurally and culturally) to prevent terrorists from harming the U.S. homeland – one that is innovative in making necessary changes to prevent attacks and resilient in the face of attacks when they occur.

Chapter 4

Accountability for System Failures: CIA's IG report and the Wrong Path to Effective Intelligence Reform

> - the Inspectors General at the Central Intelligence Agency, the Department of Defense, the Department of Justice, and the Department of State should review the factual findings and the record of this inquiry and conduct investigations and reviews as necessary to determine whether and to what extent personnel at all levels should be held accountable for any omission, commission, or failure to meet professional standards in regard to the identification, prevention, or disruption of terrorist attacks, including the events of September 11, 2001.
>
> -The Joint Inquiry Report[601]

> For example, virtually every system we will examine places "operator error" high on its list of causal factors – generally about 60 to 80 percent of accidents are attributed to this factor. But if, as we shall see time and time again, the operator is confronted by unexpected and usually mysterious interactions among failures, saying that he or she should have zigged instead of zagged is possible only after the fact.
>
> -Charles Perrow[602]

Introduction

It is almost impossible to recall what the United States was like before September 11, 2001. It was a nation in which the words "terrorism" and "homeland" were not mentioned in the same sentence. It was a nation that never thought of its open society with liberal immigration policies as our enemies' weapon of choice. That day, simply referred to as 9/11 today, has come to mean far more than a day terrorists were

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[601] *Joint Inquiry into Intelligence Activities Before and After the Terrorist Attacks of September 11, 2001*, Report of the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, S. Report No. 107-351, H. Report No. 107-792, 107th Cong., 2nd sess., December 2002, p. 14 ("Joint Inquiry Report").

[602] Charles Perrow, *Normal Accidents: Living with High-Risk Technologies*, Princeton, NJ: Princeton University Press (1999).

successful in bringing down the World Trade Center, parts of the Pentagon and crashing a plane into a field in Pennsylvania. It has come to represent the day that fundamentally changed how the United States sees the world around us and the real threats that are embedded in that world; the day asymmetric warfare reached our borders from distant places and real hatred for our way of life and policies arrived in our skies in planes used as deadly weapons. Gone are the days of our national naiveté about the intent of our enemies to do us harm and the capabilities of those enemies to carry out that harm within our borders.

However, the United States has not sufficiently changed to meet the present challenges that include threats from terrorism against the homeland. The United States needs to make more changes in the way it is organized as a bureaucracy and in the way it operates as a state both domestically and abroad. The lack of effective post-9/11 system reforms to the bureaucratic organization of the state and the absence of expeditious and judicious action on those reforms that the U.S. Congress mandated illustrates just how little we have changed in the last six years. There have been hundreds of studies, papers, and articles written about 9/11 and its implications for the country's foreign and domestic policies. Much of this analysis on the events of 9/11 casts blame on individuals or narrowly describes failures within the system as "missed opportunities." In order for the United States to change in the ways needed to combat the threats we face today, the nation must first begin to think about 9/11 and other like failures in a fundamentally different way.

In seeking more accountability in the system the 9/11 investigations were drawn to recommendations for more centralization; control of the individuals working within the system and decision making authority located at the higher levels of management. A lack of trust drove most of these recommendations. In seeking more accountability, however, the reforms overlooked the negative side affects of that further centralization and standardization would bring to the functioning of the intelligence community. This chapter looks more closely at the negative effects that come from investigating system failures with the goal of holding individuals accountable. If the U.S. is going to be able to effectively prevent further attacks from terrorists against the homeland, it will have to address these failures for what they truly are: system failures. Only by starting there will there be the possibility for effective reforms to the system.

System Failures

On 9/11 the United States was unable to detect and prevent terrorists from attacking our homeland and killing innocent civilians. That day the United States' security system failed to keep the American homeland safe from attack from our enemies. Like all *system* failures, this system failure was caused by the unanticipated interactions of a number of specific failures of different individual components of the system.[603] Individual human beings, agencies, and organizations constitute components

[603] Charles Perrow, *Normal Accidents*, New York: Basic Books (1984). Perrow calls these system failures "normal accidents." Perrow developed a theory, "Normal Accident Theory," that posits that "normal accidents" are inevitable in complex systems because of the nature of the system itself (interactive complexity and tight coupling). According to Perrow's theory the outlook is bleak for the systems that have these characteristics. Unless the system itself is abandoned there will always be failure in these complex systems. An alternative solution to these system failures, one that the author supports, is to analyze the particular characteristics of a system that make it complex and seek to rid the system of these characteristics or minimize their effects; in other words, redesign the system to make it less complex.

of the U.S. national security system. No single individual, organization, or agency failure produced the tragedy of 9/11. It was, instead, the nature of the system itself that made it inevitable that such a catastrophic result would follow from the system failure.

In analyzing the system failure of U.S. national security organizations on 9/11 there is much that organizational theory can contribute in understanding the root cause of the failure. As is common in a number of different aspects of the study of life, academics and the theories they develop tend to analyze problems of successes and failures in a different manner than others such as officials or practitioners. Frequently, for those officials, investigators and reporters that deal with intelligence successes and failures, the focus of what matters for them is typically the individuals. For them what matters in analyzing such successes or failures is the individual in charge of the organization, the line operators within the organizations and the skills they possess, and the lawmakers who exert power over the organizations. While academics do not ignore the role that individuals play in social arrangements, they are more inclined to resist arguments that are based upon reasoning such as "it depends on the person." In this way, the fact that academics tend to develop general theories that seek to explain outcomes across different places, times and leaders, is helpful to the analysis of organizational failures. For these academics, the important point in the study of intelligence failures is not individuals but the forces that operate to support or constrain these individuals.

This different approach taken by the academics is particularly relevant to the events leading up to 9/11 and intelligence reform recommendations. In the years

following the terrorist attacks against the United States on 9/11, government officials, lawmakers, journalists and thereby the public attributed the attacks to the failures of individuals. And there were plenty of individuals one could find to blame. A number of former officials from the Clinton administration, for example former national security advisor Sandy Berger and former White House counterterrorism advisor Richard Clarke, pointed fingers at Bush administration officials arguing that those officials had failed to focus on the al-Qaeda threat. Berger and Clarke described how Clinton officials had warned the Bush administration about the growing threat as the Bush administration took office.[604] Other officials from the Bush administration argued that the Clinton administration failed to do enough against al Qaeda even though al Qaeda had been responsible for a number of attacks against Americans during the Clinton administration.[605]

The lawmakers on the Hill were not absent in the game of pointing fingers. Not surprisingly those they found fault with usually were affiliated with the opposite political party. Democratic members of the 9/11 Commission like Richard Ben-Veniste seemed intent on placing the fault of the attacks on the shoulders of national security advisor Condoleezza Rice who he argued had failed to carry out her responsibilities to make sure that the President was aware and understood the threats to the United States.

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[604] Michael Elliot, "They Had a Plan," *Time Magazine Special Report*, August 12, 2002, p. 28; Richard A. Clarke, Against All Enemies: Inside America's War on Terror, New York: Free Press (2004); Clarke's 9/11 Commission testimony, March 24, 2004, http://www.9-11commission.gov/archive/hearings8/9-11Commission_Hearing_2004-03-24.pdf; see also Clarke's interview with Leslie Stahl on *60 Minutes*, CBS News, March 21, 2004.

[605] Condoleezza Rice, "9/11: For the Record," *Washington Post*, March 22, 2004, p. A21; James Rosen, "Cease-fire ends; blame game starts," *Minneapolis Star Tribune*, March 28, 2004, p. 1A.

Many other commissioners also placed the blame on Rice. Republican Senator Shelby laid the blame with former DCI Tenet.[606] In arguing for the release of the CIA's IG report related to the events of 9/11, Senator Wyden argued that the public had the right to know the names of the people at the CIA who had failed to do their jobs in preventing the attacks.[607]

Journalists also focused on the role of individuals in both the success stories related to combating terrorism and the failures. In his book *Ghost Wars*, Steve Coll tells the story of how former DCI Tenet labored endlessly to bring his concerns of the threats faced by the U.S. by al Qaeda throughout both the Clinton and Bush Administration.[608] Other journalists focused on the personalities behind the scenes that lead to conflicts and disagreements and, ultimately, to the failure to prevent the attacks.[609] Different journalists took different positions on who was to blame. For example, Michael Scheuer, former head of Alec Station and the architect of the proposed operations to kill bin Laden prior to 9/11, is portrayed at times as a relentless voice concerning the threats of bin Laden who tried to convince those within his superiors at the CIA that they needed to eliminate bin Laden.[610] At other times, he is portrayed by journalists as partially at fault for the government's inability to take action against bin Laden because his personality was so abrasive and combative which

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[606] Statement of Shelby, Appendix to *The Joint Inquiry Report*.
[607] Wyden statement, INSERT citation.
[608] Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001*, reprint ed., New York: Penguin (2004).
[609] Lawrence Wright, *The Looming Tower: Al-Qaeda and the Road to 9/11,* New York: Knopf (2006); Rich Lowry, *Legacy: Paying the Price of the Clinton Years*, New York: Regnery (2003); Gerald L. Posner, *Why America Slept: The Failure to Prevent 9/11*, New York: Random House (2003).
[610] Insert Washington Post article on Scheuer.

ultimately lead to him being fired from his job as the head of Alec Station thereby taking one of the few individuals who had the most knowledge about bin Laden and the threats that al Qaeda posed to the United States who could have potentially helped to prevent the threats. If only he had a different personality and been more even keeled others may have been more inclined to work with him and listen to him about the danger that al Qaeda presented to the United States.[611]

The official investigations operated under a similar analysis of the problem. Although the 9/11 Commission stated that its investigation was not focused on holding individuals accountable for the tragedy of 9/11,[612] the narrative of the commission report provided a long list of stories about individuals and the specific acts that they took and failed to take. For instance, the report focused on the Kenneth Williams, the FBI agent from Phoenix who tried to warn FBI headquarters about a growing concern he had about foreigners affiliated with Usama bin Laden who were taking flight lessons in the United States; the whistle blower, Kathleen Rowley, who informed FBI headquarters about the problems she identified within the Bureau which prohibited the agents from combating terrorism effectively; and the FBI agent from Minnesota who tried to convince the lawyers at FBI headquarters to seek a warrant from the Foreign Intelligence Surveillance Court to search the laptop of Zacarias Moussaoui.

The 9/11 Commission report also described the actions of an FBI intelligence analyst who failed to provide information to criminal agents in the FBI New York office

[611] Insert Cite
[612] Thomas Kean and Lee Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission*, New York: Vintage Books (2007).

about NSA's intercepted communications between al Qaeda operatives about their planned meeting in Malaysia and a CIA CTC officer who received information about Mihdhar's travel plans to the United States and failed to place Mihdhar on State Department's watchlist. There are numerous similar examples where the report focused on individuals and how they carried out the functions of their jobs. Beginning with the operators who are actually doing the work of the organizations is not wrong; it is necessary to begin there. Organizational theorists who study system failures have argued, however, that is only where one begins the investigation. The mistakes or acts of heroism that individuals within the system exhibit cannot be the end of the story if the true causes of the system failure are to be discovered and rectified.[613]

Interestingly, however, while the majority of *The 9/11 Commission Report* in its narrative sections focused on individuals operating within the system, the recommendations the report concluded with deal with structural and systemic changes. The 9/11 Commissioners stayed true to their word that they would not be going on a witch hunt (to the dismay of the family members of the victims of 9/11). While not identifying individuals that should be reprimanded or held responsible for 9/11 (in contrast to the CIA IG report) the 9/11 Commission report still sought more accountability in the system. The report's recommendations all call for more centralization within the system; the creation of the DNI who would have more authority over the intelligence community; the "equally out" if you will of all the agencies by demoting the CIA; the creation of a National Counterintelligence Center

[613] Perrow, Vaughan, Sagan

along with other "national" centers; and moving the National Intelligence Council to the Office of the Director of National Intelligence. The reform legislation would effectively "by into" the 9/11 Commission's call for more accountability and centralization as it passed the majority of the 9/11 Commission's recommendations into law. The Federal Bureau of Investigation (FBI) would also be convinced that centralization was what the Bureau needed as well in order to operate effectively as an intelligence organization. With calls from Congress to show how the Bureau was improving its performance in its counterterrorism mission, the FBI would centralize its control at headquarters.

With a superb narrative and some very specific recommendations, the 9/11 Commission report seems to have left out a section including its analysis of the problems as the report identified in its narrative; a section of analysis that would link the facts as described in the narrative with the conclusions and recommendations. Without such an analysis one wonders how the Commission reasoned that centralization was the best option for the intelligence community given the tradeoffs that the Commission must have recognized were involved in that choice. This chapter argues that it is the focus on accountability that leads such investigations to conclusions and recommendations that do not necessarily solve the underlying problems of the system. In investigating system failures, such a focus, however, is misguided and leads to unhelpful and potentially harmful recommendations.

A focus on accountability or the blaming individuals will result in two potential conclusions: (1) the data that would have uncovered the terrorist plot was available and

if only certain people had done their job correctly or had been more skillful they could have connected the dots or, alternatively, if one assumes the information necessary to piece together the terrorist plot was not available, (2) the information would have been available if only certain officials had allowed the information to be collected and other individuals did their job correctly in order to gather that information and share it. The underlying assumption is that if only the individuals involved would have done things differently the tragedy could have been avoided. Possible solutions to these conclusions are two fold: (1) punish, reprimand and/or train the individuals that made the mistakes and (2) find the right leader and put him/her on top of a reorganized centralized system so that person can effectively control the entire organization and demand better performance. What is absent from such assumptions and conclusions is an analysis of the context within which these individuals operated. What are the factors within the system and from outside the system that sometimes cause good, skilled, hard-working people to act in a manner that leads to unanticipated negative consequences? What is it about organizations that lead them to fail (even those organizations that were created to prevent the specific tragedies that their failures often result in)?

In contrast to the approach taken by the 9/11 Commission or the CIA Inspector General of focusing on accountability, an organizational analysis of the system failure would find that there were a number of constraints at work before 9/11: (1) cultural pathologies of the FBI and the U.S. government more broadly led it to resist the task of domestic intelligence collection; and (2) structural weaknesses dating back decades from the time of the creation of the intelligence community inhibited the community

from working together as a coherent whole. For years the FBI had resisted any tasks related to domestic intelligence collection. The Attorney General guidelines ensured that any action the FBI took domestically would need to have a criminal nexus or it would be extremely limited. That Bureau culture was exhibited by the FBI agents' identity being tied to their criminal investigative work. The work and the identity that supported that work required that very little information would be shared by the FBI with other organizations, and within different parts of the FBI itself, in order to protect the integrity of the information for the use in future prosecutions.

The structure of the intelligence community provided the DCI with very limited authority over the military intelligence agencies within the Department of Department and the FBI within the Department of Justice. This would result in the DCI's very limited ability to demand that the different agencies responsible in the fight against al Qaeda act according to an orchestrated plan. Today, after the reforms have been codified into law these constraints still exist within the system. The fact that little has changed since 9/11 with regards to these constraints raises some serious question about whether the U.S. is much safer than it was on 9/11. According to an organizational analysis, this view supports the idea that the U.S. national security system failed to stop the terrorist attacks not because individuals made mistakes, but because individual mistakes were the inevitable result of the debilitating organizational deficiencies that had afflicted the U.S. national security system for years.

This chapter applies principles of organization theory developed by scholars such as Charles Perrow, to critique the Central Intelligence Agency (CIA)'s *Inspector*

General Report with a view towards providing a framework for truly effective reforms. According to organizational theorists, when the interactions between individual component failures within a system are not anticipated, or even understood as possible, a "system accident" will occur. All "system accidents"—or system failures, as this chapter describes them—start with component failure. Not all component failures, however, lead to a system failure.[614] Whether component failures lead to a system failure will depend on how the failures interact and are linked to one another. On the positive side, not all systems will fail. Some systems have a higher risk of failing than others. The design of the system and the presence or absence of certain characteristics of the system will determine how likely failure of the overall system is.[615] Although overall system failures may occur infrequently, when they do occur, depending on the type of system, the result may be disastrous. When systems like nuclear power plants fail the damage can be overwhelming. As the events of 9/11 remind us, when the U.S. security system fails the outcome is catastrophic.

Individuals, even those who make mistakes, are not the cause of system failures. And blaming individuals who may or may not have made mistakes will not reduce the occurrence of future system failures, and in fact, depending on the reforms implemented stemming from the blame of individuals, chances are those reforms may increase the

[614] Specifically, there are two circumstances under which component failures will not cause the system to fail: (1) when there is only one component that fails and therefore while there will still be damage because of this failure, it can be isolated and dealt with relatively easily; or (2) in the case of multiple component failures their interactions can be anticipated and therefore the damage will be minimized with remedial action.

[615] Perrow argues that there are two specific characteristic of systems that make them more likely to fail then other systems: interactive complexity and tight coupling.

likelihood of system failure. Until the true causes of the system failure are identified and addressed, the system will likely fail again with catastrophic consequences. This chapter posits that adopting an approach that blames individuals for system failures will not identify the root causes of the system failure. Rather, this approach will result in a distortion of the facts and potentially lead to inaccurate conclusions about reforms to the system, reforms that could actually increase the number of system characteristics that were responsible for contributing to the failure in the first place. Only by analyzing the hard-to-know-in-advance nature of the interactions of component failures within the system will one be able to identify system reforms that are likely to work.

CIA's *IG Report* Released

On August 21, 2007, pursuant to legislative direction, the Central Intelligence Agency released the executive summary of its Inspector General (IG) report, entitled *OIG Report on CIA Accountability With Respect to the 9/11 Attacks (IG Report)*.[616] The classified report, completed in June 2005, was the subject of much public debate and controversy over whether the CIA should release the report to the public. The report details what the CIA Inspector General believed to be failures of CIA leading up to the September attacks against the United States. This report illustrates how little the U.S. has changed in light of the events of 9/11 in its approach to U.S. national security reform. More importantly, it should serve as a warning to everyone who cares about the potential of future terrorist attacks against the U.S. that the U.S. may still be quite far

[616] Central Intelligence Agency, Office of the Inspector General, *OIG Report on CIA Accountability*, June 2005, publicly released August 27, 2007 [Hereafter referred to as *IG Report*].

from identifying and rectifying the true causes of the system failure that led to the events of 9/11.[617]

In drafting its report, CIA's inspector general largely relied on the work done and the conclusions reached by the Joint Inquiry in its final report. The Joint Inquiry had been formed in 2002 by the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) as a bipartisan congressional commission that examined the events that led up to the 9/11 attacks against the United States.[618] The Joint Inquiry was created by Congress to look into the activities of the intelligence community prior to 9/11, including what the intelligence community knew or should have known prior to 9/11 regarding the terrorist attacks and any terrorist-related activities. In the first paragraph of the Joint Inquiry's preamble it stated that one of its mandates, as created by Congress, was "to lay a basis for assessing the accountability of institutions and officials of government."[619]

Upon completing its report in December 2002, the Joint Inquiry recommended that the inspectors general of the State Department, Department of Defense, Department

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[617] The released executive summary of the *IG Report* notes that this report only addressed accountability issues. The report notes that "Such systemic recommendations as were appropriate to draw from this review of the events of the pre-9/11 period have been forwarded separately to senior Agency managers." *IG Report*, p. v. This chapter only focuses on the report that was released to the public since the author does not have access to the portions of the report not released to the public or any internal systemic recommendations made to managers that were not part of the report. While it would have been worthwhile to discuss any systemic recommendations the IG made, the position argued in this chapter is still relevant to the approach accepted by the IG: the blame game approach will lead to a distortion of facts and potentially wrong recommendations for reform – including systemic recommendations.
[618] Richard Best, "The Intelligence Community and 9/11: Congressional Hearings and the Status of the Investigation," Congressional Research Council, *CRS Report RL31650*, Washington, DC (2004).
[619] *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, a report of the U.S. Congress, Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, S.Rept. 107-351; H.Rept. 107-792, December 2002 [hereinafter Joint Inquiry]; Id. "Initial Scope of Joint Inquiry," Appendix, p. 1.

of Justice and the Central Intelligence Agency initiate their own independent investigations to "determine whether any Agency employees were deserving of awards for outstanding service provided before the attacks of September 11, 2001, or should be held accountable for failure to perform their responsibilities in a satisfactory manner."[620] In his additional comments to the Joint Inquiry's report, Senate Richard Shelby pressed for individuals within the intelligence community to be held accountable for the problems the Joint Inquiry had identified in its report. He argued that "insisting upon accountability that life-threatening problems may best be fixed."[621] He castigated the Joint Inquiry for not "naming names," and stated that without an identification of specific individuals to be held responsible for 9/11 "these many problems [within the intelligence community] will simply remain unaddressed – leaving us terribly and needlessly vulnerable in the future."[622]

Senator Shelby was wrong. Actions and decisions by individuals (aside from members of al Qaeda) did not cause 9/11 to happen. Individuals within the intelligence community, no matter what mistakes they made or cognitive limitations they may have had, could not have caused the system failure on 9/11. Naming names, firing people and replacing them with new people, reprimanding employees and training others will not fix systems that fail unless, first, the deficiencies within the system itself are fixed.

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[620] Id. at 100; *IG Report*. While all the inspectors general conducted their own investigations of their departments and agencies, no other inspector general, except for CIA's, found any individuals accountable.
[621] "September 11 and the Imperative of Reform in the U.S. Intelligence Community: Additional Views of Senator Richard C. Shelby, Vice Chairman, Senate Select Committee on Intelligence," December 10, 2002, pp. 61-62, www.fas.org/irp/congress/2002_rpt/shelby. html.
[622] Id.

The very nature of the system must be examined and a thorough analysis must be done on the tradeoffs involved in tinkering with the different parts of the system in order to determine the best possible system configuration for the intelligence community. That examination calls for a close look at structural as well as cultural aspects of the system and the various elements of that system.

The CIA inspector general began his investigation where Senator Shelby left off; looking for individuals to name. The direction from the Joint Inquiry and Senator Shelby, to look at individual actions taken of not taken by CIA employees in order to assess their culpability in the attacks on 9/11, was accepted by the CIA inspector general and was the first critical flaw of the investigation process. The CIA inspector general started with his focus misdirected, resulting in a distortion of the facts related to 9/11. The inspector general, the Joint Inquiry, and Senator Shelby all erroneously concluded that 9/11 was caused by individuals. Focusing on individual action as the root causes of 9/11, effectively blindfolded the investigations preventing them from recognizing the true causes of the system failure.

Why was it necessary to release CIA's *IG Report*? One explanation is that advocates of the release thought it would reveal more than the similar investigations conducted by Congress and the White House. Yet the Joint Inquiry Staff and, more exhaustively, the *9/11 Commission Report* had already identified in great detail those "missed opportunities" and "lack of imagination" that they concluded led to 9/11. Another explanation is that Congress called for the release of the *IG Report* to uncover additional information overlooked by the Joint Inquiry Staff and the *9/11 Commission*

Report, with their combined review of over 2.5 million documents and interviews with over 160 witnesses.

But those on Capitol Hill who pushed hardest for the release of this report knew that there was no new or helpful information uncovered in this report that would have helped to prevent the 9/11 attacks. As the *IG Report* states, it "found neither a 'single point failure' nor a 'silver bullet'" during its investigation that would have helped stop the 9/11 attacks.[623] Senator Ron Wyden (D-OR) fought for the release of the report and, as a member of the Senate Intelligence Committee, had read the full classified version, described the *IG Report* before its release as "an extraordinarily important, independent assessment, *written with a specific purpose to learn how we can improve our security*."[624]

But once the report was publicly released and everyone could read the report for themselves, it was clear, as stated in the first paragraph of the report, the purpose of the report was to "undertake whatever additional investigations were necessary to determine whether any Agency employees were deserving of awards for outstanding service provided before the attacks of September 11, 2001, or should be held accountable for failure to perform their responsibilities in a satisfactory manner."[625] As

[623] Id. at vii.
[624] Helen Fessenden, "CIA Report on 9/11 due Labor Day," August 8, 2007, http://www.libertypost.org, (emphasis added).
[625] The *IG Report* states that there were CIA employees who were found to have performed in an "exemplary fashion," however, the IG chose not to recognize them in the report. Perhaps it is time that someone recognized these individuals publicly even if it needs to be done in a fashion that protects their identity, i.e., by title as the IG did with respect to those singled out for criticism.

stated, "This report was designed to address accountability issues."[626] In light of the report's sole purpose and its conclusions, it would seem that one could only indirectly argue that the report's goal was to fix U.S. security, as individuals like Senator Wyden argued before the report's release. Lest anyone be misled, the sole purpose of the *IG Report* was to place personal blame. The acceptance of this "blame game" approach by the CIA IG in its investigation of the system failure of 9/11 was the first fatal misstep by the IG.

In its report, the IG found that certain individuals at CIA did not "discharge their responsibilities in a satisfactory manner" in accordance with a "reasonable person" standard of "professionalism, skill and diligence" as required by internal CIA regulations. The *IG Report* itself makes note of the fact that these standards that the IG utilized to determine accountability were "subjective."[627] On the other hand, the IG found that there was no occasion that the IG found when an individual at CIA acted or failed to act in violation of the law or in a manner that could be characterized as "misconduct." In fact, the IG found that "many officers performed their responsibilities in an exemplary fashion" although the IG chose not to recognize any of these individuals for their exemplary work even though to do so was within the described purpose of the report.

A Flawed Report: Focus, Methodology and Conclusions

In conducting its investigation and writing its report, the IG failed to recognize that system failures like 9/11 are not caused by individuals whose decisions in

[626] *IG Report*, p. v.
[627] Ibid. at vi.

hindsight, could be characterized as below a certain subjective standard of professionalism. With hindsight biases in work conceivably it will always be possible to say that someone could have been a little more diligent in performing his or her job. To say otherwise would be to say that human beings are perfect all the time. By failing to recognize the true nature of system failures, the IG was unable to see that individuals, albeit not perfect individuals, are not responsible for system failures.

First and foremost, the IG's report is fundamentally flawed because of its acceptance of the "blame game" approach as the focus of its investigation. The IG accepted the "blame game" approach because the Joint Inquiry had chosen to utilize that approach and CIA's IG decided, although it did not have to, to limit its focus "exclusively on the issues identified by the JI [Joint Inquiry]"[628] thereby only looking for individuals to blame. In addition, the IG decided to only focus on the findings of the Joint Inquiry that related to CIA and not other intelligence organizations like FBI, thereby presenting an unbalanced assessment of the Joint Inquiry's findings. This focus on blaming certain individuals ultimately resulted in the inaccurate description within the *IG Report* of many events leading up to 9/11.

Furthermore, the methodology the IG used in its investigation only exacerbated the problem. First, typically, IG investigations conduct extensive interviews of the subjects of the investigation. In this case, the IG failed to interview at least three key individuals central to the events leading up to 9/11, General Michael Hayden, Director of the National Security Agency (NSA) pre-9/11, George Tenet, Director of Central

[628] Ibid. at v.

Intelligence (DCI) pre-9/11 and Charles Allen, the Assistant Deputy Director of Central Intelligence for Collection Management (ADDCI for Collection) pre-9/11 (in this position, Charlie Allen had been tasked by George Tenet to coordinate the entire intelligence community to focus the agencies on the fight against al Qaeda). In addition, IG investigations typically indicate in their reports the number of interviews that were conducted, mentioning, by name, those individuals who were interviewed. The CIA IG, however, failed to include this information and it is therefore unknowable from the report how many other individuals, who may have been critical to the events leading up to 9/11, were not interviewed. In finding that DCI Tenet was responsible for the lack of a strategic plan against al-Qaeda (a factual claim that will be disputed in this chapter) it is noteworthy that the IG did not interview the former DCI or the individual that he had personally directed to focus all of the intelligence agencies efforts on the terrorist threat. Second, IG investigations typically review previous *IG Report*s relating to the same subject matter. This is done in order to assess the current issue under investigation in light of findings by previous IG investigations on the same issue. With no mention of this in the current report, it seems that the current report did not reflect upon any previous investigations. If it had, however, it is not clear why there was no mention of the fact, in the report, that this IG had issued a report, just weeks before 9/11, reviewing and commending the efforts of the DCI's Counterterrorism Center (CTC).[629] Thirdly, the *IG Report* states that it used a "reasonable person" standard in

[629] George Tenet, "Statement by George J. Tenet on C.I.A. Report," *The New York Times*, August 21, 2007. CTC was formed in the 1980s by the DCI in order to focus the efforts of CIA employees from the Directorate of Intelligence and the Directorate of Operations on the issue of terrorism. Those employees

assessing the performance of CIA officers but fails to define what that "reasonable person" standard means. Furthermore, the *IG Report* states that it "relied on Agency regulations – which are subjective" to determine accountability issues. Nowhere in the report does the IG explain the standard against which individual officers are judged. What does a "reasonable level of professionalism, skill and diligence" mean? Even if this standard were to be accepted, it appears that the IG failed to accept that very standard, at least intuitively, as the report holds individuals accountable for decisions that would appear to be "professional" at the time the decision was made.

Relying on the findings of the *IG Report* in the hope that it identified the problems that led to 9/11 is impossible and, more importantly, a distraction from the root causes of the system failure on 9/11. The ultimate danger is that the distorted picture of the facts as depicted in the report will lead to the wrong lessons learned and potentially to incorrect, inadequate and misleading recommendations for reform. This chapter focuses on the *IG Report* and how it serves as an example of the drawbacks of utilizing a "blame game" investigative approach to system failures: an approach that will not produce effective systemic reforms of the U.S. national security system.[630] The

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who worked in CTC received and sent cable traffic to CIA stations overseas as well as coordinated efforts overseas against terrorist activities. These employees also disseminated information to the intelligence community at large related to terrorism activities and CIA activities to counter terrorism. CTC was located at CIA headquarters but had representatives from other government agencies assigned to it over the years since its creation (i.e., FBI, NSA, State, INS); *The 9/11 Commission Report*, New York: W.W. Norton & Company, (2004), p. 92.

[630] While the *IG Report* notes that there was another part of the report that dealt with "systemic problems" identified by the IG investigation, one is left wondering what those problems were that were identified and why that was not part of the report released. This might have been a more fruitful part of the *IG Report* to have released and discussed. But without its release there cannot be a fair assessment with regard to that part of the report. This chapter only focuses on the part of the report that was released. *IG Report*, p. v.

acceptance of this approach, and resulting *IG Report*, has not served to make this country safer. Rather, it has distracted from this very goal. As a result, this approach and the *IG Report* must be viewed with skepticism and others need to take a different approach to analyze the system and whether the flaws within that system were fixed through any of the post-9/11 reforms.

General Hayden, the current Director of CIA, correctly argued against the release of the report. In support of his position, he stated the report "will consume time and attention revisiting ground that is *already well plowed*."[631] To argue that the ground has already been "well plowed," however, creates the impression that this *IG Report* and other investigations into 9/11 adequately investigated, identified and rectified the flaws in the system, therein, making it unnecessary to re-examine the issues. While much work has been done by the 9/11 investigations to uncover some of the facts of the terrorists' plot against the United States, their conclusions have been inadequate. This chapter demonstrates, based upon the deficiencies in the *CIA's IG Report* that further work needs to be done. One recommendation of this chapter is that some of this work ought to be done by outsiders to the intelligence community who are not encumbered by the day-to-day responsibilities of operating the U.S. national security system but who also have an understanding of how that system works. Another recommendation is that the approach of focusing investigative efforts on blaming individuals for system flaws needs to stop. In order to develop an accurate portrayal of the true deficiencies of our national security system, a systems approach is necessary.

[631] Michael V. Hayden, "General Michael V. Hayden on the Release of the 9/11 *IG Report* Executive Summary," CIA website. https://www.cia.gov (emphasis added by author).

Only by looking at the complex and mundane structural, cultural and organizational properties of the system will there be an opportunity to fix the deficiencies. Certainly, this *IG Report* has not plowed this ground well.

Focus Results in a Distortion of the Facts

The IG investigation focused on blaming individuals for what happened on 9/11 and presented a factually inaccurate picture of certain events leading up to 9/11. This section of the chapter examines three specific topics that the *IG Report* identifies for criticism of CIA: CIA's Counter-terrorism Center [CTC]'s management of its resources, the lack of information sharing within the intelligence community, and the intelligence community's strategic analysis on al-Qaeda. This section shows, by providing a more complete picture of the actual facts, that the *IG Report* tells a story of these events that is inaccurate. The presumption, which is the basis of this chapter, is that it was the IG's misplaced focus on blaming individuals which led to a misrepresentation of the facts of these events.

The Management of the Resources of CTC

The *IG Report* argues that senior officials in CIA's CTC failed to properly manage the resources of the center. The *IG Report* notes one particular decision by these officials as evidence of such mismanagement: assigning principal responsibility for Khalid Shaykh Muhammad (KSM) to the Rendition Group within CTC. The IG concludes that this decision resulted in a deficient utilization of all the resources that were available within CTC against KSM, a principal al-Qaeda member and mastermind of the 9/11 attacks. For example, according to the IG report there were a number of

individuals who worked in other units within CTC (the Sunni Extremist Group and Usama bin Laden (UBL) Station), units that competed with the Rendition Group for resources, who told the IG that analysts from these other units were not effectively incorporated against KSM.[632] Based upon this decision by CTC management to have the Rendition Group focus on KSM, the IG incorrectly draws the conclusion that CTC failed to recognize the significance of intelligence reporting that had indicated KSM to be al-Qaeda and therefore "missed important indicators of terrorist planning."[633] The report reasons that CTC's efforts should not have been focused on the rendition of KSM but rather on watching him to collect further intelligence about his role within the al-Qaeda organization.

In order to gain an accurate picture of the facts surrounding this decision, which the *IG Report* does not provide, it is necessary to supplement the facts, as described in the *IG Report*, with additional facts, facts that the IG also had at the time of the writing of the report. In 1994, KSM accompanied Ramzi Yousef[634] to the Philippines where the two began to plan the "Operation Bojinka," a plan to simultaneously blow up 12 U.S. airplanes over the Pacific.[635] In 1996, KSM presented a plan to UBL at a meeting between the two that involved training pilots who would use planes to crash into U.S. buildings. This plan would become the 9/11 operation.[636]

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[632] *IG Report*, p. xii.
[633] Ibid.
[634] Ramzi Yousef is KSM's nephew who was ultimately convicted for his role in the 1993 WTC attack.
[635] According to information KSM provided during his interrogations while in U.S. custody, KSM and Yousef also had developed a plan during this same time frame to assassinate President Clinton during his November 1994 trip to Manila. See *The 9/11 Commission Report*, 147.
[636] *The 9/11 Commission Report*, 149.

Former DCI George Tenet described the significance of KSM, "No person, other than perhaps Usama bin Ladin, was more responsible for the attacks of 9/11 than KSM."[637] In January 1996, the U.S. Attorney's Office in the Southern District of New York indicted KSM for his role in the Bojinka Plot. In accordance with U.S. government policy at the time, once an indictment was issued, and extradition was not an option, the United States Government would seek to apprehend the indicted individual and bring him back to the United States for trial. In a similar fashion, in 1995, the FBI had issued an arrest warrant against Ramzi Yousef for his involvement in the 1993 World Trade Center bombing and he was eventually found in and rendered from Pakistan. In 1997 the Rendition Group was formed within CTC in order to assist these efforts by the U.S. government to find these wanted fugitives.[638] In rendering an individual from overseas, the CIA effectively was removing that threat from an operational position to do harm to U.S. interests. According to Louis Freeh's testimony before the 9/11 Commission, before 9/11 the Department of Justice's position was that it was important to have arrest warrants for these individuals "because incapacitating him would prevent him from further attacks against he United States."[639]

The IG argues in its report that by assigning responsibility to the Rendition Branch and not another unit within CTC, the managers of CTC effectively shortchanged the ability of the US government to collect more intelligence against KSM in order to

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[637] George. Tenet, *At the Center of the Storm: My Years at the CIA*, Harper Collins (2007), p. 250. *The 9/11 Commission Report* describes him as the "principal architect of the 9/11 attacks." *The 9/11 Commission Report*, 145.
[638] *The 9/11 Commission Report*, p. 276.
[639] 9/11 Commission, testimony of Freeh, April 13, 2004.

better understand his involvement in the al-Qaeda organization. According to CTC and former DCI George Tenet, "through the late 1990s, [CIA] knew that KSM was taking on an increasingly important role with al-Qa'ida."[640] Throughout the 1990s CIA had been following KSM across the globe, collecting intelligence about what he was doing and attempting to bring him to justice in other countries.[641]

Imagine this scenario: the CIA knew KSM to be a threat to U.S. security, had the intelligence information in hand about his whereabouts and activities and, by 1996, a legal writ in hand to arrest him. One would expect that CIA would try to apprehend him, thereby removing him from operational activity. It is almost certain that if CTC management had made the decision not to assign primary responsibility to those trying to render KSM but rather focused on collecting further intelligence on him and if he had taken part in later attacks against the U.S., the IG would be holding CTC management accountable for not trying to neutralize a threat that they knew to exist.[642] It would seem that if CIA had had the legal authority to render any of the 19 hijackers prior to 9/11, and had done that, no one would be arguing about whether CTC management made the right call.

With hindsight, there are circumstances under which the IG conclusion about CTC management's decision to concentrate efforts against KSM around rendition,

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[640] Tenet, p. 251.
[641] Ibid.
[642] According to what KSM told the U.S. Government during his interrogations, KSM himself had planned to be involved in the plan to hijack planes. His described role was to land a "plane at a U.S. airport and after killing all adult male passengers on board and alerting the media, deliver a speech excoriating the U.S. support for Israel, the Philippines, and repressive governments in the Arab world." *The 9/11 Commission Report*, p. 154.

effectively minimizing the use of other CTC resources and possibly missing "important indicators of terrorist planning" might seem the correct one, but for the fact that, after KSM was rendered into U.S. custody, he provided critical information during his interrogations which lead to the capture by U.S. authorities of other al-Qaeda operatives. And based upon the information KSM and these others provided during interrogations, U.S. authorities were able to prevent over 20 al-Qaeda plots, in various stages of planning, to attack U.S. interests at home and abroad. [643] During KSM's interrogations he "told the CIA about a range of planned attacks – on U.S. convoys in Afghanistan, nightclubs in Dubai, targets in Turkey, and an Israeli embassy in the Middle East."[644] It is quite possible that if CTC management had failed to make the decision to place primary responsibility within the Rendition Group and instead had assigned that responsibility to other units, KSM might not have been rendered by March 2003. Without the capture of individuals like KSM and the critical information gained from their interrogations by the U.S. these plots may never have been disrupted. The rendition and interrogation of KSM had a direct impact on improving the security of the United States.

This more complete articulation of the facts of the rendition of KSM brings the IG's conclusion into question. There does seem, however, to be some value in examining three specific aspects of this case study of CTC's role in the rendition of KSM that could have been useful for the IG to analyze. The first aspect is the decision

[643]Tenet at 255.
[644] Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack*, New York: Random House, (2007), p. 56.

by the United States government to place primary emphasis on arresting these terrorists to bring them back to the U.S. to try them in court. The second aspect is the length of time it took the CIA to render him. And the third aspect is the organizational design of CTC based on a division of labor.

It took the CIA over seven years to render KSM once he was indicted in 1996. As mentioned above, KSM was rendered by the CIA in March 2003. If the IG had decided to examine this issue, the report may have brought to light some of the organizational and operational limitations within the intelligence community. To have an understanding of why it took the CIA seven years to apprehend a known al-Qaeda threat would seem to be worthwhile. Yet the *IG Report* does not address this. Rather, the IG limits its inquiry to whether CTC management made the correct decisions about assignments.

There is an organizational dilemma related to the specialization of job tasks within an organization and the problems caused by the division of labor based upon highly specialized functions or areas of expertise. Within CTC, as with any organization, there were decisions made about how to arrange staff to guard against disorganization and dysfunction. Specialization of job tasks and divisions of labor within organizations allow an organization function more efficiently. The cost of specialization, however, is the risk that the organization loses sight of its overall interests as the different entities within the organization pursue their own interests or specific tasks. The *IG Report* argues that the emphasis placed on rendering KSM which led to the Rendition Branch necessarily having the lead in the KSM matter resulted in

other units within CTC being under-utilized, ultimately producing a less strategic approach to collection against KSM in particular and al-Qaeda operational plans more broadly.[645] Rather than analyze how the design of CTC may have inhibited or prevented the most effective utilization of the assets within CTC, the IG chose instead to search for fault in the actions of individuals. That approach missed the broader and more significant point.

Information Sharing

In June 2002, *Newsweek* ran a story entitled "The Hijackers We Let Escape," detailing how CIA had been following the trail of two al-Qaeda suspects, Khalid al-Mihdhar and Nawaf al-Hazmi, and had obtained surveillance on them while they attended a meeting in Kuala Lumpur, Malaysia, in January 2000. [646] In the article, FBI sources stated that CIA had failed to share this information about the Malaysia meeting as well as the terrorists' travel to the United States. The same FBI sources claim in the article that if CIA had shared this information, FBI "could have covertly tracked [the terrorists] to find out their mission."[647]

In echoing the *Newsweek* article, the CIA *IG Report* finds that CIA failed to share critical information related to these two hijackers with the FBI and that this failure was "potentially significant."[648] The *IG Report* blames CTC management for these perceived failures to share information related to some of the hijackers with the FBI.[649]

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[645] *IG Report*, p. xii.
[646] Michael Isikoff and Daniel Klaidman, "The Hijackers We Let Escape," *Newsweek*, June 2002.
[647] Ibid at 20.
[648] *IG Report*, p. xv.
[649] Ibid. at xiv-xvi.

The *IG Report*, however, fails to mention that on a number of occasions from December 1999 through 9/11 the FBI had obtained this same information from the CIA when CIA had passed the information through unofficial, informal channels to FBI or when the FBI employees assigned to CTC had simultaneous access to the information in the CIA operational cables. As with the description of events surrounding CTC management's decision to have the Rendition Group focus on KSM, the *IG Report* omits some relevant facts surrounding the sharing of information by CIA to the FBI which if included in the description of events would lead to very different conclusions regarding information sharing before 9/11.

The facts surrounding what the U.S. government knew about the hijackers prior to 9/11 is an important story to understand the events of 9/11 and be able to recommend sound reforms to the U.S. national security system. For these reasons, it is worth recounting the facts that Washington had about these and other hijackers prior to 9/11 and what the U.S. Government (USG) did with this information.

In December 1999, the NSA had intercepted a communication at a facility in the Middle East that was believed to be associated with al-Qaeda terrorists who were suspected of being involved in past attacks against U.S. interests. The intercepted communication indicated that a meeting was to take place in Kuala Lumpur in January 2000 between members of an "operational cadre" who were connected to this known al-Qaeda facility. The NSA report also included the first names of three of these travelers: Nawaf, Khalid and Salem. This report was sent to a number of U.S. government agencies including to the FBI Headquarters, the FBI's Washington Office, the FBI's

New York Field office and the CIA's Counter-terrorism Center. At the time, like other government agencies, the FBI thought the NSA collection was important and included it in the daily threat update to the FBI Director on January 4, 2000.[650]

Based on the NSA intercept, a CIA desk officer working in CTC's UBL unit[651] kicked off a major effort to try to find out who these travelers were and what they were up to. In possession of the NSA intercept and the first names of three individuals with possible travel plans to Malaysia, theCIA officer initiated an effort that involved coordinating with foreign intelligence services and multiple CIA stations overseas to find out more about these travelers. From these efforts one of the travelers, Khalid al-Mihdhar, was identified as he passed through a third country on his way to Malaysia. The local intelligence service copied Mihdhar's passport and visa information and sent it electronically to CIA. Next, CIA officers overseas verified that Mihdhar had a visa that would allow him to enter and exit the United States multiple times and that according to Mihdhar's visa application from the prior year, Mihdhar intended to travel to New York on May 2, 1999. This information was passed to CIA's CTC through an

[650] "A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks," U.S. Department of Justice, Office of the Inspector General, November 2004, released publicly June 2006, p. 239 [hereafter "*DOJ IG Report*"].

[651] The UBL unit was originally set up in 1996 as the first "virtual station" at CIA. The "virtual station" would be physically located at CIA headquarters but would be collecting intelligence against targets overseas. The unit was dedicated to tracking and following the involvement of UBL in the al-Qaeda organization. Ultimately the unit was renamed by its chief Michael Sheuer, Alec Station, after his son. Since 1999, FBI had begun to detail some of its employees to CIA to work in the CTC. See *The 9/11 Commission Report*, p. 109. On 9/11 there were six FBI employees working at CIA headquarters, five of which were assigned to the Counterterrorism Center's Usama Bin Laden Unit to work specifically on UBL matters. See DOJ *IG Report*.

electronic communication, and when it arrived at CTC this communication was read by a number of CIA officers as well as three FBI employees working at CTC.[652]

Based on these facts, it would seem that the sharing of information between the FBI and the CIA was going well. FBI employees were assigned to work in CTC with direct access to all operational cable traffic into and out of CTC. The FBI employees could and did receive, simultaneously, the same information that the CIA officers received from abroad.[653] One could describe this situation as the optimal type of information sharing. Based on the specific information that was detailed in the cables, CIA officers at headquarters initiated an intelligence operation against the individuals identified in the cables as they traveled overseas. The FBI, while privy to the same information in the cables, appears to have taken no operational action, domestic or foreign, at this time other than briefing the FBI Director about the information.

What is significant about FBI employees working at CTC? In past cases when employees were assigned from one intelligence agency to another agency on a rotational basis the employees would not get access to the most sensitive operational data of the agency they were assigned to. In this case, however, what was particularly significant about the FBI employees who were assigned to CTC was that they had simultaneous access to the CIA's most sensitive operational cable traffic and could have read any of the cables coming into or out of CTC, either at the time the cable was originally communicated or any subsequent time when the FBI employee initiated a

[652] Tenet at 195.
[653] For a description of the FBI employees that were assigned at CTC during this time period as well as their access to CIA cable traffic see DOJ's *IG Report*, pp. 231-234.

search of the database. These specific FBI employees serving at CTC during the months leading up to 9/11 all had access to these cables including a couple of important cables related to the 9/11 hijackers including information about their travel to the United States.[654] A number of the FBI employees accessed and read these cables.[655] And furthermore, the FBI employees had authority to pass any information to the FBI that they deemed relevant to the FBI.[656] As described by the FBI employee who served as the deputy chief of CTC from 1999 to 2002, the highest ranking FBI position at the CIA, "one of the FBI detailees' functions would have been to review the CIA cable traffic for information of potential relevance to the FBI."[657] The FBI employees who read about Mihdhar's visa and travel information could have passed this information to anyone in the FBI that they thought had an interest in the information. Another option for the FBI employees would have been to pass this information onto State Department

[654] The specific cables discussed Khalid al-Mihdhar's possession of a valid, multiple-entry U.S. visa; Mihdhar's and other individuals travel plans to Malaysia to attend a meeting; Hazmi's travel to the U.S. in January 2000; and the identification of Khalid, a suspected perpetrator of the USS Cole bombing, in a surveillance photograph taken of the Malaysia meetings. See DOJ *IG Report*, 316. With respect to the cable related to Nawaf al-Hazmi's travel to the U.S.: at the request of CTC, the Thai intelligence service sent word to CTC that Nawaf al-Hazmi had arrived in Bangkok after attending the Malaysia meeting and had departed Bangkok headed to L.A. and arriving in L.A. on January 15, 2000. Unfortunately because the information came into CTC buried at the end of a cable that detailed routine information and the cable was marked as "information" and not "action" requiring someone immediate attention to the information within the cable, no one within CTC, including the FBI employees connected the information in this March 2000 cable with the January 2000 cables about the Malaysia meetings. Tenet, p. 197.

[655] DOJ *IG Report.*

[656]These FBI employees also had the ability to search the cable database at any time using the names of any of these and other individuals that may have been of interest to the FBI. If any of the FBI employees had done such a search in the months leading up to 9/11, they would have been able to retrieve any of these earlier cables that had come into CTC related to these individuals. For example, if any FBI employee at CTC had searched the cable traffic using the name Nawaf, Khalid, or Salem at any time after the NSA disseminated the report that described these individuals' travel to Malaysia, they would have found the cable traffic that had come into CTC later on related to Mihdhar's visa information, Hazmi's travel to the United States, and Khalid's identification. In addition, at any time during their assignment to the CIA these FBI employees could have sought approval to pass any of this information to any USG organization that they thought had an interest in the information.

[657] DOJ *IG Report*, p. 319.

to put Mihdhar's name on the watchlist as early as January 2000 when this information became known to them. They did neither.

Based on these facts, it seems that the CIA effectively communicated critical information about Mihdhar and his travel plans to the FBI by giving the FBI the best possible kind of access to information – direct and instantaneous access to the CIA's operational traffic. Yet the *IG Report* concludes that the CIA failed to inform the FBI about Mihdhar and other terrorists' "intended or actual travel to the United States" through "prescribed channels" which had "potentially significant" consequences.[658] The "prescribed channels" that the *IG Report* is referring to is the official channel of communication between the FBI and the CIA through a Central Intelligence Report (CIR).[659] Accurately, the *IG Report* states that the CIA did not send Mihdhar's photo and visa information to FBI through this official channel of a CIR when the information arrived at CIA in January 2000.[660] What the *IG Report* does not note, however, is that three FBI employees assigned to CTC at the time read this information on Mihdhar as it came into CTC.[661] In looking for specific individuals at CIA to blame, the IG fails to describe the complete picture of how and what information about the hijackers that was shared by the CIA with the FBI. With a more complete picture of the facts, it would seem that the FBI did have the information.

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[658] *IG Report*, pp. xiv and xv.
[659] Central Intelligence Reports (CIRs) are one type of report that CIA uses when sending formal communications to other agencies. Another type of report used for formal communications are Telegraphic Disseminations (TDs). See DOJ *IG Report*, p. 230.
[660] Tenet, p. 195.
[661] Ibid. at 196.

The *IG Report* notes that a draft of this CIR on Mihdhar's information had been drafted by an FBI employee at CIA but was never sent to the FBI.[662] What the *IG Report* does not mention, however, are the following relevant facts related to what CIA had passed to the FBI about Mihdhar's travel. During the time period between July 1999 and September 10, 2001, CIA's UBL unit sent out over 1,000 CIRs, the majority of which were sent to the FBI. The FBI employees assigned to CTC during this time drafted over 150 CIRs to the FBI. There were also numerous occasions when the formal channels of passing information, such as CIRs, were not used and instead informal methods were used to pass information.[663] For example, on occasions when employees determined that specific information needed to be passed immediately or that limitations in technology required that they transport information physically, they used other methods such as secure phones, secure faxes, face-to-face meetings, and placed documents in pouches to be delivered by hand. On a number of occasions, information was passed to the FBI from the CIA through such informal channels.[664] A senior CIA officer who, at the time was aware of the arrival of Mihdhar's information to CTC and the "draft" CIR on the same subject, described the prospective sending of this CIR as "a

[662] *IG Report*, p. xv.
[663] DOJ *IG Report*, p. 230.
[664] See DOJ *IG Report*, 250-252, "Informal passage of information from CIA to FBI," describing how a CIA employee assigned to FBI informally passed information about Mihdhar to two FBI SSAs at FBI Headquarters. See also DOJ *IG Report*, 286, describing a CIA employee at FBI Headquarters printing off photographs of the Malaysia meeting and providing them to a FBI analyst to take to NY in order to discuss those photos with FBI New York Field agents. Furthermore, the DOJ *IG Report* describes a number of face-to-face meetings that took place between this FBI analyst and another one assigned to CTC and two CIA employees (one assigned at FBI at the time and another one at CTC). These meetings were described by the FBI analyst at opportunities to get together and brainstorm on issues related to the Malaysia meeting, the USS Cole investigation and specific individuals of interest to both FBI and CIA, i.e., like Khalid and Quso.

separate process, providing retroactive documentation of the fact the stuff [sic] had already been passed, not to convey new information."[665] The CIA had already passed the information to the FBI through informal channels and would have been following "routine" by following up with an official CIR with the same information.

According to the *IG Report*, after reading about Mihdhar's travel and visa information in CTC cable traffic on January 5, 2000, a FBI employee in CTC began to draft the CIR to the FBI that included Mihdhar's information.[666] The *IG Report*, however, again leaves out a number of important facts related to this CIR. The CIR was addressed to the FBI Headquarters and the FBI New York Field office. The information in this CIR included: the 1999 NSA signals intelligence (SIGINT) information regarding a planned meeting of operatives in Malaysia, the information that had already been sent to the FBI in 1999, Mihdhar's passport and visa information (the CIR stated that Mihdhar's photos from his passport would be sent to the FBI "under separate cover"), and the fact that Mihdhar's planned destination was New York.[667] At the time,

[665] Tenet, p. 195.
[666] *IG Report*, p. xv.
[667] DOJ *IG Report*, p. 240. Interestingly, according to DOJ's *IG Report*, this CIR written by the FBI employee to FBI "stated that photographs of Mihdhar had been obtained and would be sent to the FBI under separate cover." There has been a lot of mystery around whether Mihdhar's passport and photographs were ever sent to FBI from CTC. CIA employees at CTC state that this information was sent to the FBI but could not recall exactly how or who sent the information in hard copy to FBI (this information could not be electronically sent to FBI and therefore had to be sent in hard copy). FBI claims they never received these documents and no IG has been able to verify the arrival of these documents at any FBI office. Yet based upon what this FBI detailee stated in this CIR he drafted about Mihdhar's photos, one assumption that cannot be easily set aside is that this FBI detailee had some involvement and responsibility in transmitting this information over to FBI. If an FBI employee knew about the existence of these passport photos, and as the IG investigations have found CIA had no objections to passing this information, why wouldn't this FBI employee have been the person to pass this information physically to FBI. The DOJ *IG Report* says FBI had no logging system which would document any receipt of such documentation.

two other FBI employees in CTC read this CIR.[668] According to the Department of Justice's IG report on 9/11 (DOJ IG report), one of the FBI employees who read the CIR was serving as one of the deputies in the UBL unit and, as a supervisor, he had the authority to release this CIR to the FBI without any permission from any CIA employee.[669] Yet, the CIR was never sent. Why didn't the FBI supervisor release the report to the FBI? The DOJ IG report does not mention why the FBI supervisor did not release the CIR or offer any possible explanations. The CIA IG, however, in the *IG Report* states affirmatively that CIA failed to send the CIR or pass Mihdhar's travel information to the FBI. The *IG Report* never mentions the fact that an FBI supervisor at CTC had the authority to release the CIR.

In addition to the FBI employees working at CTC who read the cables and the CIR, the CIA states that the information had already been passed to the FBI employees at the FBI Headquarters before any CIR was drafted. But because there is no logging system at the FBI Headquarters for documents delivered by hand to the FBI there is no way to determine with certainty whether the documents ever reached the FBI Headquarters.[670] Rather than a lack of information sharing between the FBI and the CIA this case may have been one of the FBI not sharing with the FBI.[671] In the days leading to 9/11, this would not be the only occasion this occurred.

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[668] Ibid. at 240-241.
[669] In fact this FBI employee had personally released five such cables to FBI during his tenure at CIA's UBL unit. DOJ *IG Report*, p. 250.
[670] DOJ *IG Report.*
[671] The DOJ *IG Report* concluded that the FBI employee who drafted the CIR failed to ensure that the CIR was sent to FBI. DOJ *IG Report*, p. 254. Yet the DOJ *IG Report* does not conclude that any FBI employee should be held accountable but makes a number of recommendations related to "systemic impediments" to sharing.

According to the Joint Inquiry and the *IG Report*, there were a number of "missed opportunities" between March 2000 and August 2001 when, based upon further examination of past reported information of terrorists' travel plans, there was a chance that someone could have pieced together the information and recognized its significance. The *IG Report* holds a number of the CIA managers accountable for such missed opportunities during this time period "for failing to ensure prompt action" was taken with respect to these hijackers.[672] One specific opportunity was a FBI meeting held in June 2001 in the FBI New York Office related to the FBI's USS Cole criminal investigation.[673] The *IG Report*, however, does not provide any details about the facts of this "missed opportunity." Here are some of the relevant facts about this meeting. On June 11, 2001, a FBI analyst from FBI Headquarters and another FBI analyst assigned to CIA's CTC participated in a meeting with the FBI New York Office to "brain storm" about the FBI's criminal USS Cole investigation. A number of other individuals also attended the meeting, including an assistant U.S. attorney and a CIA analyst who had worked on the bombing of the USS Cole. Prior to the meeting, a CIA analyst had provided, in hard copy, to the FBI analyst from FBI Headquarters a number of surveillance photos that had been taken at the Malaysia meeting. The CIA analyst identified Mihdhar in the photos and described to the FBI analyst that these photos had been taken in Malaysia during the surveillance of a group of suspected al-Qaeda operatives convening there for a meeting. Based on this information the FBI analyst did

[672] *IG Report*, xvi.
[673] Information about this meeting is from DOJ's *IG Report* and an interview of the FBI analyst from FBI Headquarters who participated in this meeting.

a search of CTLink[674] at FBI headquarters and found the initial NSA reporting from January 2000 indicating that Midhdar and others were connected to a known al-Qaeda facility in Yemen and that a group of these operatives were planning to travel to Malaysia for a meeting.[675]

As far as the sharing between the CIA and the FBI is concerned, it appears that it was working well. The FBI had access to the original NSA reporting, through formal channels, related to Mihdhar's travel to Malaysia in January 2000. the CIA had informally shared copies of some of the photographs of the Malaysia meeting with this FBI analyst to help in the FBI discussions at the NY meeting discussing the progress in the USS Cole criminal investigation. The CIA had proactively provided these photographs to the FBI analyst because the CIA analyst knew that the FBI was planning this meeting to discuss the USS Cole investigation and he thought these photographs would be helpful to their discussions.[676] Prior to the meeting in New York there was no formal request from the FBI to the CIA for any information related to Mihdhar. There was no request for copies of these photographs to be passed to the FBI (at the time the FBI employees assigned to CTC were aware that the Malaysia meeting took place and surveillance photos were taken of the participants at the meeting).

At the meeting in New York, the FBI analyst showed the photographs that CIA had given to her and asked if any of the FBI New York agents recognized anyone in the

[674] CTLink is a classified information system through which classified information can be communicated within the IC.
[675] This NSA reporting had been disseminated widely throughout the intelligence community. Therefore, this report was available to anyone in the intelligence community on CTLink at anytime after it had been originally disseminated in January 2000.
[676] DOJ *IG Report.*

photographs. Specifically the FBI was interested in whether anyone recognized an individual named Quso from the photographs. Both the FBI's New York Office and the FBI analyst from headquarters were interested in identifying Quso in the photographs because he was being held by Yemeni authorities at the time as a suspect in the USS Cole bombing. While in custody Quso had told the authorities that he had never been to Malaysia. It was important to the FBI, for purposes of supporting the U.S. Attorney's office and their efforts to prosecute Quso and others involved in the USS Cole bombing, to determine if Quso was lying and in fact had been in Malaysia at the this meeting. When the FBI agents from the NY office were shown the photographs they had a number of questions about the photos: who took these photographs, were there other photographs in addition to these? The FBI criminal agents were told Mihdhar's name and the fact that the photos were taken at a meeting in Malaysia. They were not told the details about who took the photos, however, or how many photos there were or the reason these photos were taken (i.e., they were not told that NSA had intercepted a communication identifying individuals affiliated with a known al-Qaeda facility and that these people were to be traveling to a meeting in Malaysia).[677]

Why did the FBI analyst not share more details about the photographs with the FBI criminal agents? According to the FBI analyst, she did not know answers to most of the agents' questions. She had not asked any CIA employee about Mihdhar or about the surveillance photographs. It seems that the other FBI employee who attended the NY meeting, who was assigned to CTC, either did not know the answers or for some other

[677] Ibid.

reason did not share the information with the FBI agents.[678] One piece of information she did have but did not share because she had not sought NSA's prior approval to share it, was the information that the NSA had disseminated throughout the intelligence community in January 2000 regarding the al-Qaeda facility and the operatives travel to Malaysia.[679] In order to share the NSA information with anyone outside of the intelligence community (to include law enforcement officials), the FBI analyst was required to first obtain approval from the NSA. The NSA had imposed this rule in order to ensure that any information that NSA disseminated that had been obtained from a Foreign Intelligence Surveillance Court (FISC) warrant would first get NSA and FISC's approval before being passed to intelligence officials. This would ensure that no intelligence information was improperly being given to criminal investigators. At the time of this meeting the FBI analyst had not requested authorization from the NSA to share the information with FBI *criminal* agents.[680] Ironically, however, at the time of the meeting any FBI intelligence analyst in the FBI New York Office could have received the same information from the FBI intelligence analyst from FBI Headquarters because there were no restrictions on the sharing of information between intelligence

[678] This FBI analyst was an intelligence analyst and could have had access to any information she needed relevant to FBI from CIA. There were no restrictions placed on sharing information between FBI intelligence analysts and CIA analysts. She hadn't made any request with respect to Mihdhar to CIA.

[679] It was not until August 27 when this FBI analyst was notified by an FBI detailee at CTC that Hazmi was in the U.S. that this FBI analyst sought NSA permission to share the information with criminal agents.

[680] According to procedures in place at the time by NSA all FBI recipients of NSA CT information had to go to NSA to receive authorization before sharing this information with criminal agents. Requiring FBI to go to NSA for permission to share the information allowed NSA to verify whether the information was FISA derived or not. If the information was not FISA derived (which this information was) then the information could be shared directly with the criminal investigators without going through the FISA Court approval process. If NSA determined the information was FISA derived then the more lengthy approval process imposed by the court would have to be followed before the information could be shared with criminal investigators.

officials only between intelligence and criminal officials. The FBI's New York Office had at least one intelligence agent and yet that person was not utilized to pass the information. To date, no explanation why this was not done.[681] The FBI criminal agents also requested that the photos they were shown be left with them so they could use them to question Quso. The FBI intelligence analyst mistakenly believed that she could not leave the photographs with the FBI agents without the CIA's permission.[682] The photos were not left with the FBI NY office. In fact, the CIA had no objection to leaving the photographs with the FBI agents. The one restriction the CIA had placed on the handling of the photographs was that the FBI agents would need specific authorization from the CIA before passing the photographs to any foreign government.[683]

After this meeting ended there was no attempt by anyone from FBI (i.e. the FBI analyst from FBI Headquarters or the FBI agents from the New York office) to obtain copies of the photographs from the CIA or to get the CIA's permission to pass the photographs to the New York office. The CIA had provided the photographs to the FBI informally to share at this meeting but there was never a request for a formal passage of these photographs from the CIA to the FBI. Furthermore, after the meeting no one asked the NSA's permission to pass the information about the NSA intercept to the criminal agents in New York until August 27, 2001, after the FBI analyst had been notified that Mihdhar was already in the United States. Ironically, however, it appears

[681] Interview with Dina Corsi, the FBI intelligence analyst from FBI Headquarters who attended the meeting, January 3, 2008, 2:00pm, Georgetown University.
[682] The *DOJ IG Report*.
[683] The *DOJ IG Report*, Interview with Paul Pillar, August 29, 2007, 1:30pm, Georgetown University.

that the FBI agents in New York never checked their CTLink, which the intelligence analysts at FBI in New York had access to, for any intelligence reporting on Mihdhar.[684] If they had, they would have retrieved the same NSA reporting that the criminal agents were not given by the FBI analyst.

Based upon these examples, the FBI employees had access to intelligence information from the CIA, either through formal or informal channels that would have been useful in FBI's counterterrorism efforts. The FBI, however, was unable to strategically integrate or share that information between its own FBI employees. As the *9/11 Commission Report* noted, the "FBI lacked the ability to know what it knew."[685] On the other hand, the *IG Report* concluded that the CIA did not share important information about the terrorist with the FBI.

Focusing on whom to blame at CIA, the *IG Report* not only failed to portray the complete story on information sharing between the CIA and the FBI but also understated the significance of potentially the most critical piece of information uncovered during the investigations into 9/11 that provides great insight into the root causes of the system failure on 9/11 and potentially could lead to useful reforms: between January 2000 and March 2000, "some 50 to 60 individuals read one or more of six Agency cables containing travel information related to these terrorists" and all of them failed to place the terrorists on the State Department's watchlist. From this fact, the *IG Report* raises questions about CTC management's "leadership and management

[684] Interview with Dina Corsi.
[685] *The 9/11 Commission Report*, p. 77.

oversight of the watchlisting program."[686] What the *IG Report* does not mention is that "a half a dozen other agencies, including the FBI, also had the names" and could have placed the hijackers on the watchlist at State Department.[687]

As stated in the *IG Report*, these individuals were not only CIA employees but included employees from the NSA and the FBI whose responsibilities and authorities cover both domestic and foreign activities of terrorists.[688] They were senior and junior employees in both analytical and operational career tracks working domestically and overseas. So how is it that so many people from different agencies with different levels of experience and with different expertise within the U.S. national security system could have failed to recognize the significance of the information presented to them that indicated that known al-Qaeda operatives were possibly traveling to the United States and to act urgently? The *IG Report* attributes blame for this failure to the work of two former chiefs of CTC, arguing that there should be an accountability board review to assess their "leadership and oversight of the watchlisting program."[689] The failure to watchlist individuals was not the failure of a few individuals who worked within CTC but, rather, a much broader and more significant failure across the entire U.S. national security system. A more useful approach to have taken on this issue would have been to examine the possibility that there was a lack of understanding at many levels of the U.S. Government and across multiple agencies of the threat consequences of these terrorists traveling to the United States or an unconscious unwillingness to accept the costs of

[686] *IG Report*, p. xiv.
[687] Tenet, p. 196.
[688] *IG Report*, p. xiv.
[689] Ibid.

preventing those consequences. It is not clear that these important questions have been answered today. The IG had the opportunity to address these critical questions but did not do so.

As the Joint Inquiry and the CIA IG investigated, held hearings and published accounts of the events at CIA leading up to the tragedy of 9/11, they created a documentary record that became the basis for the historically accepted explanation of the USG's failure to identify and act upon the information related to some of the terrorists: poor management at CIA and cultural differences and turf battles between agencies like CIA and FBI led to a lack of proper information sharing of critical intelligence information. The die was cast for managerial failure and employee error as the explanation of the lack of information sharing when the *IG Report* identified flawed watchlisting and detailee procedures at the CIA in its report. The *IG Report* found that CIA employees had failed to put two of the al-Qaeda hijackers on the State Department watchlist in 2000. The *IG Report* also found that CIA employees did not pass travel information about the terrorists to the FBI through formal, "prescribed" channels.

But a piece of the puzzle related to information sharing between the intelligence agencies has always been missing from the investigations into 9/11. No one has asked the question: why did more than 50 individuals from the CIA, the NSA and the FBI who read the intelligence reports written between January and March 2000 indicating that two terrorists were planning on traveling to the U.S. fail to watchlist these terrorists? This question has never been directly asked and therefore never answered. In this vacuum, the conventional explanation was born and has thrived: inter-agency

rivalry between the CIA and the FBI and managerial incompetence at the CIA caused individuals to suppress information about the terrorists, knowingly violating the CIA watchlisting procedures in order to prevent the FBI from obtaining information. As with other aspects of the *IG Report*, the facts, as they relate to information sharing between the CIA and the FBI, have been distorted. More significantly, these distortions of facts will lead to unasked questions, misguided explanations and potentially to misdirected conclusions about reform measures.

The CIA IG investigation focused only on blaming individuals at the CIA for system flaws related to how information was passed between agencies. By doing so, the report produced from the investigation provides only some of the material facts about this issue, obscuring the truth about what CIA employees shared with the FBI on a regular basis. Most importantly, however, what the report failed to point out was that terrorists were able to accomplish the attacks on 9/11 because they were able to take advantage of a gap in our system: our national security system lacked an effective domestic security element that could have compensated for the complexities involved in information sharing with respect to domestic protection. In other words, the fact that the U.S. lacked, and still lacks, an effective foreign intelligence collection capability within the U.S., left the U.S. homeland vulnerable to the actions of organizations like al-Qaeda. No matter how much the FBI and the CIA worked together to share information, there were still some permanent characteristics of the system that made the protection of the homeland vulnerable.

The FBI is a law enforcement organization that is part of the Department of Justice that is in charge of enforcing the laws of the United States. As such the culture of the FBI is one of a law enforcement organization focused investigating those that violate U.S. law and holding those individuals accountable under the law. In addition, the FBI, prior to 9/11 and according to Presidential direction after 9/11, was tasked to be the lead government organization for counterintelligence (CI) and counterterrorism (CT) within the United States. These functions of CI and CT both require that the FBI have a robust intelligence collection and analytical capability as well as a culture that supports actively preventatively before someone breaks the law. Currently, the FBI is in the midst of trying to reform and reorganize in order to build up these capabilities. Taking on the new mission of CT requires the FBI to develop a new culture that will support the intelligence work necessary to do CT domestically. There is much doubt as to whether an organization with a traditional law enforcement culture that is concerned with investigating crimes after the fact and in accordance with strict AG guidelines limiting investigations that are not predicated upon the belief that a crime has already taken place can develop an intelligence culture that would operate effectively together and not conflict with its law enforcement culture. Even if the FBI can hire and train and retain good intelligence analysts the question is how long will it take for an intelligence culture to develop within the FBI; one focused on preventing acts and not being concerned with prosecuting people. And if the culture is ultimately developed can it survive and not be dominated by the law enforcement culture of the Bureau. Can these two cultures exist within the same organization? If, like Great Britain, the U.S. had the

equivalent of MI5 perhaps this flaw in the system could be corrected. Unfortunately, the *IG Report* does not provide any roadmap for possible solutions.

The Intelligence Community's Strategic Analysis of al-Qaeda

The *IG Report* blames former DCI George Tenet for a number of failings related to the 9/11 attacks. It is highly likely that if John Deutch had been the DCI at the time of the 9/11 attacks, the IG would have held him accountable because of his well known excessive focus on SIGINT capabilities, which degraded human intelligence (HUMINT) collections from the CIA's Directorate of Operations (DO). Yet George Tenet was the DCI leading up to 9/11 and he was often criticized by Congress and others for placing too much emphasis on HUMINT collection and not focusing enough on other collection capabilities throughout the intelligence community. The *9/11 Commission Report* concluded, however, that one of the factors that contributed to a lack of advanced warning about 9/11 was the paucity of HUMINT collection the U.S. Government had against the terrorist organizations like al-Qaeda. U.S. operatives had not effectively penetrated the group. It was, however, DCI Tenet's personal involvement in the counterterrorism mission which resulted in a surge in recruitments of unilateral assets who operated in Afghanistan in support of U.S. interests.[690] These efforts were part of the plan to encircle Usama bin Laden in Afghanistan and try to deny him the ability to hide there. A plan that existed long before 9/11 and a plan the IG failed to recognize. Interviewing the former DCI and other policy officials could have revealed this "plan to fight terrorism" that the IG concluded in his report did not exist.

[690] Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and bin Laden, from the Soviet Invasion to September 10, 2001*, New York: Penguin Books (2005), p. 495.

The *IG Report* states that DCI Tenet did not have a strategic plan against al-Qaeda. As early as December 1998, the DCI had not only already recognized the significant threat from al-Qaeda and UBL, he had personally written a memorandum to the entire intelligence community highlighting the threat and calling for action. The memo, referred to as the "we are at war memo" stated, "We are at war. I want no resources of people spared in this effort [against al-Qaeda], either *inside CIA or the Community*."[691] In this memo DCI Tenet also instructed Charlie Allen, the associate deputy director of central intelligence for collection, "to immediately push the rest of the intelligence community to make Bin Laden and his infrastructure a top priority."[692] A week later Charlie Allen wrote back to the DCI after meeting with other agencies within the intelligence community like the NSA and the NGA (NIMA at the time) and stated, "Senior collection managers assess that overall the Community's capabilities against UBL and his infrastructure are sharply focused."[693] Charlie would continue to meet with members of the intelligence community and report back to DCI Tent on those meetings throughout 2000. The CIA inspector general may not have known about the efforts of Charlie Allen on a daily bases to coordinate with the entire intelligence community and meet regularly with the DCI in order to pass the message along from the DCI to the various members of the intelligence community that "we at war" and ensure that the entire community was focused on the threat and taking the necessary

[691] *The 9/11 Commission Report*, p. 357 (emphasis added by author).
[692] Tenet at 119.
[693] Ibid. at 119.

steps. The IG might not have realized this because the IG never interviewed DCI Tent or Charlie Allen.

Furthermore, what the IG failed to recognize, or at least chose to leave out in the report, is the fact that CTC had a very detailed operational plan to counter al-Qaeda formulated by the fall of 1999.[694] It was at the direction of the DCI that the head of CTC at the time, Cofer Black, drafted this plan detailing how the United States was going to attack al-Qeada. In testimony Black described the plan as "comprehensive, global and newly ambitious."[695] Any plan to deter terrorists must include both tactical and strategic operations -- the CIA's plan had both.[696] And yet the IG criticizes CTC, and the DCI, for it's concern with tactical, as well as strategic, operations. Through the execution of the CIA's plan, CTC's "strategic objective was to get more intelligence—human, signals and imagery—not just to target Usama bin Laden but also to deal with a movement that was operating in sixty countries."[697] To demonstrate the commitment to the strategic plan there was some reallocation of counter-terrorism (CT) funds to specific operational divisions within the DO to enable a number of the geographic divisions within the DO more effectively attacks the terrorism threat and support the overall CIA plan. Ironically, however, it is this move by the CIA to pull in all operational divisions within the DO to support the intelligence community's counter-

[694] *The 9/11 Commission Report* at 142.
[695] Coll, p. 458.
[696] Ibid. at 457. According to "the Plan," the goal was to "surround Afghanistan with secure covert bases for CIA operations—as many bases as they could arrange. They would mount operations from each of these platforms, trying to move inside Afghanistan and as close to bin Laden as they could get to recruit agents and to attempt capture operations." *The 9/11 Commission Report* describes CTC's plan to capture and remove UBL from Afghanistan. See *The 9/11 Commission Report*, p. 111.
[697] Tenet. *Center of the Storm*.

terrorism efforts that the IG finds fault with, accusing CTC management of diverting funds away from the CT mission..

According to the DCI's assessment at the time, in order to effectively deter al-Qaeda and UBL the U.S. intelligence community had to not only target UBL wherever he currently was hiding but the intelligence community also had to work with other countries, foreign services and anti-al-Qaeda groups in order to deal with the threat as it emerged across the globe. As the former head of the DO stated, the CIA's chief of station in London "was just as much a part of the al-Qaeda struggle as an officer sitting in [the bin Laden unit]."[698] This assessment, which was criticized at the time, has come to be painfully accurate as the threat from al-Qaeda flows not just from places like Afghanistan but from European countries and other countries like Pakistan. At the time, the DCI was trying to build on the IC's ability to deal with the threats from al-Qaeda wherever they sprung up in the world. In order to do that there was a need to built new capabilities and sustain those in place already in various parts of the intelligence community. Yet, in hindsight, the IG interpreted these actions as detrimental to countering the al-Qaeda threat and accused CTC management of diverting funds away from the CT mission. In fact, these actions by the DCI and CTC management were a direct part of the strategic plan to deter al-Qaeda. In a report done by the IG just weeks before 9/11, it was stated, in assessing the CIA's counterterrorism efforts, that CTC's "comparatively favorable resource situation allows it not only to expand its own programs but also to support operations against terrorists and liaison relationships that

[698] *The 9/11 Commission Report*, p. 184.

DO area divisions otherwise could not fund."[699] Interestingly, what the IG praises CTC for just weeks before 9/11—namely, using CT funds to assist other divisions as part of the strategic plan against terrorism -- they criticize CTC for after 9/11.

The IG concluded that the DCI "did not use his senior position and unique authorities to work with the National Security Council (NSC) to elevate the relative standing of counterterrorism in the formal ranking of intelligence priorities."[700] Once again, it is useful to bring to light some facts that the IG failed to take note of in the report. In late 2000, in working with the NSC, CTC produced, at the DCI's direction, a paper referred to as the "Blue Sky Memo," [701]detailing a broad strategy that would be necessary to disrupt al-Qaeda in its Afghan sanctuary. The paper concluded that there was no specific "silver bullet" that would fix the problems in Afghanistan. Rather the United States, under a new administration that would soon take office in the White House, would have to engage in a multifaceted strategy in order to deal with the counter-terrorism problems the U.S. faced.[702] On December 29, 2000, the paper was sent to Richard Clarke, who had been appointed Clinton's counter-terrorism director working for the NSC. The "Blue Sky Memo" outlined a number of options for the White House and the NSC including an aggressive covert action program with Ahmed Shah Massoud to help him "tie down al-Qaeda fighters" as well as support to the

[699] "Statement by George J. Tenet on C.I.A. Report."
[700] *IG Report*, p. ix.
[701] *The 9/11 Commission Report*, p. 197.
[702] See *The 9/11 Commission Report*, p. 197 describing and quoting from CIA memo, Black to Clarke, "NSC Requests on Approaches for Dealing with Problems in Afghanistan," Dec. 29, 2000.

Uzbeks and other anti-Taliban groups to help them stop al-Qaeda.[703] In testimony before the Joint Inquiry Committee, Cofer Black described the idea behind CIA's plan to support Massoud's Northern Alliance since they were the only way to "attack the Afghan terrorist sanctuary protected by the Taliban" and therefore get at UBL.[704]

At the White House there was "hardly any support for the CIA's covert action proposals."[705] This paper ultimately was the basis for Clarke's policy paper to National Security Advisor Condoleezza Rice entitled "Strategy for Eliminating the Threat from Jihadist Networks of al Qaida: Status and Prospects."[706] Upon sending his paper to the national security advisor, Clarke requested that a NSC principals meeting be convened to review this proposed strategy on counterterrorism. The meeting never took place.[707] On January 25, 2001, Clarke sent a memorandum to the national security advisor stating, "We urgently need . . . a Principals level review on the al Qaida network."[708] Two decisions highlighted by Clarke that needed to be made were the same two issues that the DCI had included in the "Blue Sky Memo": covert aid to the Northern Alliance and covert aid to the Uzbeks.[709] In March 2001, DCI Tenet personally visited with Deputy National Security Advisor Stephan Hadley, at which time Tenet provided to Hadley a list of expanded authorities that he was requesting in order to combat al-Qaeda. This request included the authority to kill UBL. The White House decided to

[703] *The 9/11 Commission Report*, p. 197.
[704] Coll at 539 on CIA's plan.
[705] Ibid. at 541.
[706] *The 9/11 Commission Report*, p. 197.
[707] Ibid. at 201. The first Principals meeting on al-Qaeda did not occur until September 4, 2001.
[708] Ibid. Italic and underlining in the original.
[709] Ibid.

hold off on any immediate action related to Tenet's request for more authorities to counter terrorism. Then Tenet, along with Cofer Black and Rich B., the head of Alec Station at the time, called a meeting at the White House with National Security Advisor Rice, her deputy Hadley, and Richard Clarke in July 2001. At this meeting the CIA team presented a very threatening picture of al-Qaeda and what they believed, based on credible intelligence reporting, to be an imminent threat from al-Qaeda attacks. In response to Rice's question, "what can we do to get on the offensive now?" the DCI responded: "We need to re-create the authorities that we [CIA] had previously submitted in March."[710] These authorities were not given to the CIA until September 17, 2001. In light of the DCI's personal, and repeated, efforts to highlight his concerns to the White House about the terrorist threat to the U.S., it would be difficult to conclude, as the *IG Report* does, that the DCI did not use his position as DCI to work with the White House to "elevate the relative standing of counterterrorism" in relation to other intelligence priorities.

The *IG Report* concluded that the "DCI did not use all of his authorities in leading the IC's strategic effort against UBL."[711] What the IG fails to either recognize or acknowledge is the truly limited authorities that the then-DCI had vis-à-vis other departments and agencies such as Department of Defense (DOD) and specifically the NSA. As the *9/11 Commission Report* noted, the DCI's "war memo" that was sent to NSA and other IC members and directed to them was ignored.[712] The Commission

[710] Tenet.
[711] *IG Report*, p. vii.
[712] *The 9/11 Commission Report*, p. 357.

correctly recognizes that "the episode indicates some of the limitations of the DCI's authority over the direction and priorities of the intelligence community, especially its elements within the Defense Department."[713] As documented by the *9/11 Commission Report*, although the DCI had a strategic plan to counter-terrorism, the DCI had very little authority over the other agencies within the intelligence community to force them to follow that plan.

The inadequacy of the DCI's authority to direct and control other elements in the intelligence community is illustrated by the debate between the CIA and the NSA over access to raw traffic intercepted by the NSA. The IG cites this unresolved debate between the CIA and the NSA as a personal failure of the former DCI to manage the intelligence community.[714] The IG presumes that the DCI could have personally resolved the dispute by ordering the NSA to hand over all raw traffic to the CIA. In the words of Robert Baer, a 25-year veteran of CIA's Directorate of Operations, "Neither Tenet nor any other CIA director has ever had the mandate or the authority to force the NSA to share its raw databases with CIA analysts."[715] As with the "war memo" the DCI did not have the authority to direct the NSA to send all raw traffic to the CIA. The fact that today the CIA does not get access to the NSA's raw traffic is an indication of the IG's limited understanding of the debate between the NSA and the CIA, as well as its erroneous conclusion that the DCI's personal attention to the matter would have resolved the issue. It is unreasonable, some would argue ludicrous, to hold any

[713] Ibid. at 357.
[714] *IG Report*, p. x.
[715] Robert Baer, "How Washington Missed 9/11," *Time.com*, http://www.time.com/time/politics/article/0,8599,1655995,00.html.

individual, including the Director of Central Intelligence, accountable for failing to use authorities that he never possessed.

Based upon a closer review of the facts related to the DCI's actions to counter threats from terrorism, it is clear, going back to at least 1998, that the DCI had recognized the significant threat to the United States from terrorism (specifically al-Qaeda), had warned the White House of the threat, had directed his intelligence community to deal with that threat as the highest priority (wasting no resources), and had put together a robust plan that many within the intelligence community, especially within the CIA, fought hard to carry out. The *IG Report*, however, based upon only a limited description of the facts leads to an inaccurate portrayal of the entirety of events leading up to 9/11, concluded that these efforts were not satisfactory or sufficient, and that the DCI, as the head of the CIA, needed to be blamed for this.

Analyzing System Failures

There is a significant difference between identifying the potential causes of the 9/11 attacks against the United States and finding someone to hold accountable for not preventing those attacks. To locate the cause of 9/11 on individual failure is to oversimplify and, indeed, distort what happened. Unfortunately, the IG chose to accept the "blame game" approach in his investigation. The result is an *IG Report* that is factually inaccurate and has been a distraction from the necessary work that remains to be done to reduce the likelihood that another attack will occur. Furthermore, other factors, which received less attention in the post-9/11 accounts and received no mention in the IG's report, disappeared from public memory and discussion. Factors that remain

invisible or unacknowledged tend to remain undiagnosed and therefore escape remedy. A move from the "blame game" and a more careful examination of what factors can lead to system failures like 9/11 would be ground worth "plowing."

The most commonly identified factor leading to organizational failure by investigators is "operator error." But as the organizational theorists point out: this is the easy way to conduct an investigation because blaming the "operator" is an easy fix.[716] For every system failure there will be some human error. These people can be reprimanded and/or fired in an effort to resolve the perceived problem. Yet the problem persists because the real problem has not been fixed. Opportunities for operator error will be a part of any system involving humans, and it is no different with regard to the U.S. national security system.

In the face of the reality of guaranteed human error, the only debate within the "blame game" is over which individuals to blame. Often this mentality results in a distortion of facts leading to an incorrect response to the system failures. Placing the blame on CIA, stating that CIA officers failed to "implement and manage important processes, to follow through with operations and to properly share and analyze critical data"[717] is a distortion of the facts. Were there occasions when CIA with hindsight could have and would have done something differently? Certainly. For example, today CIA officers would probably pass every bit of information they have about anyone suspected of being affiliated with a terrorist organization to the U.S. Government organizations responsible for maintaining a watchlist on terrorists. Additionally, CIA

[716] Charles Perrow, *Normal Accident Theory*, Princeton: Princeton University Press (1999).
[717] *IG Report.*

officers would probably formally document the passage of every bit of information to the FBI. But are these the reform measures that will fix the system or will they potentially add layers of paper and bureaucracy that only contributes to the "noise" surrounding the critical intelligence information? To attribute "system accidents" or failures to "operator error" is a great oversimplification of the underlying causes of the problems.

While blaming specific government employees for the 9/11 attacks against the United States may serve some emotional purpose for the 9/11 families as well as a partisan political purpose, this "blame game" does not bring us any closer to knowing and understanding the root causes of the failures. In addition, it may likely turn out that the very people who are blamed are the same people who made some of the right choices at the time but were unable to predict how their choices would affect the rest of the system. Furthermore, it is likely that these are the same people who will be critical in identifying and rectifying the hidden flaws in the system since they, more than outsiders, have worked within the system, know the intricacies of the system, and have seen first-hand those aspects of the system that cause failure. As the *9/11 Commission Report* stated, "Before 9/11, no agency had more responsibility—or *did more*—to attack al-Qaeda, working day and night, than the CIA."[718] Instead of focusing the public's attention on the real causes of the system failure that occurred on 9/11, the *IG Report* serves only to distract everyone from the very issues that need attention: the organizational design of the U.S. national security system. And in the process, the *IG*

[718] *The 9/11 Commission Report*, p. 349. Emphasis added.

Report may have ostracized the very people that are most capable of finding those flaws.

Furthermore, the *IG Report* sends a message to officers currently at CIA, that in order to avoid being made a scapegoat they must do business differently by imposing onerous restrictions and processes within the system in order to minimize the likelihood that they will fall prey to the same blame. Does it make sense to encourage officers to over-report threat information based on a fear that someone will accuse the officer of not sharing threat information? Would it improve the security of the United States for employees in the intelligence community to formally document every communication at the expense of taking time away from pursuing important objectives for fear that someone will find the individual accountable for not formally documenting the transfer of information? Would it necessarily make the intelligence community function more effectively to have an additional layer of authority over the agencies to ensure that the proper sharing of information takes place through formal channels and that there is someone to hold accountable when things go wrong? With more restrictions or procedures in place, the system may ultimately be unable to function with the flexibility and agility required to carry out its mission. In addition, there is no guarantee that with new procedures in place the next terrorist attack will be prevented. New procedures that seemingly compensate for imagined problems may lull the system into a false sense of security. It is likely that the onerous processes put in place will compromise the system's function while creating few benefits.

Writing a report that says that someone should have zigged instead of zagged is not helpful to understanding what caused the failure. What the United States needs is a thoughtful analysis of the mundane, unexpected and maybe even hidden interactions among the parts of the national security system that led to the U.S. national security apparatus' inability to prevent the terrorist attacks on September 11, 2001. In other words, only by looking at the complex essence of the system and the interactions between the elements of the system will there useful conclusions made. As Perrow noted, "The cause of the accident is to be found in the complexity of the system. That is, each of the failures – design, equipment, operators, procedures or environment – was trivial by itself."[719] To truly understand what caused 9/11, investigators must move beyond concentrating on only accountability or blaming individuals and begin to look at all of the specific failures in light of the complex system itself. Such an analysis is necessary in order for the United States to be able to take action today, in advance of (not after) another terrorist attack.

The *IG Report* based its investigation upon the findings of the Joint Inquiry. And this might be the reason why the *IG Report* has flaws. Although the Joint Inquiry did a fair job of creating a narrative of the events that lead up to the September 11th attacks, it also took the route of the "easy fix" and placed the blame on someone for the perceived insufficient funding of counterterrorism within the intelligence community that the Joint Inquiry had concluded contributed to the U.S. government's inability to prevent the attacks of 9/11. The Joint Inquiry report found that the then-DCI was to be held

[719] Charles Perrow, Normal Accidents, p. 7.

accountable for the perceived shortcoming in allocated resources to the counterterrorism efforts.

Instead of trying to place blame on individuals, it would be more effective to try to identify the system characteristics that led to the incident and then to modify the design, either to eliminate the situation or at least to minimize the impact of future events. One major step would be to reevaluate the need to blame individuals. The question of who is to blame is not that useful if the goal is to minimize the incidents of disasters. A more useful question to ask is, "What is it about the system that made it easy for operators to make certain mistakes?" Based upon the answer to this question, a new design for the U.S. national security system, based upon considerations of how human operators function (including how they are likely to make mistakes) could be developed.

Conclusion

The problem with the focus of placing blame on individuals who may have made mistakes is that it prevents us from learning from the incident, and allows the error-prone situation to remain. So, what recommendations and changes follow from the conclusions of the *IG Report*? First, the report explicitly recommends establishing an accountability board that will reprimand, punish or fire those people who made mistakes. Training would follow next for those individuals who made the wrong decision based upon hindsight? Once this is done, however, what remains is the unaddressed and therefore unresolved problem of the system characteristics that allowed the individuals to make those mistakes that had such a dramatic, although

unforeseeable, consequences. Taking these actions based upon blaming individuals does not lower the probability of the failures happening again. In fact, it creates more detrimental effects—lower morale of the work force, not just of those individuals reprimanded but those who witness it, who are so desperately needed and relied on to protect U.S. security because they, more than anyone else, know how to do the job.

As the *IG Report* states, the very purpose of the IG investigation was to determine whether any individuals were to be held accountable for the events of 9/11. For the IG, attributing the failures of 9/11 to human error was the final step in the investigation. The act of finding human errors, however, should have been simply the first step in understanding how and why such a system failure could occur. What is critical to understanding the failure of 9/11 as well as the failures of any complex organizations is to go beyond the obvious of human errors and grapple with the complexities of the system. As with all events, true explanations of catastrophic failures always lie in the details. In any investigation that focuses only on human error there is always the danger of hindsight biases misguiding the analysis. Hindsight biases arise from natural tendencies of humans. These biases capture how people, including investigators like the IG investigators, make causal judgments. Knowledge of outcome biases investigators' judgments about the processes that led to that outcome. In looking back on events, reviewers tend to oversimplify the situation the operators faced, blocking their ability to see the deeper, complex, story behind the label of "human error." As organizational theorists have pointed out, there is a difference between the way a task, as it unfolds over time, looks to the person at work on it, while many of the

options and dilemmas remain unresolved, as opposed to the way it looks with hindsight as a finished task.[720] The finished view tends to see the action in terms of the task alone (rendering KSM or transferring resources) and cannot see the way in which the process of doing the task is actually structured by the constantly changing conditions of work and the world. Unfortunately, the IG allowed the knowledge that is now known about the outcome of 9/11 to bias the investigators' judgment about the processes that led to the outcome. In hindsight, it is easier to block out the surrounding circumstances that the operators faced when making decisions about rendering KSM or moving CT resources from CT accounts to other operational divisions that were also focused on terrorism.

Rather than blaming individuals, a more fruitful approach to trying to understand the failure of 9/11 would be based on a system analysis approach. This approach would begin by trying to understand success by looking at the system as a whole and examine how people within that system learn and adapt to anticipate threats like acts of terrorism in our homeland. This approach would require an analysis of the characteristics of the current system including the organizational cultures of the various agencies within the national security system as well as the structural aspects of the system itself.

No one has forgotten the 9/11 attacks, the Twin Towers, or the shape of the billowing clouds of dust and debris that recorded the final seconds of the Twin Towers as they crumbled to the earth. Nonetheless, the loss of the Twin Towers has receded

[720] P. Bourdeu, *Outline of a Theory of Practice*, Cambridge: Cambridge University Press (1977).

into history, as the present replaces the past. New memorials stand where the Twin Towers used to stand. The details of the investigations into the attacks on 9/11, the flaws in the U.S. national security system that the investigations illuminated, and the questions raised about the security of our country have all dimmed into the past. While the details may be forgotten, for many, the false idea of some wrongdoing by CIA managers and officers lingers along with a false sense of security that the problems, once recognized, have been fixed.

The intent of this chapter of the study was not to provide a list of prescriptive organizational reform recommendations for the intelligence community, although that is one of the objectives of the study that is addressed in the concluding chapter. Rather, in critiquing the CIA *IG Report*, this chapter attempted to show how the focus accepted by CIA's IG in its investigation into a system failure was wrong and resulted in a report that is factually inaccurate. Moving beyond these types of explanations for 9/11 that blame individuals is the first step necessary to achieving a more accurate answer to the question: why was the U.S. government unable to prevent the terrorist attacks against the United States on September 11, 2001? Only then can the next step of identifying appropriate system reforms take place. Hopefully, future studies will focus on the flaws within our system of government to identify and rectify those that played a role in the tragic outcome of 9/11.

Chapter 5

An Institutional Design for Domestic Intelligence Collection

> The safest place in the world for a terrorist to be is in the United States . . . As long as terrorists don't do something that trips them up against our law, they can do pretty much all they want.
>
> -Brent Scowcroft[721]

> The salient fact is that, approaching five years after 9/11, we still do not have a domestic intelligence service that can collect effectively against the terrorist threat to the homeland or provide authoritative analysis of that threat. It is not enough to say that these things take time.
>
> -John Gannon[722]

> It's necessary to put in place regulations that will allow the FBI to transform itself . . . into an intelligence gathering organization in addition to just a crime solving organization.
>
> -Michael Mukasey[723]

Introduction

The attacks of 9/11 and the investigations of those attacks demonstrated that the divide that had existed in the U.S. government bureaucracy between foreign and domestic intelligence collection responsibilities was no longer acceptable. The recommendations of the 9/11 investigations, however, and the reform legislation that created some changes within the intelligence community failed to adequately alter the

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[721] Lt. Gen. Brent Scowcroft, statement, U.S. Congress, House, Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence, Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001, 107th Cong., 2nd Session, December 2002, S. Rep. No. 107-531, H. Rep. No. 107-792. http://www.fas.org/irp/congress/2002_rpt/911rept.pdf.

[722] John Gannon, written testimony submitted to the Senate Judiciary Committee, hearing on "FBI Oversight," 109th Cong., 2nd sess., May 2, 2006.

[723] Lara Jakes Jordan, "AP Impact: Race Profiling Eyed for Terror Probes," *Associated Press*, July 3, 2008.

jurisdictions between the CIA and the FBI to reflect this reality. In 1947, the National Security Act established the CIA and contained a provision preventing the CIA from having any law enforcement or subpoena.[724] The CIA was prohibited from taking on an "internal security" function within the United States.[725] In 1908 with the establishment of the entity that would one day become the Federal Bureau of Investigation, the FBI was given authority to conduct law enforcement and intelligence activities both domestically and overseas.[726]

Ironically, with all the structural changes made to the intelligence community in the Intelligence Reform and Terrorism Prevention Act of 2004,[727] there was no effort to change the domestic law enforcement prohibition respecting the CIA or the intelligence authorities of the FBI. In fact, in June 2005, by presidential directive, the FBI's existing authorities to conduct domestic counterintelligence and counterterrorism investigations were strengthened.[728] Recently, the FBI has expanded its reach by increasing the number of legal attaches, or Legats, that are permanently stationed abroad in U.S.

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[724] *National Security Act of 1947*, 50 U.S. Code section 401.
[725] Executive Order No. 12,333, 46 Fed. Reg. 59941, 59945 (1981) ("[T]he CIA shall: [c]onduct counterintelligence activities outside the United States and, *without assuming or performing any internal security functions* . . . .")(emphasis added).
[726] For an official history of the FBI, http://www.fbi.gov/fbi.gov/fbihistory.htm; William Krouse and Todd Masse, "The FBI: Past, Present and Future," *CRS Report RL32095*.
[727] *Intelligence Reform and Terrorism Prevention Act of 2004*, P.L. 108-458, section 2001, 28 U.S.C. 532.
[728] White House Memorandum, "Strengthening the Ability of the Department of Justice to Meet Challenges to the Security of the Nation," June 29, 2005, http://www.whitehouse.gov/news/. In the memorandum, the White House called for " . . . creation of a new National Security Service within the FBI under a single Executive Assistant Director. This service would include the Bureau's Counterterrorism and Counterintelligence Divisions and the Directorate of Intelligence. The service would be subject to the coordination and budget authorities of the DNI, as well as the same Attorney General authorities that apply to other Bureau divisions." Ibid. This memorandum was vague on the issue of the authority the DNI would have over the new director of the FBI's national security service. Today, issues still remain concerning whether the head of the National Security Service answers to the DNI or the Director of the FBI.

embassies to perform intelligence functions in addition to representing the Department of Justice.[729] Historically, the FBI's legal attaches would conduct overt liaison with foreign services and they would not engage in clandestine intelligence collection overseas.[730] Today, the FBI's prior role in intelligence matters appears to be expanding not only domestically but overseas as well.[731]

There was discussion, at the time of the passing of the legislation, and by the 9/11 investigations, of whether the U.S. should remove the FBI altogether from the business of intelligence collection.[732] The 9/11 Commission reviewed the idea of creating an American MI-5, a separate domestic intelligence service, similar to the role of the British counterpart.[733] Although the 9/11 investigations were critical of the FBI's role in counterterrorism prior to 9/11, the investigations and the Bush administration, however, backed the continuance of the FBI in its domestic intelligence role.[734] The investigations, and Congress, however, remained skeptical of the FBI's ability to transform into an intelligence agency. Some reformers like Senator Shelby of the Joint

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[729] Frederick P. Hitz, *Why Spy? Espionage in an Age of Uncertainty*, New York: Thomas Dunne Books (2008), p. 148.
[730] *The Joint Inquiry Report*, p. 5; Todd Masse, "FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress," *CRS Report RL32336*, April 6, 2004, p. 40, fn. 164.
[731] *The WMD Commission Report*, Chapter 10.
[732] Alfred Cumming and Todd Masse, "Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress," *CRS Report PL33033*, August 16, 2005.
[733] *The 9/11 Commission Report*, pp. 403-406, 407-15; Interview with Lee Hamilton, February 2007, The Woodrow Wilson Center; Thomas H. Keane and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission*, New York: Knopf (2006).
[734] *The Joint Inquiry Report*, p. 37-39; *The 9/11 Commission Report*, p. 423-428; *The WMD Commission Report*, Chapter 10. Chapter 10 of the report, "Intelligence at Home: The FBI, Justice , and Homeland Security," is the most relevant part of the report with respect to the FBI and intelligence reform. On November 23, 2004, President Bush issued a Memorandum for the Attorney General entitled, "Further Strengthening Federal Bureau of Investigation Capabilities." In the memorandum the President directed the FBI to develop an integrated national security workforce within the FBI as the 9/11 Commission had recommended. Memorandum for the Attorney General, "Further Strengthening Federal Bureau of Investigation Capabilities," November 23, 2004, http://www.fas.org/irp/news/2004/11/wh112304ag.html.

Inquiry pointed to the "tyranny of the case file" that still dominated the FBI as proof that "policemen make poor intelligence analysts."[735] In short, a good cop could never be a great spy.

Although the reformers and President Bush declined to remove the FBI from the business of intelligence, they insisted that the FBI develop an intelligence career service within the Bureau in recognition of the Bureau's intelligence mission being equal in importance to its criminal investigative mission and to prove that the Bureau could transform itself into a true intelligence agency.[736] After 9/11, it was imperative that the FBI would make its counterterrorism mission a priority. This would mean that the FBI would have to make its intelligence function a priority. Today, the FBI looks significantly different as an organization then it did prior to 9/11. The National Security Branch was established in 2005 in Washington at the FBI's headquarters and is the home for the Bureau's intelligence analysts within the Directorate of Intelligence – "a service within a service" with "broad and clear authority over intelligence related functions."[737] But the basic question of whether the FBI should continue to function as both a law enforcement and an intelligence agency is still not resolved today.[738]

This chapter explores the FBI's capacity to meet the challenge of domestic terrorism as an intelligence organization and to supply the U.S. policymakers with the

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[735] Senator Richard Shelby, September 11 and the Imperative of Reform in the U.S. Intelligence Community, Additional Views of Senator Richard C. Shelby, Vice-Chairman, Senate Select Committee on Intelligence," December 10, 2002, p. 100, in *The Joint Inquiry Report*.
[736] *The 9/11 Commission Report*, pp. 403-406, 407-15. The 9/11 Commission recommended leaving the responsibility for counterterrorism intelligence collection with the FBI but called for an integrated national security workforce to be built within the FBI that would be comprised of agents, analysts, linguists and surveillance specialists. *The 9/11 Commission Report*, p. 425.
[737] Robert S. Mueller, testimony before the House Appropriations Committee, June 2, 2004.
[738] Deb Riechmann, "Bush to Back Creation of Intelligence Czar," *Washington Post*, August 3, 2004.

necessary intelligence information that will enable those policymakers to prevent a future 9/11-like terrorist attack in the United States. In assessing the FBI's ability to achieve the goal of change, to adapt to and effectively carry out this new priority, this chapter looks at the institutional design of the FBI -- its structural and cultural elements -- as key factors that will impact the Bureau's ability to achieve this goal. Drawing upon organizational theory and organizational culture this chapter examines the cultural and organizational characteristics of the FBI and how these factors influence the FBI's ability to accomplish two very different missions -- investigating violations of U.S. criminal statutes and collecting and analyzing foreign intelligence information related to threats to U.S. security.

The reformers' belief that the FBI's responsibilities could be effectively strengthened with minimal changes to the FBI was based on the notion that the criminal investigative functions of the FBI could be melded with intelligence collection functions needed to prevent another attack within the United States. Further, in their recommendation to leave the FBI as the sole government organization to lead to effort, the reformers suggested that the domestic counterterrorism program run by the FBI could be run effectively across the nation while staying within the bounds of the law and principles of civil liberties. The 9/11 reformers, with the support of the President and the Congress, proposed this domestic intelligence reform framework for the United States, however, without any attention to the complexities involved in bringing about organizational and cultural change within institutions such as the FBI.

This chapter argues that the lack of attention to the role of both structural and cultural factors in bringing about change within the FBI resulted in a less than adequate organizational design for a U.S. domestic intelligence service. As Seth Jones, a Pentagon consultant and terrorism expert at the RAND Corporation recently stated, "The United States faces a threat from Al Qaeda today that is comparable to what it faced on Sept. 11, 2001."[739] In some ways, the reform measures taken since 9/11 related to domestic intelligence collection has left the United States just as unsafe and ill prepared to detect terrorists within the United States as it was on September 11, 2001. As the U.S. continues to face threats from terrorists against the homeland, it is imperative to revisit the topic of domestic intelligence collection and the role of the FBI is carrying out that mission.

An Assessment: The Institution of the FBI

This chapter focuses primarily on one institution within the U.S. national security system: the Federal Bureau of Investigation. In drawing upon insights from institutional theory in examining the institution of the FBI, this chapter attempts to address the question of how the U.S. government could organize itself to improve its ability to prevent another attack against the United States. After 9/11 the FBI maintained its primary responsibility for counterintelligence and counterterrorism in the United States.[740] Unlike what some have suggested, the FBI was not new to the function of domestic intelligence collection. The FBI, and its predecessor, the Bureau

[739] Mark Mazzetti and David Rohde, "Amid U.S. Policy Disputes, Qaeda Grows in Pakistan," *The New York Times*, June 30, 2008.
[740] Executive Order No. 12333, December 4, 1981, section 1.14(a).

of Intelligence, collected intelligence -- foreign intelligence, counterintelligence and criminal intelligence -- in the United States since 1908.[741] In fact, in the late 1940s, the FBI had successfully penetrated the Communist Party operating within the United States.[742] And, yet, many questions have been raised about the FBI's ability to effectively carry out that responsibility. For instance, all three of the official government investigations into 9/11 were critical in their assessments of the FBI's role in the U.S. government's counterterrorism efforts prior to 9/11.[743] Furthermore, numerous investigations since 9/11 have found the FBI's efforts to reform unsatisfactory.[744]

The 9/11Investigations Review of the FBI

According to *The 9/11 Commission Report*, "The most serious weaknesses in agency capabilities were in the domestic arena. . . . the FBI, the Immigration and Naturalization Service, the FAA."[745] The 9/11 Commission attributed the terrorists

[741] William Krouse and Todd Masse, "The FBI: Past, Present and Future," *CRS Report RL32095*; http://www.fbi.gov/fbihistory.htm.
[742] Richard Gid Powers, *Broken: The Troubled Past and Uncertain Future of the FBI*, New York: Free Press, (2004).
[743] *The Joint Inquiry Report*; *The 9/11 Commission Report*; *The WMD Commission Report*, Chapter 10.
[744] General Accounting Office, "FBI Intelligence Investigations: Coordination Within Justice on Counterintelligence Criminal Matters is Limited," *Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate*, GAO 01-780, Washington, D.C.: July 2001; Alfred Cumming and Todd Masse, "Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress," *CRS Report RL33033*, August 16, 2005; Report Card of the Public Discourse Project, http://www.9-11pdp.org/about/index.htm. The public Discourse project was a non-profit organization established by the 10 former Commissioners of the 9/11 Commission; House Appropriations Surveys and Investigations Staff, *The Federal Bureau of Investigation's Implementation of the Virtual Case File System: A Report to the Committee ion Appropriations of the U.S. House of Representatives*, April 2005; National Academy of Public Administration, *Transforming the FBI: Progress and Challenges*, January 2005, chapter 3 on intelligence is most relevant to the discussion of the FBI intelligence reform; U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks*, November 2004 [hereinafter *The DOJ IG Report*].
[745] *The 9/11 Commission Report*, p. 352.

success on 9/11 mainly to institutional deficiencies in U.S. government organizations which hampered the U.S.' ability to operate effectively within the United States to counter such threats. While the terrorists entered and operated within the United States, free from U.S. government surveillance, the U.S. government was handicapped in its efforts to counter those threats within the United States by institutional deficiencies within the national security system.[746] With respect to intelligence activities, there was no effective domestic intelligence collection program within the United States. Within the intelligence community, the FBI was the weak link.[747]

While identifying problems with coordination between the foreign and domestic intelligence agencies, the 9/11 investigations did not identify any specific concerns or limitations in the counterterrorism efforts by U.S. government institutions collecting intelligence overseas. *The 9/11 Commission Report* noted that as far as the efforts of the U.S.'s primary foreign intelligence collection organization, the CIA, "no agency had more responsibilities – or *did more* – to attack al Qaeda, working day and night, than the CIA."[748] The CIA, however, was not responsible for collecting intelligence within the United States. "Responsibility for domestic intelligence gathering on terrorism was vested *solely* in the FBI."[749]

Since 9/11 and the passage of the reform legislation, the FBI has tried to broadly expand the authorities it has in the area of domestic intelligence collection. In

[746] Ibid.
[747] Interview with Dick Clarke, August 2007, by phone; Interview with John Gannon, February 2008, at offices of BAE; Interview with John MaGaffin, January 2007, by phone.
[748] *The 9/11 Commission Report*, p. 349.
[749] *The 9/11 Commission Report*, p. 358.

examining the progress made by the FBI in its reform efforts since 9/11, the WMD Commission concluded that while the FBI has taken ". . . . some commendable steps in the direction of an integratred national security workforce . . . " its plan ". . . .fails to create a truly 'specialized and integrated national security workforce' . . ."[750] In noting that the FBI had been "expand[ing] its current authorities relative to intelligence activities and production within the United States" by other agencies like the CIA,[751] the WMD Commission argued for ". . . .a fluid system for coordination – where both agencies are involved in the collection of foreign intelligence in the United States and conflicts are resolved by the Director of National Intelligence (or Attorney General if it is a question of what U.S. law permits).[752] The WMD Commission report cautioned against the expansion of FBI authorities in this area to the extent that they negatively impacted the work of the CIA domestically. "The FBI is, of course, the largest and most active collector of intelligence inside the United States, but the CIA has long had officers collecting intelligence in the United States as well."[753] While the FBI collects a large amount of information within the United States, most of the Bureau's collection

[750] Letter to the President on FBI and CIA Transformation Plans from The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction concerning the adequacy of plans produced in response to the White House Memorandum to the Attorney General, March 29, 2005, p. 2, http://www.wmd.gov/report/.
[751] In December 2004, the FBI proposed a Memorandum of Understanding (MOU) to govern intelligence coordination between the FBI and the CIA. FBI, *Draft Memorandum of Understanding Between the Central Intelligence Agency and the Federal Bureau of Investigation Concerning the Coordination of CIA Activities in the United States and FBI Activities Abroad*, December 13, 2004. According to the *WMD Commission Report*, the CIA contended that the MOU was "an attempt by the Bureau to gain control over the CIA operations in the United States." *The WMD Commission Report* at 470. The WMD Commission argued that the "Bureau's proposal established procedures that are overly burdensome and counterproductive to effective intelligence gathering." Ibid.
[752] *The WMD Commission Report*, p. 469-470.
[753] *The WMD Commission Report*, Chapter 10.

efforts are tied to criminal investigations and not foreign intelligence or counterterrorism investigations.[754]

Ultimately, the WMD Commission, like the other investigations, did not recommend moving the counterterrorism authority for collection inside the United States outside of the FBI by placing that responsibility within another agency. Rather, the WMD Commission recommended leaving that authority within the FBI, citing the advantages of a "hybrid" organization like the FBI; a combined law enforcement and intelligence agency in one single entity.[755] In making this recommendation, however, the WMD Commission repeated a negative forecast that the 9/11 Commission had previously issues -- based upon its track record, the FBI would likely fail to make the organizational changes that would be necessary for the Bureau to be capable of serving as a domestic intelligence organization.[756]

The WMD Commission issued its warning concerning the perspective future for the FBI: "[It] still has many miles to travel" before it can function "truly consistent with the demands of national security intelligence operations."[757] In sum, four years after 9/11, the WMD Commission concluded that the FBI had not yet changed and transformed into an effective intelligence organization. Although the WMD Commission recommended the creation of the national security service within the FBI, it concluded that "should there be a continued failure to institute the reforms necessary to transform the FBI into the intelligence organization it must become," policymakers

[754] Ibid.
[755] Ibid.
[756] Ibid. at 468.
[757] Ibid.

should "re-evaluate the wisdom of creating a separate agency – an equivalent to the British "MI-5" – dedicated to intelligence collection in the United States."[758]

Assessing Institutional Change by the FBI

Seven years after 9/11, this chapter examines the institution of the FBI, using insights from theory, to assess whether the FBI can make the necessary "institutional changes" to improve U.S. national security. Four years have passed since the WMD Commission issued its final report. The time is appropriate to review again how far the FBI has traveled down the road of reform. In the years since 9/11, the need for continued activity by the FBI within the United States has increased in light of the increased levels of threats from places like Iraq, Afghanistan and Pakistan. Foreign assets and targets still can come and go across the U.S. borders with little to no restrictions on their travel.[759] The time is ripe to stop and review what progress has been made in developing a domestic intelligence service within the U.S. government. The critical questions to ask are whether the new reforms made within the FBI are making the nation safer and whether meaningful change is occurring. In short, is transformation – organizational effectiveness, process development and the use of technology in new ways – changing how the FBI is conducting domestic intelligence?

Today, maybe more so then ever before, the U.S. intelligence agencies must be able to effectively operate within America against some of these targets. While terrorism seems to have fallen from the minds of most American's, at the lowest rungs of voters' concerns according to recent polls, national security experts like Daniel

[758] Ibid. at 468.
[759] Interview with Dick Clarke; Interview with Rand Beers, March 2007, by phone.

Benjamin continue to sound the alarms about the inadequacies of the United States' homeland security efforts.[760] As Benjamin recently argued in the *Washington Post*, merely creating a new organization like the Department of Homeland Security, or a new position like the Director of National Intelligence, does not "ensure that changes are being made."[761] Similarly, by instructing the FBI that after 9/11 it would have to take seriously its role as the primary domestic organization for combating terrorism does not guarantee that the FBI is taking that instruction seriously and making the necessary institutional changes. "The hard fact is that a presidential declaration doesn't make much happen."[762] Even when the FBI's boss, the then-Attorney General Janet Reno, tried to curtail the FBI's overuse of Rule 6(e) of the Federal Rules of Criminal Procedure which prohibited grand jury information from being shared with intelligence analysts, the Attorney General was unable to bring about change within the FBI. The question remains whether anyone individuals can force the FBI to change whether from the outside or the inside of the organization.

Directing the FBI to perform better does not guarantee that it will. Nor does the creation of a new domestic intelligence agency, in and of itself, guarantee the effective performance of that new institution. Rather, in order for there to be truly improved performance in domestic intelligence collection, there must be a sustained focus on whatever government institution is responsible for carrying out this role of domestic intelligence. This chapter examines the FBI to assess whether and how that institution

[760] Frank Rich, "The Real-Life '24' of Summer 2008," *The New York Times*, July 13, 2008.
[761] Daniel Benjamin, "The Decider Who Can't Make Up His Mind," *The Washington Post*, Sunday, July 6, 2008, B03.
[762] Ibid.

has been changing in order to operate as an effective intelligence institution. In doing so this chapter draws from organizational and cultural theories to determine whether the institution of the FBI is capable of reform to the extent necessary to operate as a true intelligence organization or whether the establishment of a new, separate agency responsible for intelligence collection within the United States would be a better security alternative.[763]

Foreign Intelligence Collection Within the United States

Defining National Intelligence

In December 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act and defined the term, "national intelligence." In addition to creating the new position of the Director of *National Intelligence*, the statute defined the term *national intelligence* as "all intelligence, regardless of the source from which derived and including information gathered within or outside the United States."[764] In defining this term the legislators intended to eliminate the divide between domestic and foreign intelligence within the U.S. government. The 9/11 Commission concluded that the U.S. government's preventive actions taken before 9/11 had fallen into a "void between foreign and domestic threats," which made it harder to make sense of the fragments of information that were available about al Qaeda:

> The foreign intelligence agencies were watching overseas, alert to foreign threats to US interests there. The domestic agencies were waiting for evidence

[763] For a comparison of how Australia, Canada, France and the United Kingdom structure and operate their domestic intelligence agencies see Peter Chalk and William Rosenau, *Confronting the Enemy Within: Security Intelligence, the Police and Counterterrorism in Four Democracies*, RAND (2004); Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*, (2005).
[764] *Intelligence Reform and Terrorism Prevention Act of 2004*, Public Law 108-458.

> of a domestic threat from sleeper cells within the United States. No one was looking for a foreign threat to domestic targets. The threat that was coming was not from sleeper cells. It was foreign – but from foreigners who had infiltrated into the United States.[765]

After 9/11, a number of reforms were made to restructure the foreign intelligence collection agencies within the U.S government. The question is whether the reforms altered anything besides the structure of the overall intelligence community. In other words, have the reforms affected the internal and external factors of the agencies that had prevented the agencies from operating in the space between domestic and foreign intelligence. By creating a legal definition for "national intelligence" were the behaviors of the intelligence agencies altered? Change in organizational behavior does not necessarily follow from defining a term in law. This chapter looks at the topic of domestic intelligence collection and examines the reforms made, and some reforms not made, in order to assess whether the impediments to unraveling the terrorist plot that existed prior to 9/11 have been removed.

The Foreign-Domestic Divide/A Division of Labor

As *The Joint Inquiry Report* stated, the "United States has a long history of defining internal threats as either foreign or domestic and assigning responsibility to the intelligence and law enforcement agencies accordingly."[766] This division of labor among the various federal government agencies was codified in law and policy guidelines. According to the National Security Act of 1947 the CIA shall have no "police, subpoena, or law enforcement powers or internal security functions." Based on

[765] *The 9/11 Commission Report*, p. 263.
[766] *The Joint Inquiry Report*, p. 6.

the legislative history of this statute there appear to be three basic reasons for this proviso within the statute: (1) Congress intended that the focus of the CIA to be foreign and not domestic. The dividing line between the two functions was clear: law enforcement was "domestic" and intelligence was "foreign;" (2) Congress did not want to create a "Gestapo-like" organization; and (3) Congress, in creating the CIA, did not want to encroach upon the jurisdiction of the FBI for monitoring the activities of foreign intelligence services within the United States.

Under the National Security Act of 1947, the CIA would focus predominantly overseas collecting against foreign threats to the United States although there was no restriction in the law on the CIA collecting foreign intelligence domestically. The National Security Agency (NSA) operated in a similar fashion to the CIA; focusing overseas against foreign threats, shying away from any intelligence collection inside the United States although there was no legal restriction preventing the NSA from collecting foreign intelligence domestically. As for the FBI, it would be responsible for collection against foreign threats within the United States. The historical division for these agencies between the domestic versus foreign collection derives from the different operational functions and approaches of the agencies and the differences in cultures rather than from law and policy. This does not mean that the law and policy guidelines do not lead to the same resulting division of labor. Rather, it means that the ambiguities in the law and guidelines have left to mostly to the working level intelligence officers and FBI agents to determine the appropriate division of labor. Certainly, the law and the guidelines have not dictated with any clarity what that division needs to be.

On initial review, this division of labor does not seem wrong or a necessarily ineffective way to operate as a government especially in light of the fact that the government is responsible for carrying out multiple tasks which requires a certain degree of division of labor a specialization of job task. This division of labor makes sense as long as the agencies are carrying out their part of the foreign intelligence collection mission. With little to no overlap, or slack, built into this system, it is vital that each agency carries out to mission to the fullest extent possible because no other government agency is duplicating those efforts. Some critics have argued that, prior to 9/11, if the CIA, the NSA and the FBI had possessed the authorities they needed to conduct their respective intelligence collection functions and they had aggressively and competently used those authorities against the threats then it would have been possible to uncover, at least some aspects of, al Qaeda's plan to attack the United States.[767]

If, however, there was a weak link within this division of labor; for example an intelligence agency without the requisite authorities, competence or experience to carry out its tasks, the system would fail. With no overlapping coverage in domestic intelligence, no redundancy built into the collection system domestically; if one part of the system faltered the entire system could fail. For years, the FBI was the weak link in the U.S. national security system.[768] In recent years, the FBI had demonstrated an

[767] Michael Scheuer, *Imperial Hubris: Why the West Is Losing the War on Terror*, New York: Potomac Books (2004); Richard A. Clarke, *Against All Enemies: Inside America's War on Terror,* New York: Free Press (2004).
[768] Dick Clarke, testimony before the 9/11 Commission, March 24, 2004, http://www.9-11commission.gov/archive/hearings8/9-11Commission_Hearing_2004-03-24.pdf; Janet Reno, testimony before the 9/11 Commission tenth public hearing (transcript), April 13, 2004, p. 62, http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf.

inability to function as an effective intelligence organization as a string of flawed FBI intelligence investigations publicly illustrated – the Wen Ho Lee investigation, the Katrina Leung investigation, and the Zacarias Moussaoui investigation.[769]

Even in the area of criminal investigations, where the FBI's reputation was the strongest, public disclosure of a number of failed investigations based on the FBI's incompetence raised questions about the FBI's overall ability to operate effectively – Waco, Ruby Ridge and the Olympic bombing investigation of Richard Jewell.[770] As the former National Coordinator Counterterrorism at the White House Dick Clarke testified before the Joint Inquiry, "The failures were years earlier. It was a failure on the part of the United States to not have a domestic intelligence collection capability."[771] In other words, no part of the U.S. government was collecting foreign intelligence within the United States. The responsibility had been given to the FBI but, for reasons addressed later on in this chapter, the FBI failed to carry out this function.

Defining Foreign Intelligence vs. Domestic Intelligence

According to the National Security Act of 1947, *foreign intelligence* is "information relating to the capabilities, intentions, or activities of foreign governments

[769] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*, New York: Simon & Schuster (2002); Eric Lichtblau, "F.B.I. Missed Many 'Red Flags' on Key Informer, Review Finds," *The New York Times*, May 25, 2006; Neil A. Lewis, "F.B.I. Agent Testifies Superiors Didn't Pursue Moussaoui Case, *The New York Times*, March 22, 2006.
[770] U.S. Department of Justice, *Report on the Events at Waco, Texas, February 28 to April 19, 1993*; Committee on Government Reform and Oversight in conjunction with the Committee on the Judiciary, *Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians*, Report 104-179, 104th Cong., 1st sess; George Lardner Jr., "Freeh Says FBI Actions at Ruby Ridge Were 'Flawed'," *Washington Post*, October 20, 1995, p. 2; Kevin Sack, "U.S. Says F.B.I. Erred in Using Deception in Olympic Bomb Inquiry," The New York Times, April 9, 1997.
[771] *The Joint Inquiry Report*, p. 40.

or elements thereof, foreign organizations, or foreign persons."[772] Foreign intelligence information is collected both overseas and within the United States by a number of different U.S. government institutions. As the term is used in the context of this study, *domestic intelligence* is information relating to the capabilities, intentions or activities of foreign government or elements thereof, foreign organizations or foreign persons but where the collection takes place within U.S. territory. As such, domestic intelligence is a subset of foreign intelligence. In short, foreign intelligence is that information which is collected overseas and domestically against targets with a foreign nexus. Similar to foreign intelligence, domestic intelligence also is information collected against threats or targets that have a foreign nexus but, unlike foreign intelligence, the targets of collection for domestic collection are located within the United States (at least for part of the time the collection is conducted) requiring that the collection against those targets be physically done within the United States.

The term domestic intelligence is used extensively in debates about the mission and capabilities of the U.S. intelligence community. The term, however, is nowhere defined in U.S. law or policy.[773] There are very few specific references in statute to domestic intelligence and its coordination within the U.S. government. The National Security Act of 1947 does state that the National Security Council is to "advise the President with respect to the integration of domestic, foreign and military policies

[772] National Security Act of 1947, as amended, 50 U.S. Code, Chapter 15, 401(a)) and E.O. 12333, 3.4; Frederick F. Manget, "Intelligence and the Rise of Judicial Intervention," *Studies in Intelligence*, Volume 39, Number 5, Washington, D.C.: Center for the Studies of Intelligence (1996), pp. 43-50..
[773] Interview with Judge Richard A. Posner, January 2007, by phone.

relating to national security,"[774] but unlike foreign intelligence matters, the act does not establish a mechanism for advising the president and coordinating the domestic intelligence community. In theory, the DNI had authority over the FBI and its domestic intelligence collection function but the Office of the Director of National Intelligence has done little to act upon its authority to direct the FBI in its domestic intelligence role.[775] As the *The WMD Commission Report* noted:

> The DNI has no say in the appointment of the Director of the FBI, presumably because the FBI is the 'primary criminal investigative agency in the federal government' and the FBI Director spends considerable time overseeing a large law enforcement staff involved in criminal justice matters. Rather than conferring a role in the appointment of the Director of the FBI, the reform legislation gives the DNI a say in the appointment of the Executive Assistant Director for Intelligence.[776]

Although the President has the authority to delegate certain functions to the FBI, as the principal authority comes from the attorney general, the attorney general, though guidelines and promulgated rules, can give the Bureau specific investigative powers and impose restrictions on those powers as well. In exercising those authorities, the attorney general does not have to take into account how the guidelines will affect the achievement of any given intelligence objective. In fact, numerous attorney generals, including Attorney General Ashcroft, have shown that most of the time they are more sensitive to general political pressures about them being seen as either "hard" or "soft"

[774] *National Security Act of 1947*, National Security Council, 50 U.S.C. 402, Section 101(a).
[775] *The WMD Commission Report*, Chapter 10.
[776] *The WMD Commission Report*, p. 460.

on issues such as civil rights and privacy rights than to accomplishing actual intelligence missions.[777]

With no law defining the term domestic intelligence the confusion (and controversy) surrounding the term may stem from the United States' historical experiences with U.S. government organizations conducting intelligence activities within the United States that were legally questionable.[778] During the 1950s and 1960s the FBI was involved in a number of domestic investigations that were described as domestic intelligence activities and were later the subject of Congressional investigations (i.e., the FBI's COINTELPRO).[779] These activities were a form of law enforcement activity focused on violent or seriously disruptive crime that was (or was asserted to be) politically motivated but with no apparent foreign nexus.[780] During the 1950s and 1960s, when these investigations were being conducted by the FBI, they were referred to as either domestic security or criminal intelligence investigations. This was the FBI's historical understanding of the term.[781]

Former FBI Director William Webster, in describing domestic intelligence, referred to it as "criminal intelligence" that was collected within the United States by

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[777] Richard Powers, *Broken: The Troubled Past and Uncertain Future of the FBI*, New York: Free Press (2004).
[778] S.Rept. 94-755, *Supplementary Detailed Staff reports of Intelligence Activities and the Rights of Americans, Book III*, Final report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate, Washington, April 23, 1976 (the Church Committee Report).
[779] Ibid.
[780] Roy Godson, *Intelligence Requirements For the 1990s: Intelligence and Policy*, Lexington, MA: Lexington Books (1996).
[781] FBI Director Webster, testimony before the Denton Subcommittee of the Senate Judiciary Committee in June of 1982; U.S. Congress, Senate, Committee on the Judiciary, *Domestic Security (Levi) Guidelines, Hearings before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary*, 97th Cong., 2d sess., 1982, p. 11.

the FBI to be used ultimately in a criminal prosecution.[782] This understanding of domestic intelligence would involve the collection, analysis and management of information useful in controlling politically motivated crimes like terrorism. Such intelligence activity is an absolutely necessary component of an effective domestic security system. In order to prevent and deter organizations and people that would use violence to do harm, cause chaos and violate U.S. law (i.e., the KKK and organized crime families), it was necessary for the U.S. government, the FBI, to use domestic criminal intelligence collection capabilities to counter these groups' goals to ensure domestic security.[783]

Judge Richard Posner, a Third Circuit court of appeals judge, who has recently argued for the creation of a separate domestic intelligence organization, has stated that domestic intelligence should be understood to mean "intelligence concerning threats of major, politically motivated violence, or of equally grievous harm to national security, mounted within the nation's territorial limits, whether by international terrorists, homegrown terrorists, or spies or saboteurs employed by foreign nations." [784] While one could think of this type of information as domestic intelligence it is actually what has been referred to in U.S. law, at least since 1947, as foreign intelligence information.

[782] Ibid.; *Code of Federal Regulations*, Part 23 defining criminal intelligence as "Data which has been evaluated to determine that it is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity." Ibid.
[783] Roy Godson, *Intelligence Requirements*
[784] Richard Posner, "Remaking Domestic Intelligence," Hoover Press (2005).

Legal Underpinnings of Foreign Intelligence Within the United States: The Keith Case[785]

The Supreme Court decision in the *Keith* case of 1978 is the leading decision of the Court on the topic of the constitutionality of searches conducted within the United States for foreign intelligence purposes.[786] In examining the Court's opinion in this case, some useful insights can be provided into the legal distinction between foreign intelligence collection for national security purposes and domestic intelligence collection for internal security purposes. In *Keith*, the Court addressed the "delicate question of the President's power, acting through the Attorney General, to authorize electronic surveillance in internal security matters without prior judicial approval."[787] In the case, the Court found that the warrantless surveillance of a CIA facility in Ann Arbor, Michigan had violated the Fourth Amendment.

Because the defendants in *Keith* were domestic terrorists with no connection to any foreign government or power the Court did not rule on "the scope of the President's surveillance power with respect to the activities of foreign powers, within or without this country."[788] Rather, in carefully restraining its analysis to the facts that were presented to the Court, the justices writing the opinion of the Court addressed the validity of warrantless electronic surveillance for the purpose of protecting against *domestic threats* to national security (i.e., Timothy McVeigh). The prosecution of the

[785] *United States v. United States District Court (Keith)*, 407 U.S. 297 (1972)(referred to as the *Keith* case after the first judge to hear the case, Damon J. Keith).
[786] Ibid.
[787] 407 U.S. at 299.
[788] Ibid. at 308.

defendants stemmed from "the dynamite bombing of an office of the Central Intelligence Agency in Ann Harbor, Michigan."[789]

The attorneys for the defendants argued that the evidence that had been collected against their clients had been illegally obtained in violations of their clients 4th amendment rights and therefore, they argued, the Court was required to dismiss the evidence obtained from the wiretap in the case. The Court held that a warrant is required for domestic security surveillance in accordance with the procedures of Title III of the Omnibus Crime Control and Safe Street Act of 1968,[790] but that more flexible standards could apply to the issuance of such a warrant. In explaining its decision, the Court stated:

> We recognize that domestic security surveillance may involve different policy and practical considerations form the surveillance of "ordinary crime." The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crimes specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crimes.[791]

In its reasoning, the Court provides a very useful analysis of the limitations of the U.S. president's authority to authorize warrantless searches in the United States for domestic security purposes. In finding that there was no foreign nexus to the

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[789] Ibid. at 322.
[790] *Omnibus Crime Control and Safe Street Act of 1968*, Pub. L. 90-351, June 19, 1968, 82 Stat. 197, 42 U.S.C. section 3711. Title III of the act sets forth the rules for obtaining wiretap orders within the United States for law enforcement purposes.
[791] *U.S. vs. U.S. District Court (Keith)* at 322.

defendants actions in the case the Court rejected the arguments of the government that the search was conducted for national security purposes and therefore did not require a warrant. In other words, the defendants were not acting as "foreign agents" on behalf of a "foreign power." Rather, the defendants were individuals who posed a domestic security threat but not a national security threat. Therefore, the Court concluded in this case, that the President did not have any authority to authorize the search without a warrant since there was "no evidence of any involvement, directly or indirectly, of a foreign power" involved in this case.[792] The Court left the possibility open; however, that the President would have such authority if there was a foreign nexus to the case making the threat a national security threat.

While the *Keith* case did not rule specifically on the legal issue of whether there is an exception to the warrant requirement of the 4th amendment for national security searches (and the legal issue is still not been resolved by the Supreme Court) the *Keith* Court clearly drew a distinction between those domestic security threats that, while they may involve criminal activity, do not have a foreign nexus (i.e., the Unibomber type of criminal activity) and other types of threats, that may or may not involved criminal activity, (i.e., national security threats) that have a foreign nexus to them (i.e., a known al Qaeda member living within the United States). The Court implies that if there had been a foreign connection or sponsorship to the defendants' activity, the President would not have had to obtain a warrant before authorizing the search.

[792] Ibid. at 310.

Keith's emphasis on the need for flexibility applies with even greater force to surveillance directed at foreign threats to national security. For more than in domestic security matters, foreign counterintelligence and foreign counterterrorism investigations are "long range" and involve "the interrelation of various sources and types of information."[793] The *Keith* decision provides background in understanding why there is a distinction made between what is called "foreign intelligence" versus "domestic intelligence" collection. What is interesting about the decision is that the Court did not base its decision regarding the lawfulness of the U.S. government action on whether there was criminal activity alleged to be involved or not. In fact, the government lawyers argued that because the activities were not considered criminal under the U.S. criminal code, the 4th amendment was not implicated. The Court rejected the government's argument and concluded that irrespective of whether there was any criminal activity involved, because the activities of the defendants were related to internal security and not a security threat with a foreign connection, the government needed a warrant in accordance with the 4th Amendment before conducting a search against the defendants. In other words, when the U.S. government collects intelligence within the United States against individuals who are considered threats, the materially relevant factor in determining what the legal authorities of the U.S. government are in such cases, is not whether the activities are considered criminal or not but rather whether the target of the collection has a connection to a foreign entity, state, or organization.

[793] Ibid. at 322.

The *Keith* case makes clear that it is the nature of the threat, not the nature of the government's response to that threat, which determines the constitutionality of the search or surveillance. Thus, where the government's purpose is to protect national security, its choice among otherwise lawful methods for achieving the protection does not implicate the Fourth Amendment.

The Foreign Intelligence Surveillance Act of 1978[794]

In response to the Supreme Court's decision in the *Keith* case, Congress passed the Foreign Intelligence Surveillance Act (FISA) to regulate the gathering of foreign intelligence within the United States. While the statute covers a slightly different issue than the *Keith* case, the act follows the Court's reasoning with respect to the distinction made between foreign intelligence information and domestic security information. FISA deals with warrants for "foreign" intelligence collection whereas the *Keith* case was dealing with "domestic" intelligence collection. As in the *Keith* case, FISA notes that criminal activity is irrelevant to the determination as whether a collection within the United States is lawful. The act provides a process by which the executive branch can obtain warrants for electronic surveillance or physical searches within the United States for national security purposes when there is a foreign nexus to the threat. Whether there is a criminal purpose or criminal activity involved is irrelevant to a determination as to whether the executive branch has provided the necessary "probable cause" in order to conduct a search within the United States under this act. The act only requires that the executive branch proves to the FISA court that the target of its investigation has a

[794] *Foreign Intelligence Surveillance Act of 1978*, 50 U.S.C. sections 1801-1862 (FISA).

foreign nexus (i.e., the target fits into one of the four categories the statute provides for as eligible targets for collection – a foreign power, an agent of a foreign power, a member of a international terrorist organization, a member of a foreign clandestine service).

As with the *Keith* case the FISA statute illustrates what is relevant in determining the legality of a collection done within the United States is whether the collection is targeted against a foreign threat. The *Keith* case and the FISA statute raises questions as to why the Attorney General guidelines impose a criminal nexus requirement on foreign intelligence investigations done by the FBI within the United States. In its original form, FISA authorizes electronic surveillance for "the purpose" of obtaining "foreign intelligence information," which was (and is) defined to include information necessary to "protect" the United States from espionage and international terrorism committed by foreign powers or their agents.[795] Under this definition, similar to the *Keith* case, information is foreign intelligence information only if it is relevant or necessary to help the United States protect against certain specified threats, including attack, sabotage, terrorism, and espionage committed by foreign powers or their agents. Thus, information concerning purely domestic threats to the United States (i.e., information concerning Timothy McVeigh's plan to bomb the Oklahoma City Federal Building) is not foreign intelligence information. Moreover, information concerning foreign activities that do not threaten national security (i.e., international fraud schemes) is also not foreign intelligence information.

[795] 50 U.S.C. section 1801(e)(1).

In the context of counterterrorism investigations, based upon the *Keith* case and FISA, information about an al Qaeda conspiracy to bomb New York would be considered foreign intelligence information since it concerns an act of international terrorism committed by a foreign power.[796] On the other hand, FISA cannot be used to acquire information for the "purpose" of obtaining evidence for the prosecution of a domestic homicide because such information is not "foreign intelligence information." The FISA process, however, may be used to acquire information for the "purpose" of obtaining evidence for the prosecution of a foreign spy or terrorist because such information is "foreign intelligence information." The USA Patriot Act, as it amends FISA, accepts the same definition of foreign intelligence information.[797]

The reasoning of the *Keith* case as well as the lower legal standard involved in obtained a warrant for national security purposes as outlined in the FISA statute makes sense. Even according to international law it is clear that when a foreign entity is interfering in the internal affairs of the United States, the U.S. government has the legal authority to act against such foreign threats even if there is no domestic criminal activity going on. The determining legal factor as whether the U.S. government would have authority to act against the foreign entity has nothing to do with whether that entity is breaking U.S. law. This makes sense since foreign nations or entities have no authority or business interfering with U.S. internal deliberative processes. When, however, there is no foreign involvement, there would be no government interest or legal authority in

[796] 50 U.S.C. section 1801 (a)-(c); H.R. Rep. No. 95-1283, Part I, 95th Cong. 2d Sess. (1978), at 47-50.
[797] 50 U.S.C. sections 1806(k)(1)(A)-(C) and 1825 (k)(1)(A)-(C) with 50 U.S.C. section 1801(e)(1)(A)-(C).

suppressing such political activity unless that activity is connected in some discernible way to illegal activity. And under the circumstances of criminal activity of domestic threats with no foreign nexus, the U.S. government has a higher legal standard under which it must operate. The US government is under more legal restrictions (i.e., requirement to obtain a warrant from a court before conducting a search) in how it conducts its actions against such threats.

Foreign Nexus Analysis Applied to the U.S. Institutional Division of Labor

As the threat or target of a foreign intelligence collection moves across the borders of the United States the nature of the threat does not necessary change. Usually, a specific threat to U.S. national security that has a *foreign nexus* will continue to have that foreign nexus whether inside the United States or overseas. As the country learned on September 11, the nature of the threat from al Qaeda did not change as the hijackers traveled into the United States to live and prepare to carry out their attacks. What does vary, however, is which specific U.S. government institution will have the responsibly to collect against that threat depending on whether the threat exists physically within the United States or outside of the United States.

Under U.S. law, information collected against a threat, whether done in the U.S. or overseas, is by definition foreign intelligence collection so long as there is a foreign nexus and the threat poses a national security threat to the United States. The *Keith* case and the FISA statue made an important distinction regarding the legality of the surveillance not based upon a consideration of which institution of the government was responding to the threat but rather based upon a distinction between efforts to protect

national security from foreign threats and other efforts (i.e., efforts to protect against purely domestic terrorists or international fraud schemes).

Today, the U.S. government still operates under a division of labor that divides the work of these agencies based upon where the threat exists at the time of the collection. If the foreign threat is operating overseas, the CIA and the NSA will have priority over the collection. If the foreign threat is operating domestically within the United States, the FBI has the jurisdiction to collect against that threat. This division of labor has existed since the creation of the intelligence community in 1947 and still exists as of today. Even in light of the flaws that the 9/11 investigations highlighted with respect to this division of labors no changes have been made to this division of labor by the U.S. government for the collection of foreign intelligence collection.

A Division of Labor for Collection Within the United States

The National Security Agency

Within the intelligence community there are a number of agencies whose mission it is to collect intelligence information that would be useful for U.S. policymakers. These collection agencies that include the CIA, FBI, NSA, DIA and NGA operate in accordance with a number of different legal and policy instructions. These laws and guidelines dictate both the authorities and the limitations the agencies will follow as they collect the information. For example, in accordance with a 1952 classified presidential directive, the National Security Agency carries out the "communications intelligence function" for the U.S. government. According to

President Truman's directive, this new organization would be responsible for communications intelligence (COMINT) and the Department of Defense would act as the executive agent of the government for the production of that information.[798] In short, the NSA would be responsible for collecting signals or communications intelligence. And in accordance with E.O. 12333, the NSA was authorized to collect foreign signals intelligence both within the United States and overseas.

The Central Intelligence Agency

In 1947, the National Security Act created the Central Intelligence Agency (CIA) and provided the new agency with authorities to conduct both foreign intelligence and counterintelligence overseas and domestically within the United States. Under the law, the CIA can collect through both technical and physical means. According to E.O. 12333, the CIA shall "[c]ollect, produce, and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of National Intelligence and the Attorney General."[799] For the majority of the CIA's collection activities, it uses human means of collecting, in other words, the CIA uses people to collect foreign and counterintelligence information. Under the same law, the CIA is

[798] Jeffrey T. Richelson, *The U.S. Intelligence Community*, 5th ed., Boulder, CO: Westview Press (2008), p. 30.
[799] Executive Order 12333.

prohibited from using signals collection within the United States and from engaging in any police or law enforcement activities.[800]

There is no legal requirement that foreign intelligence information be collected overseas or from a foreign target. The restrictions that were placed on the CIA domestically in carrying out its foreign intelligence function were two fold: (1) the CIA would not use signals intelligence (SIGINT) domestically and (2) the CIA would have no law enforcement authorities, no arresting powers, and no subpoena powers. The CIA was prohibited from collecting information domestically within the U.S. aimed at the *domestic activities* of U.S. citizens and corporations.[801] The CIA can and does, however, collect foreign intelligence domestically as long as there is a foreign nexus to the target of collection and the appropriate level of approval from the CIA management according to the internal guidelines adopted at the CIA pursuant to E.O. 12333. The CIA can recruit foreigners who are either living or just passing through the U.S. and can conduct voluntary debriefings of Americans who have access to information that would be valuable to its foreign intelligence mission. Through these human sources the CIA is able to collect information for the policymakers about the threats to the U.S. that have a foreign nexus.

Although the CIA has always had the legal authority to conduct foreign intelligence domestically, it has had very few of its foreign intelligence officers

[800] National Security Act; E.O. 12333.
[801] E.O. 12333; Dana Priest, "CIA Is Expanding Domestic Operations," *Washington Post*, October 23, 2002, A2.

assigned to these positions within the United States.[802] These case officers function as part of the CIA's Natural Resources Division (NR Division) and have areas of operations located throughout the United States in about thirty different cities. There are two main functions of NR Division. The first function is "clandestine operational activities of the Clandestine Services conducted within the United States against foreign targets."[803] In short, case officers identify foreign national of special interest who are living in the United States and try to recruit them to work for the U.S. government. Historically, these NR case officers are also responsible for debriefing American citizens who had traveled overseas and voluntarily provide information to the CIA about their observations while overseas.[804] Because of the policy decisions to make the FBI the lead organization on counterintelligence and counterterrorism domestically, most of the CIA's foreign intelligence officers working at NR stations are required to defer to the FBI (or at least coordinate with the FBI in conducting its operations domestically). According to memorandums of agree between the CIA and the FBI, the FBI would be the lead in these types of investigations.[805] The CIA, effectively, over the years has done very little when it comes to foreign intelligence collection domestically.

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[802] Henry A. Crumpton, "Intelligence and Homeland Defense, in *Transforming U.S. Intelligence*, eds. Jennifer Sims and Burton Gerber, Washington, DC: Georgetown University Press (2005), pp. 206-207.
[803] Ronald Kessler, *Inside the CIA*, p. 18; David Wise, *Nightmover: How Aldrich Ames Sold the CIA to the KGB for $4.6 Million*, New York: HarperCollins (1995), p. 77; Vernon Loeb, "Gathering Intelligence Nuggets One by One," *Washington Post*, April 19, 1999, p. A17; Massimo Calabresi, "When the CIA Calls," *Time*, June 6, 2001, http://www.time.com
[804] Henry Crumpton, *Transforming U.S. Intelligence*; Dana Priest, "CIA Is Expanding Domestic Operations," *Washington Post*, October 23, 2002, p. A2.
[805] John MacGaffin, "Clandestine Human Intelligence: Spies, Counterspies, and Covert Action," in *Transforming U.S. Intelligence*, pp. 79-95.

The CIA focused almost exclusively on foreign intelligence collection overseas while the FBI was responsible for the homeland.

The Federal Bureau of Investigation

The FBI receives its authority to conduct investigations within the U.S. from a number of specific statutes, from executive orders of the president and from directives, regulations and orders of the attorney general.[806] Under the National Security Act, the Federal Bureau of Investigation (FBI) also has authority to collect foreign and counterintelligence information both overseas and within the United States. The FBI can do this through both technical and physical means.[807] According to E.O. 12333, the FBI shall "[c]onduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support communications security activities of the United States Government."[808]

Unlike the other intelligence agencies, the FBI does not have its own charter outlining its specific authorities. Rather the statutory language authorizing the FBI to function broadly places the authority over the FBI in the office of the attorney general. There is no specific act, however, that mandates the FBI to conduct specific types of

[806] The National Security Act of 1947; E.O. 12333; Title III of the Omnibus Crime Control and Safe Streets Act of 1968, U.S. Code, volume 18, sec. 2510-20; the Foreign Intelligence Surveillance Act of 1978; the USA Patriot Act.
[807] Henry A. Crumpton, "Intelligence and Homeland Defense, in *Transforming U.S. Intelligence*, eds. Jennifer Sims and Burton Gerber, Washington, DC: Georgetown University Press (2005), pp. 206-207.
[808] E.O. 12333 section 1.14 (c)(d).

investigations. Rather the laws give the FBI and the attorney general broad discretion to carrying out its functions. The attorney general may limit that authority by issuing guidelines, with his own signature without hearings or public input or specific direction from the President. Congress placed the FBI under the supervision of the attorney general, who is vested with complete authority over the Bureau's investigative powers. Through the attorney general's authority over the FBI, the guidelines promulgated by the attorney general have a direct impact on how inhibited or unencumbered the FBI is in carrying out its domestic intelligence function. This issue will be revisited later..

Although both the NSA and the CIA have authorities to operate domestically, these intelligence agencies, for the most part, have focused their foreign intelligence collection efforts overseas. The FBI has maintained the lead on activities within the United States. This focus of the NSA and the CIA overseas and of the FBI domestically is mainly a legacy of the Congressional investigations of the 1970s of intelligence activities conducted within the U.S. and the ultimate Attorney General guidelines that came after the congressional investigations limiting the activities of the federal government within the United States. The National Geospatial Agency (NGA) [809] and the Defense Intelligence Agency (DIA) are also considered intelligence collection

[809] The National Geospatial Agency is another U.S. intelligence collection agency. This organization was created in - and, like NSA, operates under the Department of Defense. This agency was created by joining together a number of different entities within the U.S. government; the Defense Mapping Agency, Central Imagery Office, National Photographic Interpretation Center, the imagery exploitation element of the Defense Intelligence Agency, portions of the Defense Airborne Reconnaissance Office and National Reconnaissance Office, and the Office of Imagery Analysis of the CIA's Directorate of Intelligence and the Defense Dissemination Program Office. Both a DOD Directive and a DCI directive created NGA's responsibilities; NGA would provide "imagery, imagery intelligence and geospatial information products" to DOD, the DCI and other parts of the U.S. government. NGA has provided imagery and maps of areas both overseas and within the United States to U.S. government agencies. Jeffrey T. Richelson, *The U.S. Intelligence Community*, 5th ed., Boulder, CO: Westview Press (2008), p. 30.

agencies but they are not specifically authorized to collect against foreign threats within the United States.

Ironically, although there has been a division of labor between these intelligence agencies resulting in the FBI responsible for domestic intelligence matters, no "Director of Domestic Intelligence" was created to coordinate collection tasking and analysis for domestic matters. Although part of the FBI's intelligence budget can be found within the DNI's budget, there still remains no national budget for domestic intelligence. There is no overall national examination of domestic intelligence needs and capabilities. Today, numerous government entities have a slice of the responsibility for homeland security which includes intelligence activities. Yet, there has been no concerted effort to coordinate that domestic intelligence function. Rather, decisions about tasking, analysis, coordination, and integration with foreign intelligence and counterintelligence matters are left to prevailing bureaucratic forces that now include the National Counterterrorism Center, the National Counterintelligence Executive, the Office of the Director of National Intelligence, the National Intelligence Council, the Homeland Security Council, the National Security Council, the Department of Homeland Security and DOD's Northern Command to mention some. Nor are there separate oversight mechanisms for domestic intelligence.

While there is congressional oversight, it is not by the intelligence committees which are concerned almost exclusively with foreign intelligence and counterintelligence (although they do authorize the FBI's budget for countering domestic terrorism) but rather oversight responsibility for domestic intelligence is

dispersed over multiple committees in Congress with oversight responsibilities over the Department of Justice and thereby the FBI (i.e., the Judiciary, the Intelligence Committees, the Homeland Security Committees). There is no domestic equivalent to the President's Foreign Intelligence Advisory Board. Although that board has recently been renamed to the Presidents Intelligence Advisory Board the was no change within the executive order establishing the board to indicate that any more attention will be directed over the domestic intelligence matters.[810]

While there are legitimate concerns about centralizing domestic intelligence matters (i.e., fears of creating a political police state) there remains today a question as to whether the current loose organizational structure over domestic intelligence matters is adequate to ensure that the function of domestic intelligence is adequately and properly (within the law) conducted by the FBI or any other government entity. Matters have only become more complicated as the threats from terrorists against the U.S. have increased in the last couple of years. It is reasonable to believe that matters may continue to increase in complexity. Aside from changing names of entities and titles (i.e., PFIAB to PIAB and DCI to DNI) there is a need for true coordination of domestic intelligence and its integration with foreign intelligence.

If a new domestic intelligence agency were established with a new "Director of Domestic Foreign Intelligence" the concerns about a lack of focused attention and national level coordination may be eliminated. Another step in the right direction would be to consolidate the NSC and the HSC within the White House eliminating

[810] Executive Order 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," February 29, 2008; http://www.fas.org/irp/offdocs/eo/eo-13462.htm.

unnecessary overlap between the two councils and elevating the national coordination for domestic intelligence to the position of a deputy national security advisor. The National Security Council has legal authority for both domestic and foreign intelligence. And it certainly has the legal power to set up a coordinating mechanism that would deal with foreign intelligence collected domestically and foreign intelligence collected overseas.

Pre 9/11: Intelligence Collection Against A Hijacker

The Story

The 9/11 investigations revealed that the federal government's intelligence collection agencies had not been focusing on the threats that were developing within the country.[811] While the U.S. policymakers knew a lot about the particular threats overseas, they knew very little about the threats inside the United States.[812] The reports published by the 9/11 investigations provide a wealth of detail about the instances were the CIA and the NSA were not focused on activities within the United States (i.e., the entrance into the U.S. by members of al-Qaeda or the presence of al Qeada members in the United States). For example, in January 2000, the CIA had received information about a known al-Qaeda operative, Khalid Mihdhar; that he had "attended a gathering of al Qaeda associates in Malaysia and that he held a U.S. B-1B-2 multiple entry visa that would allow him to travel to and from the United States until April 6, 2000."[813]

[811] *The Joint Inquiry Report*, p. 34.
[812] Ibid. at 43.
[813] Ibid. at 13.

The CIA knew this information because CTC had been following Mihdhar overseas; watching in order to try to get an idea of what his intentions might be. When Mihdhar's passport information arrived at the CIA indicating a multiple entry visa for the United States no alarms went off at the CIA. The CIA did not put Midhdar on the State Department's watchlist. The CIA made efforts to pass the information to the FBI within CTC (and in fact it has been shown that FBI personnel within CTC did have access to and had read this information about Mihdhar) but was not overly concerned with what happened with the information once FBI knew about it. The CIA turned to focusing on Mihdhar and others as they continued to travel overseas.

So why did the CIA not place Mihdhar or Hazmi on the watchlist? According to a former chief of CTC who testified before the Joint Inquiry, "we [CIA] do this [watchlisting] hundreds of times a month. . . . I think that month we watchlisted about 150 people."[814] There were guidelines drafted at the CIA that CIA employees had been briefed on dealing with how and when to watchlist.[815] Yet the CIA officers at CTC did not watchlist these individuals. These CIA officers were trained and knowledgeable about watchlisting so why didn't they watch list these two individuals. The reason was not because anyone at the CIA thought that Mihdhar was someone that the U.S. did not have to worry about; they were following him closely overseas since January 2000 because they believed he was affiliated with al Qaeda. The reason was not because anyone at the CIA was incompetent or lazy. As the former chief of CTC testified, "it

[814] *The Joint Inquiry Report*, p. 51.
[815] Joint Inquiry Appendix

was not done because of the press of lots of other work."[816] The chief went on to note, "these same officers watching this operation were also doing a lot of other things. So it's like balls in the air. There gets a point where you don't treat each with the attention that it deserves."[817]

The CIA had identified an al Qaeda threat and had taken action against the target by collecting against him overseas as he traveled to Malaysia and continued to travel to Bangkok. At the time, the CIA was under the belief that FBI knew the information about Mihdhar's visa.[818] The CIA continued to focus on its priority as they understood it according to the law, guidelines and historical experience that guided the CIA's activities; focus overseas.

While Mihdhar might travel to the U.S. on his visa, the CIA was concerned about his current travel plans overseas.[819] Along with two other individuals who were suspected al Qaeda associates, the CIA kept following and tracking Mihdhar to see what he was up to. The CTC and multiple CIA stations overseas continued to work together to track Mihdhar and the other two as they traveled to Bangkok. When the CIA lost their trail, CTC made sure that the three individuals they had been watching overseas

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[816] Testimony of Cofer Black, The 9/11 Commission, (2004), "9/11 Commission Tenth Public Hearing: Law Enforcement and the Intelligence Community," http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf, April 13-14.
[817] Ibid.
[818] *The Joint Inquiry Report*, p. ; DOJ IG report, p. ; CIA IG report, p. ; Tenet, p. ;One of the CIA CTC officers stated that she had provided the information in hard-copy to the FBI. FBI could not receive the information electronically because FBI did not have a computer system that could accept photographs. Nor did most of the FBI employees have email connectivity. As has been the practice in the past, the FBI detailees working in CTC would serve as couriers to deliver to FBI headquarters any material either the FBI detailees or anyone at CIA determined needed to be passed to FBI. See chapter 4 of this study for further detail on this issue.
[819] *The 9/11 Commission Report*, p.

(Mihdhar, Hazmi and 'Salahsae") were placed on a watchlist in Thailand were they were last spotted. This way, "Thai authorities could inform the United States if any of them departed from Thailand" and the CIA could pick up the trail again.[820]

No alarms went off at the CIA after CTC received the visa information on Mihdhar because the CIA was doing what it was suppose to do and did everyday; collect overseas, notify the FBI of any thing related to the U.S. territory and continue to focus overseas against the threat. Because the CIA defers to the FBI on matters related to the U.S., the CIA assumed that the FBI was handling the domestic side of any possible travel by Mihdhar to the U.S. and did not think much about watchlisting on this occasion. The CIA's priority and legally mandated focus was overseas. So when time of limited because the CTC officers were working on other operations overseas watchlisting someone who might travel to the U.S. was not a priority since the FBI was in charge of domestic matters. The FBI was focused on the domestic aspect of the threat or at least that was what CTC thought. Since 9/11, there has been no change in this institutional division of labor among the intelligence agencies. The CIA is still required to focus its priority overseas, the threats are still tremendous overseas and the FBI is still responsible for foreign threats within the United States.

The Result: Virtually No Domestic Collection

As the 9/11 Commission noted, there seemed to have developed an artificial wall at the border of the United States. Beyond the borders of U.S. territory the national intelligence agencies like the NSA and the CIA would focus their efforts on collecting

[820] *The 9/11 Commission Report*, p. 181.

intelligence and tracking terrorists. Within U.S. territory the FBI would focus its efforts on collecting intelligence and tracking terrorists. Partly due to the lessons learned by the intelligence community from the Congressional investigations of the 1970s, the intelligence collection agencies had been operating on their respective sides of the artificial wall. For those agencies that were focused on activities that occurred overseas there was little likelihood of raising any legal concerns related to collecting against "U.S. persons."[821]

Operating on the respective sides of the wall prevented the agencies from being subject to Congressional criticism and accusations of illegal activities. To ensure the survival of the organization, and ones career, it was wise to stay within your area of responsibility and stay clear of domestic collection. In addition, the FBI learned from past experience that carrying out intelligence investigations within the United States would not be beneficial to an agent's career nor would it be in line with the identity of the Bureau that had developed over time. In the summer of 2001 when the head of the intelligence community was running around town warning everyone that would listen of the heightened threat concerns from al Qaeda, the FBI's lack of attention to collection within the U.S. about the terrorist threat led to the publication by the FBI in May 2001 of a report disseminated to state and local law enforcement entities that "assessed the risk of terrorism as 'low.'"[822]

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[821] E.O. 12333. The E.O. defines a US person as " ." There greater restrictions imposed on the CIA when dealing with US persons related to how and under what circumstances the CIA could collect against them, recruit them or use them for operational cover.
[822] *The Joint Inquiry Report*, p. 61.

On 9/11 some clarity was brought to the subject of what was being collecting within the U.S. against foreign threats like al Qaeda. What was revealed was the reality that no agency was effectively carrying out this function. That was not just a weak link in the system, it was a huge gap. As the 9/11 investigations revealed, the U.S. "had pitifully little information about who was in the country, plotting what sort of attacks on which cities."[823] The Joint Inquiry reported, "[T]he foreign intelligence agencies [predominately the CIA and the NSA] paid inadequate attention to the potential for a domestic attack."[824] Indeed, the Central Intelligence Agency (CIA) focused mainly on collecting foreign intelligence overseas and the NSA did not disseminate U.S. phone numbers it had collected while intercepting calls from known terrorists overseas. The question is why? The 9/11 Commission noted how effectively, in fact, the CIA performed its foreign intelligence function overseas; watching, following, disrupting (when the authority and operational imperative existed) terrorists overseas. Plenty of information of the terrorists threats were provided by the CIA and the NSA from information collected overseas.

The Reasons: Laws, Procedures, Guidelines

When an individual who poses a threat to the U.S. national security enters the U.S. the CIA stops collecting and hands off the responsibility to follow that lead to the FBI. The Attorney General Guidelines, E.O. 12333 and memorandums of agreements (MOAs) with the FBI require that the CIA coordinate with (in essence defer to) the FBI

[823] John Ashcroft, Never *Again: Securing America and Restoring Justice*, New York: Center Street (2006), p. 125.
[824] *The Joint Inquiry Report*, p. 35.

within the U.S. territory. It is primarily the FBI's role to determine what to do with the individuals; watch, wait, collect, stop and arrest. Years before 9/11, by presidential directive, the FBI had been given the lead for foreign and counterintelligence collection activities within the U.S. The National Security Agency (NSA) also was following terrorists overseas and working with the CIA in those collection efforts but when it came time to watch within the United States, the NSA hesitated to even acknowledge that it had collected a U.S. phone number as part of its foreign intelligence collection activities overseas and at times failed to pass this information to the FBI. "Prior to September 11, CIA and NSA continued to focus the bulk of their efforts on the *foreign* operations of terrorists."[825]

As the CIA, the FBI and the NSA worked to collect against terrorists they operated within the context of the laws, procedures and guidelines promulgated by different parts of the U.S. government; some drafted by Congress and others by the executive branch. The National Security Act along with a handful of executive orders, presidential directives, DCI directives and DOD directives divided up the authorities and responsibilities and outlined the restrictions that these agencies operated under. The Attorney General guidelines further refined those authorities and divisions of labor. And numerous MOAs between the agencies outlined the particulars of how the division of labor between the agencies would work on a day-to-day basis.

[825] *The Joint Inquiry Report*, p. 36.

More Reasons: Norms, Identities and Cultures

There were other factors besides the laws which impacted the way these agencies would operate. The norms that each of the institutions abided by and the identities that they each possessed all contributed to how the agencies would act in the face of daily work to get done as well as under circumstances of crisis. Each of the agencies had their own cultures that would influence how they saw themselves as intelligence agencies as well as how they would conduct their jobs. Over time and through the experience of certain events in their own histories these agencies developed institutional identities and cultures which signaled for the agency itself and its members as well as outsiders what the agency did and how the agency did it. For the FBI its experiences had created a culture driven by prioritizing criminal investigations over intelligence investigations. Each agency also followed certain norms in line with their identities. For CTC operational officers that meant taking risks to stop the terrorists, including preparing and planning to kill them. For the FBI it meant fighting to avoid tainting possible evidence for a future trial of a terrorist. This included not sharing in order to protect the integrity of that evidence.

These identities and cultures were unique to each agency. And often the agency's had multi subcultures. At times these cultures clashed between the agencies and within the individual agencies between the subcultures. At other times the cultures complemented each other depending upon the task at hand. Every time, however, these cultures served to dictate how each of these agencies would operate against the terrorist threat. In the years and months leading up to 9/11, nothing unusual or unique was

developing in the operation of these agencies; they were all carrying out their missions as their individual rules, histories and cultures had dictated for so long before 9/11.

In the years before 9/11 the laws, norms and historical experiences of these agencies served as blinders for each of them as they sought to carry out their missions. Each of the agencies operated in accordance with their own sets of laws and guidelines in "separate spheres of operations."[826] Each of the intelligence organizations within the U.S. government operated according to specific laws, guidelines, norms and cultural identities that were tailored to the individual agency's operations. Each organization had its own culture and there was no one intelligence community culture. All of these factors would contributed to the agencies' functioning in their own "lanes in the road," creating blind spots in collection. With no overlap built into the system and each agency concentrating only on its area of responsibility (foreign or domestic) the path was paved for the terrorists to exploit the hole that existed in the collection coverage within the United States.

A Failure to Realign Authorities & Culture with the Changing Threats

The Joint Inquiry concluded, "The legal authorities, operational policies and cultures that has molded agencies like CIA, NSA, and the FBI for years had not responded to the 'globalization' of terrorism that culminated in the September 11 attacks in the United States."[827] During the Cold War the threat from the Soviet Union was mainly overseas. It was rare that any element of that threat would cross into the U.S. territory and operate domestically here in U.S. territory. Because of that, the U.S.'

[826] *The Joint Inquiry Report*, p. 36.
[827] Ibid.

government's legal division of labor between the institutions of the intelligence community was satisfactory in collecting against the threat. The CIA and the NSA efforts in collection overseas proved to be very helpful to U.S. policymakers (i.e., U-2 and A-12 programs discussed in chapter 3).

During the 1990s, however, the nature of the threat changed as terrorists groups emerged as the greatest threat and they operated by crossing over borders and planning covert attacks against their target. As the nature of the threat changed, however, the U.S. government maintained its division of labor and responsibilities between the agencies for the most part identical to what it was during the Cold War. The changes that were made (specifically in light of the lessons learned from the flawed Aldrich Ames counterintelligence investigation) involved giving to the FBI more authority domestically to conduct counterintelligence and counterterrorism investigations. This decision would come back to haunt the U.S. as it tried to fight the mounting terrorist threats. As the Soviet threat evaporated and the terrorist threat emerged there was an opportunity for the U.S. government to realign its institutional structure to fit the threat. With hindsight, after 9/11, it unfortunately appeared that the U.S. had moved in the wrong direction; a misalignment between the threats the U.S. faced at home and the organizational design of the U.S. institutional arrangement that was to counter the threat.

Despite having run massive intelligence investigations within the U.S. over the years, the FBI had failed to anticipate first espionage and then terrorism within the United States. Dating as far back as the 1930s and 1940s when the FBI was

investigating the Soviet intelligence operatives who had recruited American Communists the Bureau has produced poor results in its counterintelligence investigations.[828] "Soviet espionage successes were due, not to a lack of resources and support, but to the inability of FBI agents to uncover evidence of espionage operations."[829] In 2003, after the arrest of James Smith, a veteran counterintelligence FBI agent and Katrina Leung, Smith's longtime informant and Chinese double agent, the FBI was forced to publicly acknowledge the institutional problems the Bureau has faced in its inability to effectively handle informants involved mainly in counterintelligence investigations.

Agent Smith had been having an affair, against the FBI's procedures, with his informant, Katrina Leung for almost twenty years while he was handling her as an intelligence asset. During that time, Leung had been stealing classified documents from Smith without his knowledge and providing the information to the Chinese. On the heels of the arrests of Smith and Leung, FBI officials acknowledged that the Bureau had disciplined several hundred agents over the last 10 years for improper dealings with informants.[830] The Smith case was only one example of the problems that plagued the Bureau in its counterintelligence efforts.

The results of the Bureau's failures in its counterintelligence investigations could not compare, however, with the devastating results of the Bureau's failure to perform its counterterrorism function within the United States. If the nature of

[828] Theoharis, *The FBI & American Democracy: A Brief Critical History,* p. 3-13.
[829] Ibid. at 8.
[830] Eric Lichtblau, "FBI Spy Case Highlights Problem with Informants," *The New York Times,* April 20, 2003.

espionage threat made it difficult for the FBI to "find evidence of espionage operations" the more complex nature of the terrorist threat virtually guaranteed that the FBI would not be successful in finding evidence of the terrorist operations within the United States. The FBI inadequate vetting of intelligence assets would again come back to haunt the United States when another FBI agent in San Diego would fail to adequately vet another intelligence asset who was living with two of the 9/11 hijackers before September 11th.[831]

Failure to Alter the Division of Labor

With the creation of the DNI the reformers and lawmakers thought that the new leader of the intelligence community could ensure that national intelligence information would be effectively collected whether inside our outside of the U.S. and that the information once collected would be shared with other agencies no matter which agency had collected it. With this system, the argument was, the U.S. could build an effective counterterrorism strategy. This wishful thinking, however, overlooked the fact that there were no steps taken along with the creation of the position of the DNI to build an effective domestic intelligence collection program. Nor was there an effort made to ensure that the DNI had appropriate authority of the entity which had the lead in counterterrorism within the United States. Today, there still exists the same gaps in domestic collection and the DNI has no authority over the FBI Director (unlike the NSA and the CIA which the DNI has clear statutory authority over). What the 9/11 Commission, as well as the new legislation, failed to recognize and compensate for in

[831] *The DOJ IG Report*

the new legislation was that before 9/11 what was missing was an effective foreign intelligence collection program within the United States.[832] The 9/11 investigations made no recommendations and the reform legislation made no changes to the division of labor among the intelligence community agencies with respect to collection within the United States nor did they build a new domestic collection program.

The 9/11 investigations' recommended creating a new service within the FBI bolstering the FBI's role with respect to collection responsibilities within the United States. While the new reform legislation stated that the CIA shall "provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the Intelligence Community authorized to undertake such collection," the act, however, is silent on the CIA's domestic responsibilities for foreign intelligence. [833] Since the reforms were made to the intelligence community, according to the WMD Commission, the FBI has sought to "expand its current authorities relative to intelligence activities and production within the United States."[834] The FBI has taken steps to exert "control over other agencies' activities and intelligence production in the United States" with the goal of gaining control of the CIA operations in the United States.[835] Some experts have argued that with the proliferation of efforts to collect intelligence domestically by multiple entities (i.e., DOD, DHS, FBI, CIA) there has been a diffusion of accountability for the U.S.

[832] Interview with John Gannon; Posner, *Countering Terrorism*.
[833] Intelligence Reform and Terrorism Prevention Act of 2004, section 1011.
[834] *The WMD Commission Report*, p. 469.
[835] Ibid. at 470.

counterterrorism efforts. According to John Gannon, ". . . in an effort to converge accountability, we've actually created divided accountability . . ."[836]

An Evaluation: the FBI Foreign Intelligence Collection Role

The Early History

Within the U.S. government, the FBI has had the responsibility for foreign intelligence and counterintelligence activities within the United States for a number of years prior to the attacks against the United States on 9/11.[837] In 1936, President Roosevelt had authorized the FBI to conduct counterintelligence investigations of "the Communists and of fascism in the United States."[838] And dating from March 1983, the FBI agents had broad authority to "anticipate or prevent" terrorism, under guidelines issued by Attorney General William French Smith.[839] Therefore, in the search for answers for why the U.S. did not have sufficient collection within the U.S. one must start with at look at the FBI.

There are three main factors that contributed to the FBI's inability to manage a domestic intelligence collection program within the United States: (1) the deeply embedded culture within the FBI that rewarded and sustained a criminal investigation capability while avoiding intelligence investigations from the time of its original creation in 1908 and under the tutelage of Director Hoover; (2) the laws and the guidelines enacted by Congress and the Attorneys General after the Congressional

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[836] Public Discourse Project, "The Unfinished Agenda: CIA and FBI Reform," (transcript) first public panel, June 6, 2005, http://www.9-11pdp.org/ua/2005-06-06_transcript.pdf.
[837] Athan Theoharis, *The FBI & American Democracy: A Brief Critical History*, Kansas: Kansas University press (2004).
[838] Ibid. at 3.
[839] Ibid. at 6.

investigations of the 1970s which served to reinforce that culture; and (3) the lack of any political will on behalf of the U.S. Congress, any U.S. President or Attorney General to address the deficiency of domestic intelligence collection. In other words, the laws and guidelines prevented the FBI from having the authority it needed in order to operate as a domestic intelligence organization; its culture rejected the intelligence mission and focused on the law enforcement mission; and the leaders and lawmakers of the country allowed the FBI to neglect its intelligence mission, failing to take actions to alter the FBI or develop a new domestic collection capability. This study argues that for the same reasons mentioned above (i.e., FBI's culture, the lack of authority to do what necessary under the guidelines, and the inaction of lawmakers and others) the FBI today is still unable to carry out the mission of domestic intelligence collection.

Congressional Investigations of the 1970s

The congressional investigations that were conducted during the 1970s into allegations of illegal activities by the FBI and the intelligence agencies, which included collecting intelligence against Americans within the United States, highlighted both Congress' and the public's concern about the federal government and domestic intelligence activities. The Senate Select Committee to Study Government Operations with Respect to Intelligence Activities was created in January 1975 and was chaired by Frank Church of Idaho. The House followed suit with a committee led by Otis Pike of New York. Originally formed to investigate the allegation of misdeeds by the CIA, such as assassination attempts of foreign leaders, the most sensational findings of the

committees in their reports dealt with the FBI and its Counter Intelligence Program ("COINTELPRO").

The FBI's Intelligence Program: COINTELPRO

The FBI's Counter Intelligence Program was originally started in 1956 by Hoover as a strategy the FBI could use to destroy the Communist Party within the United States.[840] During the 40s and 50s Hoover had sought to end the influence of the Communist Party within the U.S. by prosecuting individuals, both American citizens and foreigners, who were members of the Communist Party. The Smith Act of 1940, which prohibited advocating the overthrow of the government by force and organizing or belonging to a group with that goal, provided the Hoover the legal weapon he needed to investigate and arrest members of the Communist Party and other organizations based upon their membership alone.

In 1956, however, based upon a Supreme Court ruling in *Yates*, the Department of Justice notified Hoover that in order to bring individuals to court under the Smith Act the FBI from now on had to have evidence of "an actual plan for a violent revolution" before the DOJ would prosecute them. Hoover's legal weapon for arrests of members of the Communist Party was taken away. In reaction, Hoover created a new strategy to base his domestic security investigations on, COINTELPRO. In 1956 COINTELPRO operations became the foundation for the FBI's domestic security operations.[841]

As originally designed in 1956, COINTELPRO was a campaign to destroy the Communist Party in the U.S. by circulating disruptive rumors and reports about

[840] Richard Powers, *Broken*
[841] Powers, *Broken*, pp. 25-50.

individual members of the Party and by using other "dirty tricks" to keep the Communist party from functioning. Eventually, as Hoover recognized the successfulness of COINTELPRO against the Community Party, the operations were expanded against other targets, including campus radicals such as members of the Student Democratic Society (SDS), the Black Panthers, the Ku Klux Klan and the Socialist Workers Party. As the COINTELPRO operations expanded, the FBI dropped any pretext of these operations being intended to lead to the prosecution of crimes or, for that matter, the prevention of violence. The purposes of these operations were to combat political beliefs by discrediting those who held them. Such operations included preventing speech against the Vietnam War or disrupting antiwar organizations and demonstrations.

On April 28, 1971, Hoover terminated COINTELPRO operations because of rising concerns that the details about the operations would become public.[842] Hoover believed that if the FBI's actions under COINTELPRO were to become known by the public that, unlike other secret operations done with general public support, the public would turn their backs on the FBI and the FBI would lose its prestige among the public. Hoover had learned from past experiences of the Bureau that the public's positive image of the Bureau was critical to its continued success. During his time as the Director, Hoover made it clear to all employees that the job of an FBI agent was to conduct interviews with citizens in ways that would enhance the public's confidence in

[842] Ibid.

the bureau and make arrests in ways that would be immune to legal challenges.[843] Twenty years later, these same lessons from history would influence Director Freeh's views on the importance of the bureau maintaining the public's support. Like Hoover, Freeh strongly believed that the FBI agents must been viewed by the public as ethical and working within the bounds of the law.[844] The Joint Inquiry identified these very beliefs as the unfortunate causes for some of the Bureau's missed opportunities to detect and prevent the terrorists from attacking on 9/11.

It was also based upon this fear of exposure that Hoover cut off the FBI contact with other intelligence agencies, fearing that they might leak word of the FBI's sensitive operations. Based upon concerns about public disclosure of the FBI investigations that would tarnish the bureau's reputation, Hoover even refused direct orders from President Nixon to conduct certain types of political investigations for the president. Hoover even vetoed a White House plan to coordinate domestic intelligence with the FBI in charge for fear that the FBI would be blamed when the plan failed. Hoover had learned from the lessons of the 1920s of how easily the FBI could be destroyed if it was misused even by a president.

After the extensive and painful details of COINTELPRO operations were aired by the Church committee is was virtually impossible for Congress and the public to prevent their condemnation for the abuses of that took place within the COINTELPRO operations from extending to a general condemnation and distaste towards all domestic intelligence collection. The Church Committee staff's Final Report contained a detailed

[843] James Q. Wilson, *The Investigators* (New York: Basic Books, (1978), chap. 5, pp. 23-39.
[844] Powers, *Broken*

staff study of the COINTELPRO entitled, "The FBI's Covert Action Programs Against American Citizens."[845] In searching for an explanation for the FBI's transgressions and violations of civil liberties, the staff study concluded that the "unexpressed major premise of the programs was that a law enforcement agency has the duty to do whatever is necessary to combat perceived threats to the existing social and political order."[846] The portrait portrayed by the Church committee was one of an FBI war against civil liberties. The obvious conclusion to most was that *any* domestic intelligence collection would violate civil liberties and would be illegitimate. This conclusion was wrong. In fact, many of the targets of the FBI were appropriate targets for the FBI's surveillance: The Communist Party was futile territory for spies against the United States, the KKK was a violent terrorist organization; the Black Panthers were certainly violent and some, not all, of the New Left organizations used violent tactics such as bombings, kidnappings and murders. The problems, which lead to the abuses by the FBI, lay not with the domestic collection itself but rather from the misuse of the domestic intelligence to support campaigns of personal destruction authorized by presidents, attorneys general and FBI leadership.

Bad Rules That Were Once Good: Attorney General Guidelines

A number of actions were taken with respect to the FBI in response to the Church Committee report. In April 1976, largely in response to revelations of the

[845] S.Rept. 94-755, *Supplementary Detailed Staff reports of Intelligence Activities and the Rights of Americans, Book III*, Final report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate, Washington, April 23, 1976 (the Church Committee Report).
[846] Ibid., Book II, p. 71.

Church Committee and the perceived illegal and excessive actions by the FBI, the then Attorney General Edward Levi issued the Domestic Security Guidelines that specifically authorized the FBI to conduct investigations to prevent terrorism but limited the measures the FBI could use for those investigations.[847] Levi also promulgated guidelines delineating the authority of the FBI to conduct foreign intelligence collections and national security investigations ("NSI Guidelines").[848] These guidelines have since been amended several times – first amended during the Carter administration and then again in 1983 by Reagan's Attorney General French Smith and most recently in 2002 by then Attorney General John Ashcroft.[849] In response to 9/11, in 2002 and 2003, Ashcroft amended both of these sets of guidelines.[850] While portions of the context of the NSI guidelines are classified there is language in the released portions of the NSI guidelines which allows some general conclusions to be made about the restrictions that these guidelines place upon the FBI in its domestic work. Similarly, a review of the criminal guidelines shed light on the restrictions that the Attorney Generals have placed upon the FBI in its criminal investigations.[851]

A Response to the Church Committee Investigations

In 1976, a hurried response to the findings of the Church committee, the U.S. government looked to define the threat that it perceived from domestic actors. In the

[847] Office of the Attorney General, "Domestic Security Investigations," March 10, 1976.
[848] NSI Guidelines
[849] DOJ, Fact Sheet, Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, November 5, 2003; http://www.fas.org/irp/agency/doj/fbi/nsi-fact.html.
[850] Press Statement, DOJ website
[851] DOJ, Fact Sheet

atmosphere of the congressional investigations and allegations of wrong doing by the U.S. government, the threat was defined almost exclusively as likely and immediate violations of federal law. And legally binding Attorney General Guidelines were developed to regulate intelligence collection, retention and dissemination according to this defined threat. In March of 1976 the Attorney General Edward Levi established rules for FBI non-criminal domestic investigations. The intent was to ensure that FBI would never again violate anyone's civil liberties through programs like COINTELPRO.

Through the collection of such information, the U.S. authorities would be able to prosecute the individuals in a criminal court of law. It makes sense that domestic intelligence investigations ought to be undertaken when a crime has been or is about to be committed. In 1982, Attorney General Levi signed the "Domestic Security Guidelines" setting out the procedures by which the FBI would conduct these types if criminal intelligence investigations when an organization or person was believed to be involved with illegal activities.[852] The Levi guidelines, and the Smith guidelines that followed and amended the Levi guidelines,[853] stated that these domestic criminal intelligence investigations could be undertaken by the FBI when there was a reasonable belief that the target or targets of the investigation were engaged in activities that

[852] U.S. Department of Justice, *Domestic Security (Levi) Guidelines, Hearings before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary*, 97th Cong., 2d sess., 1982 [hereinafter Levi Guidelines].
[853] U.S. Department of Justice, *Attorney General Guidelines on General Crimes, Racketeering Enterprises and Domestic Security/Terrorism Investigations*, March 7, 1983.

involve force or violence and a violation of the criminal laws of the United States.[854] Under these investigations, the U.S. could apprehend, prosecute and at times take preventive actions in order to avoid a violent group or person from carrying out violence against the United States.

It was under these types of investigations that the FBI got into trouble during the 1950s and 1960s when the Bureau began to target groups within the U.S. based solely on their political views and expressed thoughts. For example, some of the investigations that the FBI conducted under its COINTELPRO during this time were against targets which the FBI had no suspicion of being involved with criminal activity.[855] Some of these investigations were done merely to destroy the reputation of political opponents. In other words, there was no indication of a threat to the United States nor were the investigations concerned with criminal activity. In response to these legally questionable activities by the FBI, the Attorney General passed these specific guidelines that dictated under what circumstances the FBI could conduct investigations for domestic intelligence purposes. These guidelines imposed a criminal standard for such investigations. That made sense since the investigations had no nexus to a foreign threat.

In May 2002, Attorney General Ashcroft amended these guidelines in order to try to give the FBI the authorities it needed in order to act proactively instead of only

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[854] Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations, Attorney General William French Smith, March 7, 1983.
[855] S.Rept. 94-755, *Supplementary Detailed Staff reports of Intelligence Activities and the Rights of Americans, Book III*, Final report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate, Washington, April 23, 1976 (the Church Committee Report).

after the fact of a crime. The amendments allowed the FBI, which it was allowed to do under the prior guidelines, to collect information that was already publicly available; general internet searches, use of commercially available databases and visit public places without a warrant.[856] The new guidelines also provided the field offices with more authority where SACs in the field can now authorize the renewal of terrorism enterprise investigations while before the Director of the FBI or an Assistant Director had to authorize such renewals.[857] These guidelines still, however, require that a criminal nexus is found before the FBI investigates a suspected terrorist.[858] When dealing with possible U.S. citizens or legal residents, the "FBI agents need specific reasons – like evidence or allegations that a law probably has been violated – to investigate."[859]

According to the Department of Justice, "Under the revised guidelines, agents can investigate suspected terrorists with ties to religious or political groups only when they are acting on the basis of information indicating a possibility of actual criminal activity."[860] As one FBI intelligence analyst described the impact the recent changes to the guidelines have had on the work of FBI agents, she stated, "Under the new guidelines we still can't go into a mosque if we have been given information that someone inside is advocating terrorists actions against the United States. We go to a

[856] Attorney General's Guidelines on General Crimes, Racketeering and Terrorism Investigations, Attorney General John Ashcroft, May 30, 2002.
[857] DOJ Fact Sheet, Attorney General's Guidelines For FBI National Security Investigations and Foreign Intelligence Collection ("NSI Guidelines"), November 5, 2003, http://fas.org/irp/agency/doj/fbi/nsi-fact.html.
[858] Lara Jakes Jordan, "AP Impact: Race Profiling Eyed for Terror Probes," *Associated Press*, July 3, 2008.
[859] Ibid.
[860] DOJ Fact Sheet, May 2002.

supervisor to get permission and he says 'who are you looking at in the mosque?' and I say 'I don't know, the source didn't give me any specific names.' Under those circumstances I am not allowed to go into the mosque. My request is considered a request for a fishing expedition."[861] In describing the 2003 amendments made to the guidelines, one official stated, "They are limited, tightly monitored by FBI headquarters in Washington and, overall, confusing to agents about how or when they can be used."[862]

No matter how loosely interpreted, the criminal standard used by the FBI that was codified in the Attorney General guidelines and is still in those guidelines today, forces investigators to think and to work in terms of judicially prosecutable cases. For the most part, the FBI over the years has accepted that they are bound to work within the criminal standard. The FBI's comfort with working with the criminal standard was not due to the law or logic so much as to the desire to be "on the right side" of those individuals and groups in the judiciary, the Congress, the Justice Department and the public who want to see domestic intelligence conducted in this way. After the negative impact the Congress investigations had upon the FBI reputation, it made sense that some new rules were necessary to ensure that the FBI stayed within the bounds of the law and principles based on civil liberties. As the organizational theorist Charles

[861] Interview with Dina Corsi, August 2007, Georgetown University.
[862] Lara Jakes Jordan, "AP Impact: Race Profiling Eyed for Terror Probes," *Associated Press*, July 3, 2008.

Perrow writes, however, "Most bad rules were once good, designed for a situation that no longer exists."[863]

The creation of the guidelines virtually ensured that the FBI would operate only within the criminal standard called for in the Attorney General guidelines for these criminal intelligence investigations. The FBI effectively stopped its foreign intelligence investigations.[864] The FBI felt that by staying within the Attorney General guidelines for domestic security criminal intelligence cases, and by operating under a criminal standard, the Bureau would not be accused of violating civil liberties. During the late 1970s, the 1980s and the 1990s while the FBI was not conducting foreign intelligence investigations within the United States, however, groups like al Qaeda were operating in the United States free from U.S. government surveillance.[865] More freedom than what they would receive if they were operating overseas.

According to the Ashcroft guidelines, the FBI can launch "preliminary investigations" when "there is information or an allegation which indicates the possibility of criminal activity and whose responsible handling requires some further

[863] Charles Perrow, *Normal Accidents*, (1986), p. 26.
[864] Local police department also stopped these types if criminal intelligence investigations. So did the Army.
[865] In 1976, the Washington D.C. Metropolitan Police Intelligence Unit ceased operations and discontinued its investigations. It withdrew its informants from the Hanafi Muslim sect on the grounds that there was no evidence that the Hanafits were engaged in or were about to engage in violence or illegal conduct – the same standard used in the FBI guidelines. About six months later the Hanafi seizure of three public buildings in downtown Washington occurred. More than 100 persons were held hostage for three days; one person was killed and one permanently paralyzed. See testimony by former Deputy AG Laurence Silberman before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee on July 13, 1977. U.S. Congress, Senate, Judiciary Committee, *Erosion of Law Enforcement Intelligence, Capabilities, Public Security*, Hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, 95th Cong., 1st sess., part 1, 1977, p. 12.

scrutiny beyond checking initial leads."[866] According to the guidelines, once there is a criminal nexus then the development of sources and informants and undercover activities and operations can be used. Preliminary investigations can last only 180 days and are restricted to determining whether the allegations had a basis in fact.[867] To continue the investigation, the FBI needs approval for a "full investigation." A "full investigation" can be either a general crimes investigation or a criminal intelligence investigation; both require that the FBI to show that "facts or circumstances reasonably indicate that a federal crime has been, is being or will be committed."[868] In full investigations the FBI can use wiretaps, and mail covers. But again these investigations will have to be stopped after a certain number of days.

After investigations are closed, which is still required in both sets of guidelines, the matter is over in the minds of the FBI agents and they are on to the next case. With the investigation closed, the information that was collected in the investigation is also closed. Under the guidelines there are no provisions for when, how and if an FBI agent can use a source or information from another case that has been closed.[869] Similar to the "wall" guidelines that had been established in the 1990s the issue of the acceptable use of sources within the guidelines is confusing to FBI agents.[870] According to a current FBI employee, "for preliminary inquires we are allowed to use sources that are

[866] DOJ Fact Sheet
[867] Ibid.
[868] Ibid at 2.
[869] Interview with Dina Corsi, August 2007, Georgetown University.
[870] Lara Jakes Jordan article

active but it is not clear under the guidelines whether we are allowed to go back and use sources that are no longer active."[871]

It is critical for intelligence professionals to be able to cultivate and preserve human sources on a continuing basis. One source that is useful one year for one problem may be useful in another year for a completely different problem. If no contact has been maintained between the source and the FBI agents because the FBI agent "closed a case" it will be difficult to quickly reconstitute the relationship even if the FBI agent recalls or recognizes the potential value of an old source to the new problem. The negative consequences of not having a domestic intelligence service that using intelligence sources for more than specific open investigations was starkly illustrated in the example of the FBI agent who had closed an old case ending a relationship with an intelligence asset who was a Saudi national who ultimately assisted two of the 9/11 hijackers as they settled in San Diego.[872] Rather then maintaining contact with this foreign national as a source, after the specific investigation was ended that the source was being utilized for, the agent terminated contact with the source. The opportunity to exploit this source targeted against Muslims living in the San Diego (and two future hijackers) was lost.

The Attorney General guidelines with respect to the use of sources must be clarified to allow intelligence collectors to recruit sources and maintain those relationships over time. To tie the use of sources to particular investigations with short time limits, with all contact broken when a particular investigation is terminated

[871] Ibid.
[872] The DOJ IG Report, pp.

significantly reduces collection capability. As former FBI Director Webster once stated, "Without effective informant coverage it becomes almost impossible for us to anticipate any future criminal activities . . . The Bureau needs a procedure that allows us to maintain a low level of awareness about organizations who may be temporarily inactive, but whose prior record or stated objectives indicate a need for continuing federal interest."[873] Currently, the Attorney General guidelines do not allow for this.

Although these guidelines are to cover criminal matters ("general crimes") as well as non-criminal investigations ("terrorism enterprise investigations") done by the FBI (i.e., related to intelligence matters like Counterterrorism), the guidelines still require a nexus to criminal activity. By equating security threats and intelligence exclusively with criminal activity or even with an ultimate criminal nexus, the Attorney General guidelines forces those concerned with domestic threats to think almost exclusively in terms of specific individuals who may or may not be breaking the law. In other words, there has to be a criminal nexus and specific target at issue before the FBI can conduct an investigation against a threat to the United States. For the FBI, the collection of domestic intelligence is understood as a form of law enforcement activity focused on violent crime that was (or was asserted to be) politically motivated. According to the testimony of the then-Director of FBI William Webster before the Denton Subcommittee of the Senate Judiciary Committee after the passage of the Levi guidelines, "Domestic security investigations today are best understood if they are viewed as another form of criminal intelligence. . . . . In this respect, terrorist groups

[873] Press Briefing, September 8, 1982, as reported in the *Baltimore Sun*, September 9, 1982, p. A-1.

functioning today are no different from other criminal enterprises, except that their motivation may be political rather than financial."[874] Where investigations must cease because criminal activity is not apparent, such awareness becomes impossible.

The current guidelines may work well with the FBI criminal agents who need to think in terms of evidence that will be presented in a criminal court of law against a defendant. Based upon the Attorney General guidelines, the threat becomes a "case." For a criminal law enforcement officer it is appropriate and good to think in terms of "cases." For purposes of intelligence collection though, thinking in terms of criminal cases produces perceptual "blinders" for intelligence officers and inhibits them from thinking like an intelligence officer. Intelligence officers think about vulnerabilities and potential threats and not about an individual's involvement in a specific criminal activity. In looking for potential threats, intelligence officers think of trends and potential "sources" that would access to information that would be helpful to them in dealing with the security threats. They do not think of their targets as subjects of a criminal case and prosecution. They think about their targets as potential threats and they work towards collecting as much information as possible in order to pick out patterns and trends that could tell a story about the threat: what is it, how capable of a threat is it, could the threat become operationalized.

Criminal investigators work on a case by case basis.[875] When a defendant is convicted or a determination is made that there is not enough evidence to bring charges

[874] U.S. Congress, Senate, Committee on the Judiciary, Domestic Security (Levi) Guidelines, Hearings before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, 97th Cong., 2d sess., 1982, p. 11.

against the individual, the case is closed. All of the information collected pursuant to those case investigations is closed within that file and the file is put on a shelf. Once an agent closes a file there is no reason to look back at the file. Even if an agent wanted to locate a past case file and a nugget of information that may be relevant to an ongoing investigation it is unlikely they would find it since the information in case files are not easily retrievable because they are not in databases on computers that can be searched.[876]

In May 2000 Attorney General Reno wrote a memo to Louis Freeh and she warned, "It is imperative that the FBI immediately develop the capacity to fully assimilate and utilize intelligence information currently collected and contained in FBI files and use that knowledge to work proactively to identify and protect against emerging national security threats."[877] In her testimony before the 9/11 Commission, Reno stated that upon taking he position as Attorney General she "learned that the FBI didn't know what it had" . . . and when it [FBI] finds that it has something, doesn't share."[878] Reno testified that she tried to impose change at FBI and yet in October 2003 in a request to answer questions in writing from the WMD Commission an FBI employee regretfully had to acknowledge that the questions would have to be mailed to him in hard copy through the U.S. Postal Service because, according to the agent,

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[875] Interview with McGaffin.
[876] Ibid.
[877] The 9/11 Commission, *9/11 Commission Staff Statement Number 10: Threats and Responses in 2001*, http://www.9-11commission.gov/staff_statements/staff_statement_10.pdf, April 13, 2004; The 9/11 Commission, "9/11 Commission Tenth Public Hearing: Law Enforcement and the Intelligence Community," http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf, April 13-14, 2004, testimony by Janet Reno.
[878] Janet Reno, testimony before the 9/11 Commission tenth public hearing (transcript), April 13, 2004, p. 62, http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf.

"There really isn't e-mail at the bureau."[879] Today with over six billion pages of records still stored on paper within FBI it is unlikely that information will be readily available with those files.[880]

While this case-based mentality may help to assure fewer violations of civil liberties, although recent reports would dispute this fact,[881] it will lead to a failure to collect vital intelligence information about the intentions of those in the U.S. that are planning to harm to the country. The approach of a law enforcement organization is punishment through prosecution. Therefore a case based mentality with all of its restrictions and guidelines for collecting and disseminating information is appropriate in order to ensure that defendants have their rights protected. But such an approach is not appropriate for an intelligence organization.

The approach of an intelligence organization, however, is preventive protection. An intelligence officer does not think in terms of cases and criminal acts. That would be inappropriate considering his objectives. Intelligence officers do not close cases. The information collected from sources is always potentially valuable. Names, dates, events incorporated into a case officer's "201" files are searchable in the operational cable traffic located in computer databases. Once a source is recruited and providing information, unless that source is discredited, the intelligence community will continue to rely on that source's information. The use of the sources does not end once a conviction is made or a case is closed for other reasons.

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[879] Philip Shenon, *The Commission*, p. 268.
[880] Ibid. at 268.
[881] Dan Eggen, "FBI Chief Confirms Misuse of Subpoenas," *The Washington Post*, March 6, 2008, p. A02.

Attorney General Guidelines: The Results

As a result of the guidelines going into effect, by the mid-1970s there was a dramatic cutback in information and analysis available for Counterterrorism and Counterintelligence for U.S. policymakers as the collection of this information was curtailed. The FBI ceased most of its domestic intelligence collection.[882] This meant that while the FBI continued its foreign intelligence collection abroad (and even expanded it under Freeh) there was very little domestic intelligence information to complement that foreign intelligence collection abroad. With little to no domestic intelligence information being collected by the FBI, the FBI did little analysis of domestic intelligence and the domestic threats. With no analysis there was no analysis available to drive the collection of domestic intelligence to detect and counter foreign threats within the U.S. Leading up to 9/11, the FBI did not understand the threat that existed from terrorists within our country. Today, they still may not.

One consequence, arguably inevitable, from the investigations into COINTELPRO and the resulting Attorney General limitations on the FBI was that the FBI began to reject domestic intelligence work. And the incentive and rewards system at the FBI reflected that fact that those FBI employees who were intelligence careerists would not rise to the highest ranks of the Bureau or be given much respect within the Bureau. On the other hand, the FBI agents who investigated crimes would have the opportunity to rise within the FBI career ranks and would be seen as representing the image of FBI employees, as developed by Hoover, as honorable, respectable men (and

[882] Roy Godson, *Intelligence Requirements for the 1980s: Domestic Intelli*gence, Washington, DC: Lexington Books (1986), pp. 6-11.

women) who put the bad guys behind bars. The fall out from COINTELPRO taught the FBI employees that the public would, just as the Congress had after its investigation of COINTELPRO, view any FBI investigations of any groups or individuals that had not yet committed a crime as criminal acts themselves for which the FBI had to be punished, individually and collectively.

According to Oliver "Buck" Revell, former deputy director of the FBI under William Webster and William Sessions, it was not only domestic intelligence investigations that the FBI shied away from but also counterterrorism investigations.[883] Once again, lessons learned by the FBI after being accused (falsely) of violating the law in its investigations of the organization known as the Citizens in Solidarity with the People of El Salvador (CISPES) operating within the US in support of the guerilla insurgency in El Salavador, lead the FBI to conclude that counterterrorism investigations like the one FBI conducted against the CISPES are to be avoided like the plague if an agent wants to advance in his career. In the words of Buck Revell, describing the fallout from the lack of Congressional and public support for the FBI after the investigations into the CISPES operations:

> The Counter-Terrorism Section was effectively neutralized. After all of the removals and censures, we practically had to order people to work on counterterrorism investigations. People were always going to criticize what you were doing or not doing, fraught as it was with peril. Agents would be only too happy to work noncontroversial cases, such as bank robberies and kidnappings. To work counterterrorism was to become a target for the wildest and cruelest of accusations a law enforcement officer could possibly endure.[884]

[883] Buck Revell, *A G-Man's Journal*, pp. 296-97; Powers, *Broken*
[884] Revell, *A G-Man's Journal*.

Hoover and the FBI had learned two main lessons from its past, including the investigations by the Church committee: (1) domestic intelligence collection was not something the American public supported and as a result if the FBI is in the business of domestic intelligence, that fact would eventually become public and lead to the lose of the prestige of the Bureau and (2) in order to try to minimize the chances of the FBI's sensitive, and sometimes controversial operations from being public and causing a lose of prestige, the best option was to limit contact and the sharing of information about those operations with outsiders, including other government agencies within the intelligence community. These lessons are some that are well entrenched at the FBI reaching back many years into the Bureau's life.

The passage of the Attorney General guidelines in 1976 effectively guaranteed that the FBI would not function as a true intelligence organization. And over the years since then, an FBI culture has developed around guidelines which virtually ensure that the FBI does not function as an intelligence organization. Before 9/11, the U.S.' lack of a domestic intelligence service might have been acceptable considering that the threats the U.S. faced from its adversaries was mainly targeted at U.S. interests aboard. Today, however, this gap in domestic capabilities is not acceptable. The only question that remains is whether the FBI, which still works under the same Attorney General guidelines for purposes of foreign intelligence collection in the United States, is the organization that should have the job of filling that gap. To blame the FBI alone for its failure to adopt a different culture is too simple. The FBI's culture that resists domestic intelligence activities is simply the FBI's adaptation to the culture of the Department of

Justice and, in some ways, the culture of the entire country which looks negatively upon any form of domestic intelligence collection. For there to be hope for the FBI's ability to transform into an intelligence agency, there must be a change in the culture of the DOJ as long as the FBI remains within that organization.

Current Proposed Changes to the Guidelines

Today there is some discussion that the DOJ is considering another amendment to the NSI guidelines that would allow FBI agents "to ask open-ended questions about activities of Muslim- or Arab-Americans, or investigate them if their jobs and backgrounds match trends that analysts deem suspect" without any "evidence of allegations that a law probably has been violated."[885] Attorney General Mukasey, in speaking to reporters about the possible changes to the guidelines stated, "It's necessary to put in place regulations that will allow the FBI to transform itself . . . into an intelligence gathering organization."[886] If the changes were made, the FBI would still be prohibited from conducted electronic surveillance or gaining access to banking records until a full investigation was opened. The new rules, however, would allow the FBI to collect information it currently cannot collect without suspicion of a crime and potentially use that information as the basis upon which to open a preliminary or full investigation. Mukasey did not mention any of the proposed changes in detail, presumably because any changes made would be classified. The proposed changes, however, would work to reduce some of the confusion about the rules and how they are

[885] Lara Jakes Jordan, "AP Impact: Race Profiling Eyed for Terror Probes," *Associated Press*, July 3, 2008.
[886] Ibid.

to be applied. If that is done, there may be some hope that different outcomes may develop from the FBI's work in domestic intelligence. "Rules, if they are clear, induce agencies to produce certain observable outcomes."[887]

Currently, the FBI is still hindered by guidelines that restrict its ability to function effectively to collect intelligence information domestically to combat terrorism within the United States. As one FBI official familiar with the recent plan to amend the guidelines stated, the FBI agents still "don't know what we don't know."[888] Even if the changes are authorized, however, it does not necessarily suggest that the FBI will automatically begin operating as an intelligence organization. Changes to the rules of an institution do not necessarily lead to a change in the institutional culture. Rules, by themselves, "cannot induce organizations to improve hard-to-observe processes."[889]

Whether the efforts to amend these guidelines are successful or not, the impact that these guidelines have had since their initial establishment in 1976 on fostering a culture within the FBI that resists any activities that are not in line with its traditional criminal investigative functions cannot be understated and will have a lasting impact on the FBI's future ability to change. Even if the proposals to loosen the restrictions on the FBI survive the protests from civil liberties groups that have dubbed the plan a "Racial and Ethnic Profiling Plan,"[890] there still remain doubts about the ability of the FBI to

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[887] Wilson, *Bureaucracy*, p. 342.
[888] Jordan, "AP Impact"
[889] Wilson, *Bureaucracy*, p. 342.
[890] American Civil Liberties Union, Press Release, "ACLU Calls on Congress to Investigate FBI's Reported Racial and Ethnic Profiling Plan," July 8, 2008, http://www.aclu.org/racialjustice/racialprofiling/35921prs20080708.html. Groups such as the ACLU and commentators such as David Wise, Victor Navasky, Frank Donner and Athan Theoharis have long

change its culture. To be effective any new guidelines for the FBI must actually redefine the core tasks of the FBI agents in a significant way; recreating the identity of the FBI agents from criminal investigators to intelligence collectors. So far the intelligence reform efforts imposed upon the FBI have not done this. Instead of altering the daily work of FBI agents, the new task of intelligence collection was given to a new unit staffed by new personnel within the FBI. The NSB at headquarters staffed with new analysts and the "field intelligence groups" in the field officers are the center of the reform changes at the FBI. Today, the organization's culture remains one of criminal agents; the new task of intelligence collection and analysis was left to employees who are assigned a lower status within the organization and who are left without any organized managerial career protections vis-à-vis the criminal agents.

As organizational theorists have noted, the passage of time is usually not on the side of supporting change within organizations in general and to a greater extent in government agencies.[891] Organizations tend to become more resistance to change as routines, rules, norms and relationships become fully established.[892] For government organizations, change is even more challenging as time passes. Government organizations, especially ones that have developed strong mission and culture, will resist any real changes to that culture. The FBI has operated under the restrictions imposed by the Attorney General guidelines for over 30 years. During those years these

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condemned intelligence-type investigations based on more tenuous indications of possible future criminality as "domestic spying" and unconstitutional.

[891] Wilson, *Bureaucracy*, p. 232.

[892] Arthur L. Stinchecombe, "Social Structures and Organizations," in James G. March, ed., *Handbook of Organizations*, Chicago: Rand McNally (1965).

rules have come to define who FBI agents are and how they conduct their work. The replacement of the Ashcroft guidelines with a less strict standard, or even no standard, would not necessarily lead to a vigorous domestic intelligence collection activity by the FBI. Investigations would still be opened at the discretion of the FBI – that is, according to policies enunciated by the FBI leadership and workforce. If the culture of the FBI is against a policy of an active intelligence system, few investigations will be opened even if the guidelines are amended. Thus, potentially to a greater extent then any written guidelines, the institutional culture of the FBI may ultimately determine the level of domestic intelligence collection activities by the Bureau. According to some observers, there is dim hope for a significant change in the FBI "since the Bureau has been quite comfortable with its existence operating within the bounds of the attorney general guidelines."[893] It may be, however, that an amendment to the guidelines is the first major step in the right direction towards cultural change at the FBI.

A Cultural Challenge for the FBI

If FBI leadership is apposed to the FBI's role in an active foreign intelligence system collecting domestically, few investigations will be opened – even if there are no guidelines. And if the FBI agents fundamentally see themselves as criminal investigations and not intelligence officers, they will resist any new direction calling for the prioritization of intelligence collection over criminal investigations. They will ultimately continue to find criminal work that needs to get done and focus on that. For instance, as the WMD Commission found, FBI agents in the field were directing

[893] Interview with John Gannon.

intelligence resources to be used in criminal investigative efforts in direct disregard to the direction from FBI headquarters to prioritize counterterrorism investigations over criminal investigations.[894] Over the years since the Bureau establishment, an FBI agent's identity is tied to an image of a "cop" who takes bad guys off the street and is concerned with avoiding accusations of violations of civil liberties. This deeply embedded identity is reinforced by guidelines restricting an agent's intelligence investigations in order to ensure that those activities stay within the bounds of principles based on civil liberties and a concern for individual rights. FBI agent will therefore be naturally resistant to conducting intelligence investigations because they don't see themselves as intelligence officers and the Bureau as well as the Department of Justice supports that belief.

The challenge that Director Mueller faced was to change the FBI's culture from one of criminal investigation to one of criminal investigation and intelligence. Changing organizational cultures is hard at best and at times, as illustrated by the inability to alter the organizational culture of our armed forces in the Vietnam War[895] and the failure to alter the cultures of corporations through mergers, impossible. What makes the collaboration of these two cultures more difficult and therefore less likely to successfully coexist is the political imbalance between the two within the Bureau. On the one hand, the criminal investigative agents within the FBI are immensely popular.

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[894] *The WMD Commission Report*.
[895] R. W. Komer, *Bureaucracy Does Its Thing: Institutional Constraints on U.S.-GVN Performance in Vietnam*, Arlington, VA: RAND (1972).

They represent the history and the image of the Bureau as the G-men -- clean cut and keeping criminals off the streets. They represent the best work of the FBI.

Since the inception of the Bureau, as a tradition, the Bureau has, on an annual basis, presented awards such as the Distinguished Service Awards and the Meritorious Executive Awards, the highest civil service awards in the federal government, to its officials in recognition of their outstanding service.[896] In overwhelming numbers these awards are given to agents whose work involve traditional criminal investigations rather then counterterrorism and counterintelligence work.[897] The act of granting these highest achievement awards is a symbol for the FBI and its work force. It is a gauge of the culture of the FBI, what the Bureau values and the work that it rewards.[898] The members of the FBI who do criminal work are identified as central to the mission of the Bureau and are respected for the work they do. On the other hand, those members of the institution who carry out the counterintelligence and counterintelligence functions of the Bureau are identified as lesser value to the mission of the institution. This symbol reflects the identity of the FBI: how the institution defines what an FBI agent is and does, what kinds of work the institution values. The fact that today these awards are still provided mainly to criminal agents reflects the extent to which these identities and ideas have not changed over time.[899]

[896] Zegart, Spying Blind, p.
[897] Zegart, *Spying Blind*, p. 149.
[898] Ibid. at 149.
[899] Ibid. at 149.

In the culture literature, symbols are an offspring of culture.[900] They are "objects, acts, relationships or linguistic formations that stand ambiguously for a multiplicity of meanings, evoke emotions and impel men to actions."[901] The act of giving the awards to its criminal investigators is a symbol. Through the act of symbol construction the rewards themselves serve as a vehicle for group and organizational conception. The symbols themselves then have significant functional consequences for the organization. The process of singling out only the criminal agents for recognition and not others within the FBI like analysts creates ideas and beliefs about the use and distribution of power within the workforce of the Bureau. It reflects the privileged status of agents, more specifically criminal agents, within the Bureau as compared to analysts and other support personnel with significant consequences for the functioning of the organization. While these awards like other internal social pressures can reinforce positive aspects of organizational culture, creating a spirit de crops and a shared belief in "the way things are done," they also provide strong natural resistance to change.

The intelligence analysts within the FBI are not as popular as the criminal agents and are struggling to be treated less like "furniture."[902] The criminal agents are immensely popular within the Bureau and they are politically powerful. Today, the criminal agents still dominate the senior ranks of the FBI both in the field and at headquarters. According to the WMD Commission, " . . . .even now, only nine of the

[900] Abner Cohen and Paul Kegan, *Two Dimensional Man: An Essay on the Anthropology of Power and Symbolism in Complex Society*, London: Routledge, 1974, p. 23.
[901] Ibid.
[902] John Gannon, testimony before the 9/11 Commission.

heads of the FBI's 56 field offices come from divisions other than the Criminal Division."[903] This leaves the intelligence analysts, particularly those serving as the Field Intelligence Group analysts out in the field offices, in a situation of considerable vulnerability as an unpopular cadre within the Bureau with little political power or protection from upper management.[904]

The fact that the FBI resides within the Department of Justice virtually guarantees that the intelligence function of the U.S. government will not receive the same priority that the criminal investigations supporting prosecutions receives. Former acting director and deputy director of the FBI, Tom Pickard, testified before the 9/11 Commission that prior to 9/11 he had on numerous occasions tried to brief Attorney General Ashcroft on counterterrorism but Ashcroft was not interested in hearing his briefings.[905] Pickard stated, "After two such briefings [on terrorist threats] the attorney general told him he did not want to hear this information anymore."[906] Ashcroft was "only interested in three things: guns, drugs and civil rights."[907] Prior to 9/11 Ashcroft had downgraded terrorism in the Justice Department's budget request, ranking tradition crimes like drug trafficking higher.[908] Over the protest of Tom Pickard, Ashcroft had denied a request to increase the counterterrorism budget for the FBI by $58 million. The denial of Pickard's appeal of that decision would arrive at Pickard's desk on

[903] *The WMD Commission Report*, p. 453.
[904] Interview with John Gannon.
[905] Thomas Pickard, testimony before the 9/11 Commission tenth public hearing, April 13, 2004.
[906] Ibid.
[907] John J. Miller and Michael Stone and Chris Mitchell, *The Cell: Inside the 9/11 Plot and Why the FBI and CIA Failed to Stop It*, New York: Hyperion Books, (2003), p. 329, quoting Pickard.
[908] Ibid.

September 12, 2001.[909] Ashcroft, however, would not be the only Attorney General to prioritize criminal matters over intelligence matters.

The Impact of the 1995 DOJ Guidelines on Sharing Information

A stark example of the negative impact the DOJ culture has on the hopeful transformation of the Bureau into an intelligence organization is a 1995 set of new guidelines issued by the then Attorney General Janet Reno regulating the passing of information between criminal and intelligence investigations. These were self initiated policy guidelines that the DOJ readily admitted at the time were not required by law.[910]

The Church committee hearings and the reforms that followed embedded a culture within the FBI that encouraged the use of caution and resistance when dealing with domestic intelligence investigations and required "the FBI to have their eyes closed and their ears plugged up and look the other way" unless they had evidence that a crime "has been or is about to be committed."[911] During the 1990s when terrorists were increasing their activities against the US and plotting the attack against the homeland, the FBI was operating under over cautious self-regulating guidelines and policies. In 1995, the Justice Department created the infamous "wall" of separation between criminal and intelligence investigations. It was only after 9/11 that the Foreign Intelligence Surveillance Court of Review, in the *In re Sealed* case,[912] and the Congress with the passage of the USA Patriot Act declare in the law that this act of caution was unnecessary.

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[909] Thomas Pickard, testimony before the 9/11 Commission tenth public hearing, April 13, 2004.
[910] Memo by Gorelick
[911] Buck Revell statement in Bill Gertz, *Breakdown* , Washington DC: Regnery, (2002), pp. 94-95.
[912] *In re Sealed* Case No. 01-002, 310 F.3d 717, 734-36, FISA Ct. Rev. 2002.

In March 1995, Jamie Gorelick, the then deputy attorney general, wrote a memorandum to the U.S. Attorney in the Southern District of NY, Mary Jo White, whose office was the principal office that ran terrorism investigation in the United States, as well as FBI Director Freeh, explaining the new policy requiring that criminal and intelligence investigations within the bureau could not share information related to their investigations. In the memorandum, Gorelick acknowledged that this policy went beyond what the law required but that she believed that it was necessary to have such a policy in order that the bureau and the justice department would not appear to be engaging in improper domestic surveillance. Gorelick stated, "These procedures, which go beyond what is legally required, will prevent any risk of creating an unwarranted appearance that FISA is being used to avoid procedural safeguards which would apply in a criminal investigation."[913]

The Joint Inquiry and the 9/11 Commission ultimately concluded that this decision to create a policy that prohibited the sharing of information between criminal and intelligence investigators greatly minimized the US' ability to detect, to deter, and to incapacitate terrorists within the U.S. who were plotting the attacks of 9/11. In November 2002, the Foreign Intelligence Surveillance Court of Review informed the Department of Justice and the FBI that they had been misinterpreting the FISA statute by imposing such self-imposed restrictions on sharing intelligence information. According to the Court of Review, the DOJ's policy position was "inconsistent with the

[913] Jamie S. Gorelick, "Instructions on Separation of Certain Foreign Counterintelligence and Criminal Investigations," Memo to Mary Jo White, Louis Freeh, and Jo Ann Harris, specific date unspecified (1995).

statute [FISA] as well as inconsistent with the Constitution."[914] As Gorelick indicated in her memo, the basis of DOJ's policy decision was not based upon any legal requirements of the FISA statute or any other law; rather the reason why the policy was established was because of the culture of the DOJ and the FBI dictated that this policy would drive the work of FBI.

In the desire to draft these new guidelines, the concern by the DOJ was that the FISA court had recently raised some issues with respect to the FBI's handling of a number of FISA warrant requests.[915] The FISA court was concerned that the FBI was using the FISA court process which entailed a lower probable cause standard for obtaining a warrant then required in a criminal Title III warrant process. In other words, the court voiced suspicions that the FBI agents were abusing the FISA process in order to avoid the higher legal hurdles that had to be met in the criminal process for obtaining warrants. The DOJ was concerned that if the FISA court continued its concerns about the FBI's veracity in submitting FISA applications the court would reject the FISA requests which would jeopardize potential criminal prosecutions that would have proceeded based upon the evidence from the FISA warrants.[916] For instance, in the counterintelligence investigation against Aldrich Ames, an employee of the CIA who was spying against the U.S. government for the Russians, intelligence investigators had shared information with the FBI criminal investigators during the

[914] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf.
[915] Janet Reno, testimony before the 9/11 Commission tenth public hearing, April 13, 2004.
[916] John Ashcroft, *Never Again*

investigation.[917] The concern was that if the defendant had been brought to trial (he ultimately plead guilty), the information that had been obtained through intelligence means and provided to the criminal investigators could have jeopardized the criminal trial.

The legal/prosecutorial concern is that information obtained through the FISA process is obtained based on a lower legal standard than what is required under the fourth amendment of the Constitution. If intelligence information is collected outside of the FISA process (through arguably independent Presidential constitutional authority), for instance, the same legal question of the constitutionality of the search could be raised in court jeopardizing the possibility of a successful conviction of the defendant. The intent of the creation of the DOJ guidelines was, to ensure that a court would be satisfied that the DOJ had not undermined any future defendant's 4th amendment rights under the U.S. constitution. The guidelines could do this by prohibiting the FBI intelligence investigators from sharing information with the criminal prosecutors. This would maximize the possibility of successful prosecutions. The guidelines, however, in seeking to maximize the possibility of successful criminal prosecutions had effectively ensured ineffectual sharing and utilization of critical intelligence information.

Like all Attorney Generals, John Ashcroft and Janet Reno were responsible for running the entire Department of Justice. This meant the Attorney Generals would

[917] General Accounting Office, "FBI Intelligence Investigations: Coordination Within Justice on Counterintelligence Criminal Matters is Limited," *Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate*, GAO 01-780, Washington, D.C.: July 2001.

focus primarily, on prosecutions secondly, on civil liberty concerns and lastly, maybe, on intelligence. If intelligence was a by product of a criminal investigation that was fine and good. But the desire to gather intelligence would not come first before there was adequate assurances made that the criminal prosecution was not going to be jeopardized. The Attorney General of the United States, and therefore the Director of the FBI, has to handle a number of matters related to the work of the department and the bureau that do not involve intelligence or counterterrorism issues. For example, the Attorney General has to be concerned with immigration, anti-trust matters, and a host of criminal matters that range from Congressmen taking bribes to money laundering to corrupt fraud or incidents of law enforcement scandals like Ruby Ridge and Waco.

This is not a criticism of the Attorney General who has numerous other issues that he has to deal with including over 100,000 employees within the Department of Justice. Nor is a criticism of FBI that must devote time, resources and focus on its other mission of law enforcement in support of the Justice Department's mission. It is, however, a structural and cultural issue that will effect how intelligence matters are handled within the Department of Justice. Correctly, those Attorney General guidelines that were created in 1995 by Reno were rescinded after 9/11. Those guidelines, however, were not the root cause of the lack of focus on intelligence collection or for the lack of information sharing within the FBI and between the FBI and the CIA. Rules don't prohibit a focus on the intelligence collection function. Rather those rules were a manifestation of the culture of the Department of Justice and the FBI; a culture which is still alive and operating within the DOJ and the FBI. Culture can operate to focus an

institution's operations and behavior on one task versus another.[918] Culture can also work to avoid tasks that do not fit within its mission.

Today the Attorney General guidelines that restrict the FBI from operating as a true law enforcement organization within the United States also serve as an example of the culture of the DOJ and the FBI. The rules themselves might ultimately need changing, like the Reno guidelines, in order to allow the FBI to operate as an effective intelligence organization. Importantly, however, to understand how these rules operate and why these rules exist, one must look to culture. Changing specific rules, while that might be helpful, will not get to the root of the institutional problem.

The Attorney Generals and the FBI Directors of the U.S. government face competing interests when it comes to intelligence and criminal investigations. They did prior to 9/11 and they still do after 9/11 and the reforms. In other words, nothing has changed after 9/11 with respect to the Attorney General's primary responsibility for prosecuting justice and making sure that cases go to trial and end successfully. Nothing has changed for the FBI either; the Bureau is still responsible for focusing on criminal investigations. Arguably, things have gotten worse for the FBI. Today, they must try to focus equal attention of two very different and contradictory missions; criminal investigations and intelligence.

Prior to 9/11, the Attorney General guidelines prohibited FBI agents from going into mosques to follow suspects there even though terrorists were known to hatch their plots in mosques. For instance, for months the FBI and the Department of Justice

[918] James Q. Wilson, *Bureaucracy.*

debated whether to open an investigation against Sheik Omar Abdel Rahman who was later convicted in the first World Trade Center bombing.[919] According to the Department of Justice, "Because of ambiguity in the ten-current guidelines, the FBI did not call Rahman before a grand jury, question him, or conduct surveillance of his offices or the religious buildings where he met with his co-conspirators."[920] Under these same Attorney General guidelines the FBI agents were prohibited from conducting research on line or taking part in online chat rooms to develop leads on people who might be recruiting terrorists. As a former FBI deputy director described the effects of the guidelines, "A crime practically had to be committed before you could investigate . . . if you didn't have that you couldn't open an investigation."[921] The FBI was prohibited from even having a source in a mosque report on anything in the mosque, or look at anything in the mosque, "unless we had a specific target within the mosque."[922]

On October 31, 2003, the Attorney General guidelines for foreign intelligence collection and national security investigations were amended to allow the FBI agents to engage in investigative activities such as Internet researches, searches using commercially available data mining services, and visits to public places that are open to all other citizens.[923] The new guidelines outlined three different levels for the FBI's

[919] Ronald Kessler, *The Terrorist Watch*, p. 67.
[920] Department of Justice, Fact Sheet, *Attorney General's Guidelines: Detecting and Preventing Terrorist Attacks*, May 30, 2002; http://www.fas.org/irp/news/2002/05/ag-guideline-factsheet.pdf.
[921] Kessler, p. 68.
[922] Kessler, p. 68.
[923] DOJ, Fact Sheet, Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, November 5, 2003; http://www.fas.org/irp/agency/doj/fbi/nsi-fact.html.

investigations of threats to the national security: threat assessments, preliminary investigations and full investigations. The new level added to the new guidelines that were not part of the old guidelines is the threat assessments. This level, however, only allows the FBI to use already available information to identify terrorist threats. In other words, there is no new collection authorization. Under the new guidelines, the FBI can proactively search for information that is already available if databases or within other government agencies.[924]

According to the Justice Department, however, even after the amendments to the guidelines, the "agents can investigate suspected terrorists with ties to religious or political groups *only* when they are acting on the basis of information indicating a possibility of *actual criminal activity*."[925] It does not seem that much has changed with the amendments to the Attorney General guidelines. The criminal nexus still remains there in order to investigate and collect information against a terrorist operating domestically. This still reflects the criminal case mentality of needing a criminal nexus before collecting intelligence information. An intelligence officer whose primary goal is to collect information on foreign threats operating within the United States should not be constrained by the fact that the threat is operating within our country. As 9/11 has shown us clearly, terrorists operating within the United States were not breaking any U.S. laws before they attacked on 9/11.

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[924] Ibid.
[925] DOJ, Fact Sheet, Attorney General's Guidelines: Detecting and Preventing Terrorist Attacks, May 30, 2002; http://www.fas.org/irp/news/2002/05/ag-guideline-factsheet.pdf. (emphasis addded).

According to some FBI agents the Attorney General guidelines "still prohibit the FBI from operating as a true domestic intelligence organization."[926] The USA Patriot Act was a necessary first step to breaking down the information-sharing barriers between the law enforcement and intelligence – reflected in the "wall" guidelines – and allowing the FBI to begin to operate more like an intelligence agency.[927] The corresponding policy and regulatory guidelines for applying this legislation at the agency level, however, has still not been developed. Clear guidelines need to be developed and communicated to the individual agencies responsible for domestic collection within the United States. Until that is done there remains a real danger that unclear guidance, confusion and misperceptions related to concerns about domestic collection will inhibit appropriate and necessary collection in the same fashion that confusion about what was allowed under the "wall" guidelines and the attorney general guidelines lead to the FBI not collecting when it was lawfully permitted to. Unclear and vague policy guidelines allow the FBI to fall back on the culturally supported preference to do the least about of domestic intelligence collection as possible. As Director Webster once testified, "My problem today is not unleashing the FBI, my problem is convincing those in the FBI that they can work up to the level of our authority."[928] Clear guidelines should exist to allow government employees to do their

[926] Interview with Dina Corsi, August 2007, Georgetown University; statement by Mukasey.
[927] U.S. Congress, Senate, *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, USA Patriot Act, P.L. 107-56, Washington, DC: Government Printing Office, October 26, 2001, p. 278.
[928] U.S. Congress, Senate, Hearing Subcommittee on Security and Terrorism of the Judiciary Committee, FBI Oversight, 97th Cong., 2d sess., February 4, 1982, Washington, DC: Government Printing Office, (1982), pp. 39-40.

job while keeping them within the bounds of the law. They should not be so restrictive or unclear that they prevent the job from being done. Seven years after 9/11, one state agency official, in describing the impact the USA Patriot Act has had on his agency stated that the legislation "had not impacted his agency's internal guidelines in any way."[929] By anyone's measure, this is not progress.

The role of the DNI will be critical in how the FBI is fully integrated into the intelligence community. But many have pointed out that the DNI so far has not exerted much authority over the FBI but rather has "left the FBI alone to operate according to how the FBI thinks it should operate."[930] The FBI Director does not answer to the DNI. He answers to the Attorney General. The FBI Director does not answer to the National Security Advisor and is not usually present at Principals meetings; the Attorney General would attend such principals meetings at the White House. The DNI has no say in the appointment of the Director of the FBI, and this probably makes sense since the FBI is the "primary criminal investigative agency in the federal government"[931] and the FBI spends most of its time overseeing non intelligence related work focused on criminal justice matters. And while the DNI has some authority over the nomination of the individual who directs the NSB and some budgetary authority over the NSB, the NSB is located low within the hierarchy of the FBI; below the Special-Agents-in-Charge (SACs). Today, the SACs still dominate the priority issues at the FBI. The NSB

[929] K. Jack Riley, Gregory F. Treverton, Jeremy M. Wilson and Lois M. Davis, State and Local Intelligence in the War on Terrorism, Santa Monica, CA: RAND Corporation, (2005), p. 33; http://www.rand.org/pubs/monographs/2005/RAND_MG394.pdf.
[930] Ibid.
[931] *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, May 30, 2002, p. ii.

director stills works for the FBI Director who still works for the Attorney General. The guidelines that control the FBI's behavior are issues by the Attorney General. The culture change that the 9/11 commission argued had to be altered was the culture of the FBI. Yet, it is the culture of the DOJ that further needs to be changed if FBI is ever going to be an effective intelligence organization. The structural arrangement with DOJ and FBI of its intelligence mission diminishes the DNI's ability to ensure that the FBI is fully integrated into the intelligence community.

DOJ - FBI Culture

As a part of the Justice Department, the FBI's culture that has been characterized as case-centric and focused on criminal investigations in support of successful prosecutions makes a lot of sense.[932] In 1908 the Bureau was created as a reorganization of resources and personnel within the Department of Justice (DOJ) after the DOJ recognized that it did not have any investigators to assist in its mission of prosecuting those that violated U.S. federal law.[933] Not surprisingly, the FBI's culture is a reflection, in many ways, of the culture of the larger organization of which it is a part. As organizational theorists have noted, the subcultures of an organization will likely reflect in whole, or in part, the culture of the organization of which those subcultures are a part.[934] Through its actions and rhetoric (i.e., building a "wall" between intelligence investigators and criminal prosecutors in order to protect future prosecutions) the DOJ demonstrates what is most valued by the organization –

[932] Siobhan Gorman, "FBI, CIA Remain Worlds Apart," *National Journal*, August 1, 2003.
[933] Zegart, *Spying Blind*.
[934] Geert Hofstede, "Identifying Organizational Subcultures: An Empirical Approach," *Journal of Management Studies*, Volume 35, Number 1, 1998.

successful prosecutions. Similarly, through its actions and rhetoric (i.e., failing to prioritize its counterterrorism cases, treating intelligence analysts "like furniture," and ensuring that the SAC who are almost exclusively criminal investigators hold the power within the Bureau) the FBI demonstrates what it values as an organization -- criminal investigations in support of the DOJ's prosecutions.

In prioritizing criminal drug cases and civil liberties concerns over terrorism work, the DOJ culture appears to have dominated the work of the FBI in terrorism investigations. As Pickard testified before the 9/11 Commission, he "initially briefed the Attorney General regarding these [terrorism] threats, after two such briefings the Attorney General told him he did not want to hear this information anymore."[935] According to Pickard, Ashcroft was not interested in hearing about terrorism rather he "was only interested in three things: guns, drugs and civil rights."[936] The Attorney General's act of rejecting an FBI request for increased counterterrorism funding on September 10, 2001, while sadly ironic, is not surprising considering the culture and the identity of the DOJ.[937] The act of placing terrorism issues lower on the list of priorities for a law enforcement institution is exactly what one would anticipate from an institution whose identity is tied to law enforcement activities and based in a criminal investigative culture.

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[935] 9/11 Commission, *9/11 Commission Staff Statement Number 10: Threats and Responses in* 2001, http://www.9-11commission.gov/staff_statements/staff_statement_10.pdf, April 13, 2004, p. 5.
[936] *The Cell*, p. 329; Walter Pincus and Dan Eggen, "Briefing on Al Qaeda Included Specifics, *"Washington Post*, April 10, 2004, p. A05.
[937] 9/11 Commission, "9/11 Commission Tenth Public Hearing: Law Enforcement and the Intelligence Community,"(2004), http://www.9-11commission.gov/archive/hearing10/911Commission_Hearing_2004-04-13.pdf, April 13-14; James Risen and David Johnston, "FBI Report Found Agency Not Ready to Counter Terror," *The New York Times*, June 2, 2002.

One of the FBI's missions is to support the DOJ in criminal investigations. Towards that end, the FBI's reliance on an aggressive, case-oriented, law enforcement approach has served the Bureau well in supporting its mission. The FBI's work in the area of criminal investigations has led to a number of successful prosecutions of international terrorists.[938] The FBI, however, has a second mission, to lead the U.S. government in its counterterrorism and counterintelligence efforts. In support of this mission, the case-oriented approach does not produce the same performance results. The use of this approach by the FBI over the years has failed to cultivate a culture within the Bureau that values the intelligence work that is central to both counterintelligence and counterterrorism. As a result, the FBI's record on its counterintelligence and counterterrorism efforts has been poor; far below the success level of its criminal work. Indeed, some of those criminal investigations have even produced useful intelligence.[939] The purpose and intent of the collection in those cases, however, was not to target the threats within the U.S. nor was it to conduct all-source analysis for dissemination to other intelligence agencies or policymakers concerning the threat, rather it was intended to support the specific investigations for those trials.

Prior to 9/11 the FBI had not ever produced an analytical intelligence product about the domestic threat from terrorism.[940] According to former FBI Director Freeh, the reason the Bureau had not written an intelligence report on the subject was because,

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[938] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf.; Janet Reno, testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 26.
[939] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf.
[940] *The Joint Inquiry Report*, p. 61.

"we were not asked to."[941] In testimony before the Joint Inquiry, the Chief of FBI's National Security Intelligence Section stated, "the FBI had 'no analysts' dedicated to strategic analysis prior to September 11."[942] Even if the FBI has been asked to write an strategic analysis it is doubtful whether the Bureau would have been able to do it. As White House officials testified before the 9/11 Commission, they could not recall a time when they received threat information from the FBI. As former National Security Advisor Sandy Berger testified ". . . .if there was a flood of intelligence information [on terrorism] from the CIA, there was hardly a trickle from the FBI."[943] These officials did recall, however, discussions with FBI and DOJ about specific criminal prosecutions of terrorists.[944] According to a Government Accounting Office report done in 2004 reviewing FBI's analytical capability, the qualifications of the analysts at FBI were far below the level of capability compared to other analysts within the intelligence community.[945] In fact, after 9/11, FBI had asked CIA analysts to do the analytical work for the Bureau.[946]

The culture of DOJ and FBI predicted that the bureau would take a conservative and cautious approach to any of its actions that would be viewed as domestic intelligence collection within the United States. In 1998, the then Director of FBI Freeh was presented with a draft of a new strategic plan for FBI, drafted by Bear Bryant, that

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[941] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf.
[942] *The Joint Inquiry Report*, p. 61.
[943] Ibid. at 48.
[944] Joint Inquiry, statements from former National Security Advisor Sandy Berger and Former National Security Advisor General Brent Scowcroft, pp. 40-41.
[945] GAO report (Zegart)
[946] INSERT Cite

placed counterterrorism within the highest category of a Tier-One priority for the bureau but had concluded that FBI was unequipped to do the job because it lacked an effective domestic intelligence capability that was required in order to do counterterrorism. The plan found that "human source information, the lifeblood for FBI intelligence, has not only not kept pace with the demands posed by new investigative areas, but in some programs the number of human sources has declined."[947] In response to the strategic plan Freeh stated, "With respect to core values, it is important to note that a large part of the FBI mission is inherently reactive and rightly so."[948] The FBI's history and the FBI culture that was an outgrowth of that history had taught Director Freeh, as it had taught Hoover, that FBI attempts to forestall acts of terrorism, like Hoover's bureau's attempts to forestall acts by radicals within the US, could lead to justification for surveilling any and all political organizations and ultimately to the public's lose of confidence in the bureau.

This culture that is dominated by criminal investigative norms does not work well with terrorists who break no laws within our country until the very act of terrorism that they carry out. FBI's history and lessons learned from its investigations had firmly established a criminal investigative culture within the Bureau one which was supported by Congress and the public. The FBI understood that by concentrating its efforts on criminal investigations, following the rules that guide those investigations, including the AG guidelines, and focusing on prosecuting criminal offenders, the Bureau would avoid

[947] Federal Bureau of Investigation, *Draft FBI Strategic Plan: 1998-2003, Keeping Tomorrow Safe*, Washington, D.C.: U.S. Government Printing Office, (1998), p. 2.
[948] Ibid.

the scathing criticisms that almost brought the Bureau down with the Church investigation of the Bureau's COINTELPRO.

What the U.S. needed, however, on 9/11, and before 9/11, was an organization that was endowed with a culture that was supportive to intelligence collection activities domestically. A culture which could empower the norms and tasks of a clandestine collection agency while at the same time operate within the principles of the US Constitution based on a respect and understanding of civil liberties. In contrast to this conservative culture of the FBI, U.S. government's principle law enforcement organization, the U.S. government's principle foreign intelligence organization, CIA, is representative of a very different culture, a culture some describe as a "maverick" culture. In September 2007, in a speech at a meeting of the Council on Foreign Relations, the current Director of the Central Intelligence Agency, General Michael Hayden, in describing how CIA operates stated, "once the laws are passed and the boundaries are set, the American people expect CIA to use every inch we're given to protect our fellow citizens."[949] In other words, CIA, in carrying out its mission, seeks to work within the bounds of the laws passed by Congress but works right up to that line which the law draws in order to do the most effective job it can. On the other hand, as the memo from Jamie Gorelick clearly reveals, the DOJ and the FBI, tend to operate well within the bounds of what is allowed under the law. To illustrate how the FBI's conservative criminal investigative culture handicapped the Bureau in its efforts to

[949] Council on Foreign Relations, "A Conversation with Michael Hayden," transcript, September 7, 2007, New York, http://www.cfr.org/publication/14162/conversation_with_michael_hayden_rush_transcript_federal_news_service.html.

conduct counterterrorist investigations within the United States it is useful to examine how the FBI managed two intelligence investigations related to two of the 9/11 hijackers that were living within the U.S. prior to 9/11.

Two Illustrations: The Impact of Culture on FBI's Counterterrorism Performance

Case One: FBI Target Associated with Two Hijackers[950]

On January 15, 2000, Khalid Mihdhar and Nawaf Hazmi, two of the 9/11 hijackers, boarded a flight in Bangkok, Thailand, for Los Angeles. Shortly after arriving in Los Angeles they traveled to San Diego. Mihdhar lived in San Diego until June 10, 2000 when he left the United States. Hazmi remained in San Diego until December 2000 when he moved to Phoenix, Arizona to live with another hijacker, Hani Hanjour. Upon arriving in California, Mihdhar and Hazmi met several times with a former subject of an FBI preliminary *intelligence* investigation, Omar al-Boyoumi. Boyoumi would ultimately help the two hijackers rent a room in the home of an FBI sources. The FBI had recruited this source as part of an *intelligence* investigation. For several months from when they arrived in California in January 2000 these two hijackers were associating with a former target of an FBI intelligence investigation and living with a current source of another FBI intelligence investigation.[951]

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[950] Most of the detailed of this case study were revealed in DOJ's Inspector General's investigation titled, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attack*. Most of the details can be found in Chapter 5, Part III of that report, section titled "Haxmi and Mihdhar in San Diego. U.S. Department of Justice, Office of Inspector General, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks*, November 2004, pp. 256-259 [hereinafter referred to as "The DOJ IG Report"].

[951] 9/11 Commission report, pp. ; U.S. Department of Justice, Office of Inspector General, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks*, November 2004, pp. 256-259.

It was widely reported in the press and in the 9/11 investigations' reports that in January 2000 FBI personnel in Washington and CIA personnel at Langley had received information that Midhdar had a multiple entry visa to the United States.[952] It was also reported in the press that by March 2000, CIA had received information that Hazmi had boarded a plane to Los Angeles.[953] As the Joint Inquiry and the 9/11 Commission found, no government agency had placed either of these men on a watchlist until late August 2001. In late August 2001, upon realizing that these men had not been placed on a watchlist, the FBI and CIA notified State Department. The FBI in San Diego, however, would not find out about these men until September 11, 2001.[954]

In August 20001, while these men were placed on the watchlist, no one at FBI headquarters had notified any FBI field office, except the New York FBI office, about these men and the fact that the U.S. believed that they were potentially in the United States.[955] If the FBI agents in San Diego had checked the watchlist by August of 2001, they would have known to look for Mihdhar and Hazmi in their area. According to the *DOJ IG report*, however, the agents did not even know that the watchlist existed.[956] *The DOJ IG Report* concluded that if the FBI agents in San Diego had known in August 2001 that the U.S. government was looking for these two individuals within the United

[952] *The Joint Inquiry Report*, p. -; *The 9/11 Commission Report*, p. –; Michael Isikoff and Daniel Klaidman, "The Hijaackers We Let Escape," *Newsweek*, June 2002.
[953] Isikoff, Ibid.
[954] *The DOJ IG Report*, p. 256.
[955] Ibid.
[956] Ibid. at 260.

States, they might have been able to go to their sources who knew Mihdhar and Hazmi and may have been able to locate them before September 11, 2001.[957]

The circumstances surrounding FBI's contacts with individuals that knew the hijackers has not received much attention in the press but is very illustrative of the impact that FBI's culture had on its performance in the area of intelligence investigations. The FBI intelligence agents in San Diego had at least two individuals that they had extensive contact with (one a subject of an investigation and one a paid source) who during 2000 had established contact with Mihdhar and Hazmi. Although the FBI agents had no way of knowing that Mihdhar and Hazmi would ultimately fly a plane into the Pentagon, a review of the methods the FBI agents used to conduct their intelligence investigations that touched upon these two hijackers will provide valuable insight into the accepted approach by the FBI, in intelligence investigations, and how that approach had hindered the Bureau in effectively collecting valuable intelligence information.

Some background on the FBI's involvement with both of these intelligence sources, as described in *The DOJ IG Report*, is valuable here. On September 8, 1998, the FBI's San Diego field office opened a "preliminary inquiry" under the Attorney General's Foreign Counterintelligence Guidelines for national security and foreign intelligence investigations (NSIs) against a suspected terrorist, al-Bayoumi.[958] This

[957] Ibid.
[958] Under the Attorney General Foreign Counterintelligence Guidelines in 1998, a preliminary inquiry could be opened when there was information or allegations indicating that an individual is or may have been an international terrorist or a recruitment target of an international terrorist organization.

inquiry was opened based upon a tip from the building manager where al-Bayoumi lived. The manager reported that a U.S. Postal Inspection Service agent had notified her that al-Bayoumi had received a suspicions package from the Middle East; the package had a number of wires protruding from it and there were no customs papers or appropriate postage on the package that had been sent from Saudi Arabia. The manager reported that al-Bayoumi had frequent gatherings of young Middle Eastern males at his apartment. The maintenance worker for the building also had told the FBI that he had seen strange wires in Bayoumi's bathroom. Based on this information the FBI agent conducted a "limited investigation" of Bayoumi but closed the preliminary inquiry in June 1999. There was no further inquiry by the FBI about al-Bayoumi until after 9/11. By that time, Bayoumi had already left the United States.[959] After the investigations of 9/11 by the US government are started it was determined that al-Bayoumi was the individual that had assisted both Mihdhar and Hazmi in getting settled in the San Diego area.

During the course of the preliminary investigation against al-Bayoumi it had been determined that al-Bayoumi had "delivered $400,000 to the Islamic Kurdish community . . . to build a mosque."[960] The source who provided this information noted that al-Bayoumi "must be an agent of a foreign power or an agent of Saudi Arabia."[961] The FBI also knew that al-Bayoumi did not have any source of income

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Preliminary inquiries were permitted to remain open for 120 days and had to be closed unless the FBI obtained sufficient evidence to open a full field investigation.

[959] *The DOJ IG Report*

[960] Ibid. at 262.

[961] Ibid.

since he didn't have a job in the United States. The FBI knew that he had been receiving money from Saudis. The agent tried to conduct an interview with al-Bayoumi but her supervisor instructed her not to conduct the subject interview because of another sensitive investigation that was ongoing and concerns that it would compromise that investigation.[962]

Under the Attorney General guidelines for intelligence investigations, specifically those provisions relating to preliminary investigations, the agent could have conducted photo or physical surveillance of the al-Bayoumi, used confidential sources and undercover activities or operations, and interviewed individuals who could have been able to corroborate or deny the truth of the allegations about al-Bayoumi, including the claims that he was a foreign agent.[963] None of these techniques were used however. The preliminary inquiry was closed on June 7, 1999 and not converted to a full investigation and the FBI never returned to question al-Bayoumi until after 9/11.

According to the DOJ Inspector General, valuable information was lost related to the investigation of al-Bayoumi that may have lead the FBI to two of the hijackers in the United States prior to 9/11.[964] As *The DOJ IG report* stated, "had a full field investigation of Bayoumi been opened at the time – the FBI could have discovered Mihdhar and Hazmi's presence in San Diego and also uncovered the CIA information

[962] Ibid.
[963] A photosurveillance of al-Bayoumi would have picked up al-Bayoumi together with Mihdhar and Hazmi on a number of occasions during 2000; during their meetings in restaurants and during a bank visit in February 2000.
[964] Ibid. at 262.

about their attendance at the Malaysia meetings."[965] In response to questions from the DOJ IG as to why the FBI agent did not keep an investigation open on al-Bayoumi and continue to collect information on him and his activities, the FBI agent stated she had "no *concrete* information linking Bayoumi to any terrorist activities."[966] When the FBI agent was asked about the source's reporting that Bayoumi was probably a foreign agent working for Saudi Arabia, the agent responded, the "Saudi Arabia was not listed as a threat country and the Saudis were considered allied of the United States. Therefore, Bayoumi's potential involvement with the Saudi Arabian government would not have affected the FBI's decision to close the preliminary inquiry."[967] In short, even though there was information that Bayoumi was a foreign agent as defined under the FISA statute (in addition to all of the other information related to suspicions meetings and suspicious packages that FBI had on Bayoumi), the FBI would not request a FISA warrant on Bayoumi or open a full investigation on him "because he was a citizen of a friendly country."[968]

Case Two: FBI Source Lives with Two 9/11 Hijackers[969]

In May 2000, Hazmi and Mihdhar rented a room in a house that belonged to an FBI asset.[970] This asset had been recruited by an FBI agent in 1994 and had remained an asset until 2003. An "asset" is an informant that has been recruited by the FBI as

[965] Ibid. at 331
[966] Ibid. at 334
[967] Ibid.
[968] *The DOJ IG Report*, p. 262.
[969] Some of the details from this case study also comes from the details as revealed in The DOJ IG Report, Chapter 5, Part III, pp. 259-262.
[970] Ibid.

part of a foreign intelligence program. Of significant importance for this discussion, is the fact that the asset was an intelligence asset versus a criminal informant. Even though the FBI was nominally running a "foreign intelligence" investigation, the FBI managed the case in the same fashion that the Bureau was managing its criminal cases; with little regard to potentially very valuable intelligence information. On numerous occasions the FBI agent handling the asset met with the asset and discussed a number of issues. On at least one occasion the asset informed the FBI agent that two new borders were staying at his house and that they were Muslim students. Although the FBI agent testified that he had asked the asset for the names of the two borders, the asset had only provided the agent with their first names. The FBI agent never pursued the subject further with the asset.[971]

The FBI agent who was "handling" the asset never documented any information about Mihdhar or Hazmi that the asset told him about.[972] In testimony in a closed hearing before the Joint Inquiry, the FBI agent reported that the asset did inform him that two Saudi nationals had recently rented a room from him and he had been told their first names.[973] The asset had been known to the FBI as someone who rented rooms in his home to Muslim men who needed temporary housing. The FBI agent testified that the FBI usually questioned assets about information on "already opened investigations" that the FBI had on going.[974] While there were no restrictions on the FBI collecting

[971] Ibid.
[972] Ibid. at 260.
[973] The asset was interviewed by the FBI after 9/11 and he verified that he had mentioned the fact that Hazmi and Mihdhar had been living in his home to the FBI agent.
[974] The DOJ IG Report.

information from assets related to individuals who were not targets of any open investigations, the FBI agent did not ask the asset for any other information that he may have had access to. The FBI was focused on individuals who were already under an investigation. The goal for the FBI agents in "running assets," in other words, was to collect as much specific information on targets of other investigations from the asset in order to collect "evidence" to either elevate the other investigation to a full investigation with evidence of a crime or charge the other target with a crime.

The FBI agent described in his testimony that under the Attorney General guidelines for foreign intelligence collection investigations he would not have been able to open an investigation against either Hazmi or Mihdhar "because there were no allegations or information provided to Stan that Hazmi and Mihdhar were terrorists or agents of a foreign power."[975] But the FBI agent was not asking his asset the questions either that may have provided answers that would have allowed him to open up a preliminary investigation against Hazmi or Mihdhar. The FBI agent had not even made note of their names in his files. The DOJ IG report noted that the FBI agent was not "required," according to FBI policies, to document the information on Hazmi and Mihdhar that he had received from his asset. Nor was he required to ask his asset questions about other people that lived in the house with him or to obtain full names of the individuals living with assets.[976] As *The DOJ IG Report* concluded, though, had the FBI agent sought to gain more information from the asset he would have potentially

[975] Ibid. at 259.
[976] Ibid. at 259.

found out that the asset knew Bayoumi and had warned Hazmi and Mihdhar to stay away from Bayoumi because he was associated with the Saudi government.[977]

As the 9/11 Commission would find out when the Commission interviewed al Bayoumi after 9/11, if the FBI agent had asked the asset a few questions about the foreign individuals living with him, the FBI agent might have found out that the asset believed that his boarders "exhibited suspicious behavior," (i.e., leaving the house to make calls on their cell phones outside instead of using the house phone). Given this information and the fact that Bayoumi had been a subject of an FBI investigation there would have been enough information to open up further investigation against Hazmi and Mihdhar but the FBI agent never asked the questions. The agent was focused on collecting only information related to already existing cases that had the likelihood of a criminal prosecution. Asking random questions about random foreigners living with his asset did not seem to be a valuable use of his time. For the FBI agent the idea of validating his asset by making general and specific inquiries about the asset even to the asset did not cross the FBI agent's mind.

For any organization that collects human intelligence, having a system for asset validation is critical to producing reliable and valuable intelligence. In this case, the FBI was not thinking in the terms of collecting human intelligence for a broader national intelligence purpose. If the agent had been thinking in those terms, the agent would have collected more information about his asset, even seemingly unrelated information to ongoing cases, in order to make an assessment about the intelligence

[977] Ibid. at 262.

value of the information the asset provided. The FBI agent, however, was satisfied with the asset providing information on cases that the FBI had already opened investigations on. What the FBI agent was looking for from his asset was information that was concrete, clear, focused and related to existing investigations. Other information seemed extraneous to the agent, even information that may have questioned the assets value as an intelligence source. A conclusion that is drawn from this case is that while the Attorney General guidelines made it more difficult to open up certain lines of investigations, the culture of the FBI, stuck in a case-mentality, provided the blinders to other pertinent and valuable information that could have been collected but was not because questions were not asked.

It is common knowledge (and practice) that intelligence agencies that run human assets will need to assess the credibility or "bona fides" of the asset the officer is handling. Otherwise, the asset could be a double agent or a fabricator (the case of "Curveball" is a good example of the implications of not vetting assets aggressively). This is part of the traditional tradecraft of an intelligence officer and is taught to new case officers as they join the CIA to serve as intelligence collectors. An intelligence officer checking the asset's credibility would have likely wanted to verify or confirm some information about the asset from those that lived with him. Presumably they would have valuable information about the asset's behavior, life style and activities. Within the asset files kept by the FBI agent, however, there was no information related to a validation of the assets credibility. According to the IG report, the asset's bona fides were "merely verified through the attestation" of the FBI agent.

FBI agents who were conducting intelligence investigations were not using sound intelligence tradecraft. As recently as 2005 when the WMD Commission asked the FBI for a summary of how many assets it had been terminated in the last year because they were considered fabricators, the FBI was unable to provide an answer to the Commission since there was no centrally-managed database of its human assets. As the WMD Commission concluded, this was "an essential element of any objective and systemic approach to asset validation" and core to the tasks of an effective intelligence service.[978]

Throughout its investigations, the DOJ IG had found that "despite the fact that FBI Headquarters had established counterterrorism as a top priority of the FBI in 1998, the San Diego Field Office was continuing to pursue drug trafficking as its top priority in 2001."[979] The DOJ IG also found that FBI headquarters "took few steps to ensure that field offices complied with this directive" to make counterterrorism a top priority.[980] From these findings, many have argued for a more centralized control structure for the FBI, both at headquarters and in the field, in order to resolve this perceived problem of unresponsive field offices.[981] That has been the structural "fix" that FBI Director Mueller and some outside observers have accepted in light of the events leading up to 9/11. Today, the FBI has centralized control by consolidating its decision making authority at headquarters, for intelligence activities within the position of the Executive Assistant to the Director for Intelligence (EAD-I) and directing

[978] *The WMD Commission Report*, p. 456.
[979] *The DOJ IG Report*, p. 361.
[980] Ibid.
[981] Zegart, Spying Blind, she argues for centralized control at FBI headquarters.

intelligence analysis and collection from headquarters through the "field intelligence groups" in the field.

The Problem: A Cultural Problem not a Control Problem

What the example of the San Diego agent's mishandling of an intelligence asset illustrates, however, is that the problem did not arise from a lack of control from FBI headquarters. Rather, the problem stems from the culture of the FBI and the identities of the FBI agents themselves. These investigations against al-Bayoumi and the recruitment of the asset were both counterterrorism investigations conducted under the Attorney General guidelines that dealt with intelligence investigations (not criminal investigations). Although they were intelligence investigations, the FBI ran both of these investigations using traditional criminal investigative methodology; no "concrete" evidence to prove that al-Bayoumi was committing any terrorist activity so the "case" is closed, no evidence that two foreign visitors in the assets house are doing anything wrong no questions asked about them.

The FBI agent conducting the intelligence investigation targeting al-Bayoumi did not use the investigative techniques allowed under the Attorney General guidelines for preliminary investigations – interviewing individuals about his alleged ties to Saudi Arabia or conducting an undercover operation. The FBI agent handling the asset in San Diego does not attempt to collect further information about foreigners living in the asset's home. This is exactly what an intelligence officer would do; try to collect as many seemingly unrelated tidbits of information to develop a complete picture about possible threats. The DOJ IG report faults FBI headquarters for not getting its message

out more clearly to its field offices that counterterrorism needed to be treated like a real priority. The report states, "Even though FBI Headquarters had designated al Qaeda as the number one counterterrorism priority, the San Diego FBI was not attempting to identify individuals that were associated with al Qaeda."[982] Rather, the report notes, "The counterterrorism efforts in San Diego were directed primarily at another terrorist organization and related groups not connected to al Qaeda."[983]

The DOJ IG makes note of the fact that the "San Diego agents assigned to counterterrorism concede they had received little to no specific training concerning Bin Laden or al Qaeda."[984] Yet, the inspector general misses the point. The fact that the FBI agent closed the case targeting al-Bayoumi or that the FBI agent handling the San Diego asset failed to ask questions of his asset and others has nothing to do with what priority the San Diego office had placed counterterrorism. The fact was that the San Diego FBI office was conducting counterterrorism investigations and these two investigations were, in fact, counterterrorism investigations. No additional supervision of the field office would have altered the actions of these agents unless FBI headquarters actually ran the investigations and even then it is arguable as to whether anyone at FBI headquarters would have done anything differently. After all, it was FBI headquarters that ignored Agent Williams Phoenix memo concerning the agent's suspicions about radical Muslims taking flight lessons in the United States. It was also FBI headquarters that rejected a request by an FBI agent in the FBI Minneapolis field

[982] Ibid. at 263.
[983] Ibid.
[984] Ibid. at 259.

office for an application to the FISA court for a warrant to search Zacarias Moussaoui's computer in August 2001.

All of these investigations were counterterrorism investigations. And no arguments were made that the al-Bayoumi case was closed or that Stan did not conduct further inquiries because of the limited resources they had at their disposal. These "missed opportunities" occurred because of the FBI criminal investigative culture of the FBI and not because the agents did not understand enough about al Qaeda. In order to collect the information that may have lead to finding Hazmi and Mihdhar the FBI agents did not have to be experts on al Qaeda (although that would have provided some advantages for the FBI) they just needed to think and operate more like intelligence officers.

After noting that more San Diego FBI agents had been assigned to counterterrorism after 9/11, the DOJ IG concludes, "If San Diego's focus on counterterrorism and al Qaeda had occurred earlier in San Diego, there would have been a greater possibility, though no guarantee, that Hazmi's and Mihdhar's presence in San Diego may have come to the attention of the FBI before September 11."[985] Unless there has been a cultural change throughout the FBI and its agents in the field that has altered the way the agents look at the job of collecting intelligence, this conclusion may very likely be overly optimistic. As former Attorney General Reno stated in her testimony before the 9/11 Commission, "It's not going to be resources. It's not going to be legislation necessary. It's not going to be legal authorities . . . . It's going to be people .

[985] Ibid.

. . starting to end the culture that says this is mine, I've got to keep it to me because it's my case."[986]

An Evaluation: Reforms Fail to Address Problems of Domestic Collection

The entire effort proceeded on an extremely dubious, poorly examined premise: that because FBI had successfully functioned as the U.S. government's domestic law enforcement authority, it could with equal élan and efficiency serve as the U.S. government's domestic intelligence authority. Furthermore, the argument went, placing the mission within the already existing FBI would be more feasible than trying to get Congress to authorize the creation of a new domestic intelligence organization. While the second premise may have been factually accurate, the first one was principally flawed. Supporters of this change assumed that by putting this domestic intelligence function within the FBI would change the character of how the U.S. government conducted counterterrorism more than it would change the character of the organization of the FBI. This assumption overlooked the decades of indoctrination that the FBI personnel had received in criminal investigations by right as the bureau's distinctive mission. And it overlooked that signs that the bureau was already severely taxed by responsibilities it already had. This decision certainly deserved more critical examination than anyone in the government gave it.

Given that the hazards were not obscure, it is fair to ask to what extent policymakers weighed them as they designed the policy. Did they ask the elemental questions: can the FBI perform this task? And what will be the consequences if it tried?

[986] Janet Reno, testimony before the 9/11 Commission tenth public hearing (transcript), April 13, 2004, p. 62, http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf.

Were they so engaged in the struggle over policy change they ignored organizational questions? Or so committed to the policy outcome that they deliberately chose to accept the risks? How did they perceive those risks? Did they perhaps discount them as unimportant, on the theory that it is the duty of every organization to get the job done?

The lack of extensive and serious examination of the FBI decision may be accounted for in large part by the pressure exerted upon a President to do something quickly in the face of commission recommendations (the 9/11 Commission recommendations) announced publicly at the same time as national crisis. President Bush was faced with the recommendations of the 9/11 Commission that had been endorsed by other presidential candidates, Kerry, in the run up to elections. There was little time for the candidates to seriously consider the Commission's recommendations including its recommendation no to create a separate intelligence agency and to give the FBI the counterterrorism lead. The stifling effects of presidential power on policy discourse almost guaranteed that no one would disagree with the president's directive once he made the decision. Once a president's pursuit of a policy change is under way and the power and prestige of his office have been committed, the pressure on executive subordinates to cooperate is overwhelming. At the time, no one would have wanted to risk being seen to have jeopardized the president's chances of success by voicing an apposing view on the issue. The consensus had to be that FBI was going to effectively protect the US from another terrorist attack.

An Assessment: The Failure of the FBI to Adapt after 9/11

According to officials who have worked at both the FBI and the intelligence community, the FBI still has not developed an effective capability to work within an intelligence requirements process.[987] In order for FBI to function as an intelligence organization it will have to develop this expertise. Intelligence organizations function to provide information to numerous consumers pursuant to the requirements that come from the senior policymakers based upon an understanding of what is needed by the senior policymakers. As one FBI official stated to the WMD Commission, the FBI sees intelligence requirements "more as an invitation" to fill collection gaps than as requirements that the Bureau needs to fulfill.[988] Today, FBI is not capable of responding to requests from agencies like the Department of Commerce and the Department of Treasury that need to know the threats to the domestic homeland. Yet this is exactly what a domestic intelligence organization needs to be able to do.[989] Furthermore, with the DNI's attenuated authority over the direction of FBI the FBI's ability to conform to intelligence requirements seems unlikely to improve based upon its past record.

What happens when criminal investigations don't provide such information helpful to preventing an attack but that is all the FBI has. Can FBI do intelligence collection? Based upon Freeh's testimony it would appear that FBI sees its identity tied to criminal investigations that support prosecutions from which information may be useful only as a by product to prevent terrorist attacks. For FBI Director Freeh if the

[987] Testimony by Gannon, interview with Gannon, interview with MacGaffin
[988] *The WMD Commission Report*, p. 462.
[989] Interview w John Gannon, February 25, 2008.

US government has not declared war against an enemy the only effective alternative to dealing with the threat is conducting criminal investigations to stop the perpetrators from committing future acts of terrorism. While Freeh stated that "It was never our notion in the FBI that criminal prosecutions of terrorists and investigations of their organizations was a substitute for military action," however, in making no mention of intelligence and FBI's purported intelligence function to counter terrorism, it would appear that Freeh believes that those criminal prosecutions can be a substitute for intelligence operations. Aside from what FBI may believe, evidence collected pursuant to a criminal investigation is not a substitute for intelligence.[990] Nor can intelligence be a by product of that evidence.

FBI agents see their identities tied to being criminal investigators. Today, the special agents-in-charge (SACs) that compose the majority of the FBI agents with the Bureau still get rewarded based upon how many cases they have and how many arrests they make that lead to convictions.[991] This emphasis on statistics by the FBI is something that has been part of FBI's history and still is a very central aspect of how FBI operates. When Hoover ran the Bureau he insisted that the agents spend their time focused on the types of cases that would yield numbers by which the Bureau could justify its budget and articulate its worth to the policymakers in the White House. Hoover, therefore, disliked and purposely limited the Bureau's involvement in organized crime (OC) investigations. For Hoover, the OC investigations not only involved undercover work that could get an agent involved in unattractive, "dirty,"

[990] Henry Crumpton, "Intelligence and Homeland Defense," in *Transforming U.S. Intelligence*, p. 209.
[991] Gannon interview

work but these investigations often lasted for years, were difficult to bring to trial and therefore were not helpful to increasing the Bureau's statistics on successful investigations and prosecutions.[992]

The heavy emphasis on statistics is understandable because of the desire to measure performance. The performance of criminal investigators, unlike that of intelligence officers, can be evaluated by objective, quantitative criteria like the number of arrests which lead to successful convictions. Indeed, that is how the FBI as a criminal investigative organization measured the success of its members. As the 9/11 Commission noted, "The [FBI] rewarded agents based on statistics reflecting arrests, indictments, and prosecutions. As a result, fields such as counterterrorism and counterintelligence, where investigations generally result in fewer prosecutions, were viewed as backwaters."[993] For the FBI, as an organization, it made sense not to put much emphasis on the work of counterintelligence and counterterrorism; there was no easy way to measure the performance of its agents in these areas and these types of investigations which involved undercover work and the less publically acceptable work of clandestine collection could bring embarrassment and public ridicule to the Bureau.

For FBI agents it made sense to avoid these career fields for the same reasons. Agents, like any employee, want to be in career tracks that the institution supports and identifies as important. It is not solely the institution of the FBI that supported the primary interest in prosecutions but it was predominantly the Department of Justice,

[992] Powers, *Broken*, Kessler, *The Terrorist Attack*.
[993] 9/11 Commission, Staff Statement No. 9, "Law Enforcement, Counterterrorism and Intelligence Collection in the United States prior to 9/11."

whose sole mission is to prosecute justice. Time and time again, the Justice Department would give mandates to prosecutors in terrorist cases: don't bring charges unless you are sure you can convict him.[994] The Justice Department knew just how difficult to was to convict based on conspiracy cases, particularly for terrorism. As part of the DOJ, this meant that the FBI needed to place emphasis on successful convictions which meant investigations that would provide the type of evidence that could bring a successful prosecution. FBI agents knew from experience that prosecutions against terrorists for acts not already committed were very difficult to win. Criminal cases centered on crimes that are not committed, like terrorism, are extremely difficult because you are asking a jury to determine guilt based upon evidence presented that they defendants "said" they were going to do it and had taken some steps towards that act. FBI agents knew this from painful past experiences with investigating these types of cases.

Conspiracy Cases Are Hard to Win

In 1985, the FBI would conduct one of the FBI's largest investigations to date of members of a group called the New African Freedom Fighters. The leader of the group, Mutula Shakur, had been on the FBI's Ten Most Wanted list since the 1981 Brinks Bank robbery in Nyack, New York. The group was composed mainly of practicing Muslims whose goal was "to create a separate black nation carved from the southern states of Alabama, Georgia, Louisiana, Mississippi and South Carolina." [995] While some

[994] Cell, p. 147. DOJ on charging the "blind sheik" Abdel-Rahman in New York for his involvement in the World Trade Center bombing, the Kahane murder and the Landmarks plot against New York bridges and tunnels.

[995] Brent L. Smith, Kelly R. Damphousse, Paxton Roberts, "Pre-Incident Indicators of Terrorist Incidents: The Identification of Behavioral, Geographic, and Temporal Patterns of Preparatory Conduct," paper

of its members had been convicted for the brinks robbery, the 1985 FBI investigation was against members of the group that had plotted to attack the Brooklyn courthouse where one of the defendants in the Brinks case was being tried. After two years of an FBI investigation (a lifetime in terms of law enforcement standards) which resulted in overwhelming evidence of a conspiracy to commit a crime, the eight defendants were acquitted of the conspiracy charges and only convicted on lesser charges of illegal weapons possession. Ultimately, the judge suspended the sentences for the lesser charges, except for one defendant, and the defendants received probation. The one defendant convicted received three months in prison.[996] For the FBI agent who lead the investigation, "the verdict was the low point" of his career.[997] For the other FBI agents at the Bureau, the "message reverberated through the Bureau for years:" investigating crimes that have not occurred yet will get you nowhere.[998]

For FBI agents, the smartest career track to take was the track that would likely guarantee career advancement based on hard investigative work that produced results: successful prosecutions. As the 9/11 Commission pointed out, that meant a career in criminal investigations outside of terrorism; i.e., bank robberies, drug trafficking, fraud, etc. As the current director of public affairs of FBI stated, "Driven by an appetite for headline cases and quantifiable stats, the Bureau prioritized leads according to how well the resulting evidence might stand up in court, and thus it often ignored or failed to

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funded by the Department of Justice federal funds, May 2006, http://www.ncjrs.gov/pdffiles1/nij/grants/214217.pdf.

[996] Ibid. at p. 166.

[997] John Miller and Michael Stone with Chris Mitchell, *The Cell: Inside the 9/11 Plot and Why the FBI and CIA Failed to Stop It*, New York: Hyperion (2002), p. 35.

[998] Ibid. at 35.

analyze or act on otherwise valuable intelligence form other agencies."[999] For an FBI agent, the choice between work involving the collection of clandestine intelligence (and all of the risks that go along with that --low likelihood of career recognition and high likelihood of incurring criticism from civil libertarians) and work collecting evidence to build a criminal case, the decision is an easy one for the agents.[1000]

For the FBI agents, their identities as members of the Bureau were tied to two main functions; assisting in the successful prosecution of cases and not bringing any shame to the FBI image. These elements of the FBI agent identity had been embedded within the culture of Bureau since Hoover ran the Bureau in 1908. That culture was deeply engrained within the Bureau and has persisted to this day. As former Director Freeh noted in his memoir, his greatest achievement during his long career within the FBI, which started off as an agent, was that "Never once did I say or do anything that embarrassed or caused harm to the FBI or the country."[1001]

Even in the post-9/11 reform transformation environment at the FBI, the Bureau still is consumed by a concern for statistics. Since 9/11, FBI has hired 876 new intelligence analysts.[1002] The majority of these new analysts have been assigned to the "field intelligence groups" (FIGs) located in the FBI's 56 field officers across the country. The creation of the FIGs in 2003 has been part of the FBI's efforts to develop an intelligence analytical capability within the Bureau at the field offices. They were

[999] Ibid. at 330.
[1000] Ibid.
[1001] Louis J. Freeh, with Howard Means, *My FBI: Bringing Down the Mafia, Investigating Bill Clinton, and Fighting the War on Terror*, New York: St. Martin's Press (2005), p. viii.
[1002] National Academy Report, p. 16.

intended to integrate intelligence and law enforcement operations in the field, to strengthen the role of analysts in guiding this process and in managing production, especially strategic analysis. They consist of all-source analysts, linguists, special agents, and reports officers.

Recently, a number of these analysts during training run by a contractor voiced concerns about their supervisors who the analysts claimed were "pressuring them to increase the number of IRs [intelligence reports] they produced."[1003] Intelligence Information Reports (IIRS) generally provide raw, unevaluated intelligence to a wide number of consumers. According to former Director Mueller, the FBI had a "222% increase in the dissemination of IIRs . . . " from calendar year 2003 to calendar year 2004.[1004] These newly hired analysts sought advice on how to "push back" on the pressure to produce more reports because they were concerned that the quality of the reports were being compromised in an effort to increase the number of reports.[1005] The hiring of new intelligence analysts has not resulted in any change in FBI's preference for the use of statistics as a good measure of success. According to the FBI, during the first eight months of 2005, FBI analysts produced 5,630 IIRs and 80 strategic assessments.[1006]

Furthermore, the hiring the intelligence analysts since the directive from the White House has not altered the hierarchical structure at the Bureau which is dominated

[1003] Interview with Mark Lowenthal
[1004] Director Mueller, testimony before the WMD Commission, March 8, 2005.
[1005] Interview w Mark Lowenthal re his teaching FIGs recently.
[1006] Alfred Cumming and Todd Masse, "Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress," *CRS Report RL33033*, August 16, 2005, p. 25.

by the SACs. After the establishment of the Directorates of Intelligence at the FBI, the Bureau created the FIGs that were to "manage and direct all field intelligence operations."[1007] The decisions, however, about how the FIGs should be organized at the field offices (what the role of the special agents in the FIGs would be and what the future size and make-up of the FIGs would be like) were left up to each individual SAC who headed the individual field offices. While it makes sense to involve the SACs at the field offices in decisions about the FIGs operating within their offices, such consultation should have been done as a part of a strategic planning exercise involving FBI headquarters and the Directorate of Intelligence. As the WMD Commission report noted, the FIGs "do not have authorities to drive counterintelligence and counterterrorism investigations, collections, and operations" raising questions about their effectiveness.[1008]

Some of the problems between FIGs and the agents in the field have been well documented. In a recent 2004 report on one field office, "due to a backlog of telephone numbers to be loaded into telephone applications, the FIG [Field Intelligence Group] has requested overtime and pulled analysts from squads to load and analyze data . . .. [T]he use of [Intelligence Analysts] for clerical duties diminishes the analytical function of an [Intelligence Analyst]."[1009] The DOJ IG reported that the FIGs in some field

[1007] FBI Directorate of Intelligence, *Report to the President of the United States: Comprehensive Plan for the FBI Intelligence Program with Performance Measures*, February 16, 2005, p. 15.
[1008] *The WMD Commission Report*, fn 61.
[1009] FBI Directorate of Intelligence, *Office of Intelligence On-Site Review of Field Intelligence Groups*, September 10, 2004, p. 6.

offices were "being used to empty trash cans."[1010] Even the newly created National Security Branch has no direct authority over the SACs who are the heads of the field offices unless it can somehow prompt the intervention of the FBI Director or his deputy. Unless these analysts are made part of a distinct career service within the FBI that has control of its own budget and personnel and has a direct line to the FBI Director (independent of the agents) there is serious doubt in many peoples minds as to whether the FBI will ever be able to do strategic analysis.[1011] Today, only six of the 56 SACS that run the field offices come from backgrounds other than criminal investigations. It will be a long time before an FBI agent with a background and experience in intelligence collections reaches the point in his career where he could be a SAC running an over. In a conservative estimate James Q. Wilson noted in an interview that he thought "in about 5-7 years when the new intelligence professionals being hired by FBI today rise in the ranks into leadership at the FBI we will see some changes being made."

Today, FBI agents' investigations are still case-based and are geared toward prosecutions. And while the FBI has improved its intelligence capability related to criminal investigations it still falls far short of maintaining an effective national intelligence capability. FBI agents share in the same accolades that the prosecutors receive when a defendant is successfully convicted. It is the number of arrests and successful prosecutions – not the number of intelligence requirements satisfied -- that an

[1010] DOJ IG reporting that the FIGs were being used in the field offices to do administrative work like cleaning trash cans.
[1011] Interview w John Gannon.

agent is promoted and recognized for service at the Bureau. And when the defendant is convicted or there is a determination made that there is not enough evidence to bring a case to court, the case is closed both for the prosecutors and the FBI agents.[1012] There is no reason for an FBI agent to maintain the files of a closed case and use the information gathered from the case in furtherance of understanding foreign threats to the U.S. A criminal investigator measures his/her value to the organization based upon how many successful prosecutions they supported and how well they avoided allegations of violations of civil liberties during that process.

That is not to argue that FBI should not continue its criminal investigations especially in light of the fact that the Bureau has shown to be effective in this criminal investigative role. These criminal investigations are valuable because they neutralize threats and put criminals behind bars. Furthermore, as seen through the FBI's foiling of the Landmark plot, these criminal investigations can provide valuable information that is useful in preventing terrorist attacks. But these criminal investigations, however, are not intelligence collection operations. Nor are these criminal investigations that may provide some valuable intelligence equivalent to being responsive to national intelligence requirements levied by the intelligence community and in support of costumers needs for information.

The FBI approach is that the FBI conducts its investigations based upon a "case-file mentality." This is the approach that is codified within the Attorney General guidelines the FBI operated under. Whether the investigations are organized criminal

[1012] Siobhan Gorman, "FBI, CIA Remain Worlds Apart," *National Journal*, August 1, 2003.

investigations targeting Sicilian mafia family members or counterterrorism investigations targeting al Qeada members, the FBI approach is to work towards successful convictions while avoiding allegations of violations of civil liberties. Throughout its history FBI has learned that only by staying within this required case-file mentality would it limit the possibility of Congress and the public attacking the FBI for being lawless.

FBI's Past Attempts at Reforms

By 1993, after the World Trade Center, the FBI acknowledged that "merely solving this type of crime is not enough; it is equally important that the FBI thwart terrorism before such acts can be perpetrated."[1013] There appeared to be a public recognition by FBI that in order to protect US national security, the FBI needed to function more as an intelligence organization specifically as it related to counterterrorism. And that this would require closer coordination with CIA. And yet in 1993 based upon a disagreement between FBI and CIA, the then new FBI Director removed the FBI's employee representative from CIA Counterintelligence Center. FBI agents had been assigned to CIA CIC ever since in creation in 1988 under Director Webster.[1014] In response to the perceived need for change at FBI, Congress, at FBI's request, increased the FBI counterterrorism budget in the mid-1990s, nearly tripling it, even as the overall resources for the intelligence community declined during this

[1013] National Commission on Terrorist Attacks Upon The US, 10th Pubic Hearing, April 13, 2004, Staff Statement No. 9.
[1014] Mark Riebling, *Wedge: From Peral Harbor to 9/11, How the Secret War Between the FBI and CIA Has Endangered National Security*, New York: Simon & Schuster, p. 441.

period.[1015] And yet, according to the 9/11 Commission, FBI's spending on counterterrorism remained constant between 1998 and 2001. According to an external review done of FBI personnel, prior to 9/11 there were twice as many agents devoted to drug enforcement matters as to counterterrorism.[1016]

So while FBI was stating that it understood that it needed to operate more like an intelligence organization that was capable of working in a preventive fashion in detect and deter terrorists, its actions revealed a different approach. Instead of moving away from a criminal investigative approach tied to cases that were focused on prosecutions, FBI actions reveal that it maintained its old approach. The number of prosecutions of terrorists increased. And the FBI seemed to have been reverted to an old habit of "machine-gun criminology." In order to carry out its strategy of counterterrorism FBI turned its attention not to thoughtful intelligence work but to older movie image of FBI agents as men with guns using brute force.

In 1983 FBI created its own assault team, the Hostage Rescue Team (HRT) which was to be FBI's own counterterrorism team that would be able to intervene in crises like major hostage incidents.[1017] One of the most notorious HRT incidents is Rudy Ridge where - . Then in the 1990s FBI actively got involved in the rendition of terrorists. Prior to 9/11 in rendering terrorists the FBI would physically take custody of

[1015] Former National Security Advisor Samuel Berger stated to the Joint Inquiry "working with Congress, [the Clinton administration] more than doubled the counterterrorism budget from 1995 to 2000, during a time of budget stringency – with a 350% increase in the FBI's counterterrorism funds." *The Joint Inquiry Report*, p, 256.
[1016] 9/11 Commission Staff statement.
[1017] Oliver "Buck" Revell and Dwight Williams, *A G-Man's Journal*, New York: Pocket Books, (1998), p. 214.

terrorists from overseas that they US had indictments for in order to provide them back to the US for prosecution. The renditions were often dangerous missions where FBI agents used deadly force and often anticipated possible casualties of their own. Examples of high profile FBI renditions prior to 9/11 of terrorists include the rendition of Mir Aimal Kansi, the Pakistan who killed 3 CIA officers in 1993 as they waited at a stop light in McLean, Virginia to enter CIA headquarters. An FBI team lead by FBI Special Agent Brad Garrett, forty-five-old ex-marine, along with member of the FBI's HRT rendered Kansi from Pakistan after a tip was called in to the FBI revealing to FBI where Kansi was hiding out. He ultimately stood trial for the murders of the CIA officers in a Virginia courtroom and was sentenced to death for two counts of capital murder. He was executed in November of 2002. In 1995 the FBI rendered Ramzi Yousef from Pakistan to the US where he stood trial for the World Trade Center bombing in 1993. In 1987 Fawaz Yunis, who had hijacked and blown up a Royal Jordanian jet in Beirut with three Americans abroad and later hijacked a TWA jet was rendered by a team of FBI agents lead by Buck Revell. The FBI agents lured Yunis to a yacht in international waters where they arrested him. He was brought back to the US to stand try and ultimately was sentenced to thirty years in a federal prison. After 9/11 the renditions that FBI took part in where focused on members of al Qaeda. Unlike the renditions that FBI performed prior to 9/11, these renditions were done without judicial warrants or indictments and most of these individuals were rendered to third counties rather than the United States to stand trial.

Prior to 9/11 FBI was not fighting terrorism through tedious and methodical intelligence collection and analysis. In line with what the Bureau had done in the past it was using its traditional law enforcement criminal investigative abilities to find, capture and prosecute terrorists. According to the 9/11 Commission, even those agents that were assigned to counterterrorism and intelligence work at FBI were diverted from they work in order to work on criminal matters. Prior to 9/11 FBI intelligence analysts at Headquarters were focused on supporting current criminal cases that the US Attorneys offices were developing against individuals suspected of being involved in terrorist acts. These analysts were not engaging in intelligence work related to preventing another terrorist attack.

While these analysts worked cooperatively with the intelligence community, the FBI analysts were not focused on preventing an attack but rather their day-to-day work efforts revolved around providing support to a US Attorneys office that was building a criminal case against an alleged terrorist. For example, Dina Corsi is an FBI intelligence analyst who has been working as an FBI intelligence analyst for 19 years.[1018] Prior to 9/11, her role was to assist the New York FBI field office in its efforts to support the U.S. Attorney's office in Manhattan in their criminal terrorism cases. Since the World Trade Center bombing of 1993, the US Attorneys office for the Southern District of New York had been the lead to bringing cases against terrorists in the federal courts in the Southern District of New York. The USAO for the southern district of New York had prosecuted the perpetrators of the first World Trade Center

[1018] History of Dina in IG report

bombing, Khobar Towers bombing and other high profile terrorist cases. During the summer of 2001, that office was busy putting together a criminal case against the perpetrators of the bombing of the USS Cole. The FBI agents at the NY field office as well as FBI intelligence analysts at FBI Headquarters assigned to the counterterrorism division were supporting the USAO in its efforts to try these terrorists.

During the 1990s, FBI and CIA had started a practice of detailing personnel to each other's counterterrorism units with their respective organizations. This included an FBI agent to serve as the Deputy Chief of the CIA's CTC, and a CIA officer to serve as the Deputy Chief of the FBI's International Terrorism operations Section. These exchanges of personnel were intended to enhance the cooperation between the FBI and CIA particularly on terrorism matters. On 9/11 there were a number of FBI agents assigned to CTC (including the deputy of the center who was an FBI agent). Five of the agents were assigned to bin Laden unit within CTC that focused its efforts on collecting intelligence solely against bin Laden and his organization. Although these FBI employees were assigned to CIA in order to improve cooperation between FBI and CIA on counterterrorism issues, according to DOJ's IG report, these FBI employees for the most part worked on terrorism issues related to criminal investigations.

In 1999, the FBI created the Counterterrorism Division and Counterintelligence Division as two new separate divisions in order to increase the focus on these missions within the FBI. Dale Watson, who served as the first head of the new Counterterrorism Division, developed a strategy that he called MAXCAP 05 that sought to increase FBI efforts on counterterrorism by focusing on tasks such as intelligence gathering and

interagency cooperation among others to bring "the Bureau to its 'maximum feasible capacity' in counterterrorism by 2005." By the summer of 2001, however, Watson had concluded that his MAXCAP 05 strategy was a failure with none of the FBI's 56 field offices capable of supporting the MAXCAP counterterrorism strategy. Watson believed that the FBI needed to make a conscious decision to change its mission and prioritize counterterrorism. In 2000, he offered a stark assessment to the then-White House Counterterrorism advisor Richard Clarke as to what he thought was required in order for the Bureau to be able to fulfill its counterterrorism strategy: "We have to smash the FBI into bits and rebuild it to do terrorism."[1019] In 2003, former attorney general Janet Reno told to the 9/11 Commission that "Director Freeh seemed unwilling to shift resources to terrorism from other areas, such as violent crime."

By the mid-1990s, after the US had suffered a number of terrorist attacks against its interests at home and abroad, the FBI seemed to recognize the need to prioritize its preventive counterterrorism efforts as the lead agency responsible for domestic counterterrorism. And in the 1990s, FBI received funds from Congress in order to enable the Bureau to do just that. And yet it did not. With the recognition by the Bureau itself that there was a real need to change the way FBI did business (even back to the early 1990s) and there was money to assist FBI to do that, why didn't that happen by 2001? More importantly, what indications are there that FBI is capable of this change today? In order analyze this one must understand culture and the possibilities for cultural change within an organization.

[1019] Dick Clarke, *Against All Enemies*,

Despite the post-9/11 efforts by the FBI to focus on counterterrorism, the FBI remains, organizationally, structurally and culturally, most attuned to combating criminal enterprise. According to numerous reports by GAO, the FBI has made little progress, post-9/11, in reforming the way it fights terrorism. The FBI remains the world's top law enforcement agency and still does a good job of arresting criminals (although recent statistics on the increase of federal crimes has raised some concern that because FBI's attention and resources have been draw to new intelligence priorities the criminal resources have been dwindling resulting in the FBI providing less attention and resources to criminal work and resulting in an decrease of federal crimes that are investigated and prosecuted). The FBI, however, has never been well suited to intelligence work. In their efforts to create within the FBI a domestic intelligence capability the 9/11 Commission and the President failed to appreciate the lessons from FBI's history and culture and the useful insights from organization theory related to cultural change and organizational design.

Training

By executive order, President Bush directed that the FBI would be the government organization that would be responsible for domestic intelligence within the United States. However, much concern has been raised about whether the FBI can perform both its law enforcement mission as well as the domestic intelligence mission as directed by the President. Organizational theory lends some insight into whether this structural arrangement makes the most sense when dealing with domestic threats of terrorism.

As the 9/11 Report described, the FBI has produced it own sealed fiefdoms, with a strong culture and incentive structure that pushes it to consider drug arrests more significant than terrorist attacks. It is true, as organizational theory experts know, that a certain level of specialization is necessary in any organization that requires certain tasks to be performed. However, such specialization becomes an obstacle to interpretation. The specialized knowledge and experience that one obtains in order to perform a certain task can interfere with understanding matters outside one's own job description. Such specialization narrows ones worldview, creating rigidity and resistance to change. For FBI agents, since - , they have been focused on honing the necessary investigative skills that have made the Bureau excellent at tracking down and collecting evidence against individuals and groups that have violated the laws of the United States. In the field of counterterrorism this honed expertise has resulted in successful prosecutions of terrorists like Ramsey Yousef and the Blink Sheik; both involved in plots against the United States.

In order to reach a level of expertise in these skill sets FBI agents currently receive 680 hours of training at Quantico during a 17 week course that new special agents. Their courses range from fire arm qualifications to cyber forensics. These courses indoctrinate new agents into the bureau culture of investigative operations and are the building blocks for these agents to further develop the skills necessary for them in the field. Yet, today, even after the reform recommendations based upon the 9/11 report, the FBI agents only receive 2 hours of training during their 17 week course

specifically devoted to intelligence work.[1020] The training that these new FBI agents receive on intelligence relates broad, high-level issues of how the intelligence cycle works and the role that intelligence plays in national security goals. This level of understanding is what an agent could receive in a course at a university like Georgetown that offers national security and intelligence courses.

What is missing from the FBI's new agent training program is any instruction on the tradecraft or skills involved in clandestinely collecting information and operating clandestinely against threats, in the United States or abroad. Intelligence officers at CIA as well as the terrorists who are operating against the United States have all had extensive training in these areas. In light of this shortcoming, the Bureau has begun to send some of its new agents to CIA's training facility to participant in parts of the same training as case officers at CIA receive. The fact, however, that FBI new agents are training at CIA's training facility only indicates that they still do not have the ability to train their own agents in the work of intelligence. If the FBI does not have senior trainers in its ranks to teach incoming intelligence agents who will continue to develop the necessary skills of these agents while they are in the field? For those in the intelligence community, this is the critical aspect of training. On the job training, or OJT as it is often referred to by intelligence officers, is how intelligence collectors and analysts learn their skills.[1021] John Gannon, a former deputy director of intelligence at CIA and a former chairman of the national intelligence council, described training at

[1020] CRS Report, "FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress," p. 9, http://www.fas.org/irp/crs/RL32336.pdf.
[1021] Interview with John Gannon

FBI like "learning to use a lawnmower" . . . . "where you might read a manual or get some kind of quick vocational-like course and then you are expected to just drive the mower."[1022] As Gannon stated, "training qualified intelligence analysts takes years of OJT where the young analysts would work side by side with senior expert intelligence analysts and learn, literally every day, what it means to be an intelligence analyst and how to do the job. As far as what a qualified intelligence analyst would look like, Gannon noted, "a qualified intelligence analysts would not only be able to answer ten or so questions from a policymaker but would be able to speak the language of the country at issue, would have spent extensive time in the country, would know the culture and social aspects of the area of the world and would be able to answer hundreds of questions not just ten."[1023] The FBI does not have anything near that level of expertise in its new hires post 9/11. And there is little hope that anything in FBI's new training would be able to develop those core analytical skills anytime soon.

According to that National Academy of Public Administration report, "Transforming the FBI: Roadmap to an Effective Human Capital Program," published in 2005, primary responsibility for training and development throughout FBI, including for the intelligence analysts assigned to the Directorate of Intelligence within the National Security Branch, is vested in the Training and Development Division (TDD) of the FBI, headed by an Assistant Director of Training & Development. The TDD falls under the responsibility of the Executive Assistant Director for Human Resource Branch. Responsibility for training and career development within FBI is also shared

[1022] Ibid.
[1023] Ibid.

by Administrative Services Division, the Intelligence Directorate and other offices, including individual field offices. The TDD Strategic Program Plan FY 2004-2009 describes this fragmentation:

> Currently in the FBI there are multiple divisions, sections and units with responsibility for creating, offering or purchasing training. This fragmented approach is confusing, lacks accountability and is inefficient. There is no single point of responsibility for workforce training and no comprehensive system to track and measure the development of employee skills or the FBI's investment in training.

Not only does this dispersed responsibility for training raises questions of whether the Bureau is making the most effective possible use of its scarce resources, it also raises questions as to the quality of the training for the intelligence cadre within the FBI. The initial training program that was developed by the TDD for the entry-level training for the intelligence analysts was not effective and the revised course developed based on collaboration between TDD and the Intelligence Directorate "continues to draw substantial criticism from participants."[1024] Course sessions were not systematically delivered, there were gaps in certain areas and repetition in other, and attendance was low mainly because the courses were voluntary.[1025]

The most favorable estimate for the FBI is estimated that it will take the Bureau at least 7 years before the some of the analysts the Bureau is currently hiring will be eligible for promotion to the senior ranks of the FBI where they might be able to influence the FBI policy decisions in favor of intelligence analysis and mentor younger

[1024] Report, p. 46.
[1025] U.S. Department of Justice, Office of the Inspector General, *The Federal Bureau of Investigation's Efforts to Hire, Train, and Retain Intelligence Analysts*, Washington, D.C., May 2005.

analysts.[1026] That time frame, though, is based on the assumption that these analysts are exposed to OJT by seasoned analysts. The question is where would the new analysts get the OJT? As for the FBI's expertise and training related to clandestine collection, the record is even bleaker.

A Prediction: Two Cultures in Conflict at FBI

The Reforms Call for Change at the FBI

The 9/11 investigations had called for a change in the culture at the FBI in order that the Bureau could effectively serve as the nation's lead agency in fighting terrorism and protecting the homeland from another terrorist attack. The investigations had determined that the US lacked a domestic intelligence capability. They also concluded that FBI should be the organization to fill that gap. To do that the FBI would have to develop a new capability to do intelligence collection and analysis within the Bureau. With the new National Security Branch, a new cadre of analysts hired and more training for all FBI agents, Director Mueller and his supporters have felt confident that the Bureau will develop a culture that would support the FBI's counterterrorism mission. This would also mean that a new culture had to be developed within the Bureau one that supported the new intelligence mission. Those that have supported the FBI in its effort to reform argue that with time and the efforts of the Director Mueller the FBI will be able to effectively adapt into an organization that can do both law enforcement and intelligence.

Culture Defined

[1026] Interview with James Q. Wilson.

As noted in Chapter 2, culture is defined as "a pattern of basic assumptions – invented, discovered, or developed by a given group as it learns to cope with its problems of external adaptation and integral integration – that has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems."[1027] As defined in this study, culture is a feature belonging to an organization, like structure. In this structural-functional approach, culture is seen as an adaptive and regulative mechanism connecting individuals and social structures. The cultural dimension of an institution is seen as contributing to the overall systemic balance and effectiveness of the institution. As the constructivists have added to the understanding of culture and particularly how it changes, this study has underscored the understanding that culture is not a fixed element of an institution but rather an emergent process of reality creation.[1028] Culture then includes socially transmitted patterns for behavior characteristic of a particular group or community.

Subculture Defined

The overall culture of an organization may be understood as a secondary phenomenon derived from the commonalities and interactions among the subcultures.[1029] Subcultures may be distinguished on the basis of horizontal or vertical dimensions. Occupational communities, as mentioned in Chapter 3, and especially

[1027] Edgar Schein, "Culture: The Missing Concept in Organizational Studies," *Administrative Science Quarterly*, Volume 41, p. 9.
[1028] Cite constuctivist
[1029] Rob Lucas, "Political-Cultural Analysis of Organizations," *Academy of Management Review*, Volume 12, Number 1 (1987).

professional subcultures have also been conceived influential within the organizational context.[1030] Subcultures consist of individuals identifying themselves as a group – a collective identity has evolved. There exists a feeling of solidarity among the members, and construction of boundaries against outsiders. Subcultures have developed their own distinct sets of shared understandings, interpretations and assumptions.

The subcultures identified in this section of the chapter include the cultures of:

- The intelligence professionals who are actively involved in collecting and analyzing disparate pieces of information that might be useful in preventing a threat from materializing. The intelligence analysts and the intelligence collectors would both belong to this sub-culture.
- The criminal investigators who represent the viewpoint of the Department of Justice. These investigators actively collect evidence in order to provide that evidence in a court of law to prove guilt of an individual.

It is not uncommon that government agencies, like other organizations, will have multiple, competing cultures. Within the FBI, as the reforms altered how the FBI would operate, they effectively created a Bureau with two main subcultures which are critical to the goals of the organization. These two cultures are also incompatible in many ways. The interaction of these two sub-cultures within the FBI is important in order to understand and assess the likelihood of change within the FBI. In concentrating on the controversies between these two sub-cultures it may be possible to

[1030] Edgar Schein," Three Cultures of management: The Key to Organizational Learning," *Sloan Management Review*, Fall 1996.

shed light on why there are so many problems with sustaining and diffusing change throughout organizations like the FBI.

Proactive Intelligence Culture vs. Retroactive Criminal Investigative Culture

The 9/11 investigations showed that the FBI had a culture of retroactive action where agents would collect evidence to prosecute individuals for crimes already committed. The investigations concluded that what the U.S. needed was the capacity to act proactively in advance of a terrorist attack happening rather than just reactively after the fact. Based upon the recommendations of the 9/11 Commission, the president directed that the FBI make counterterrorism a priority by building within the Bureau an intelligence capability. The changes made within the FBI since the president's directive have focused mainly on developing an intelligence analytical cadre within the new National Security Branch.

Every one seemed to recognize that FBI's criminal investigative culture had prevented the Bureau from developing an effective intelligence collection and analytical program. After the 9/11 investigations made this clear, Director Mueller's goal was to ensure that there was a cultural change at the FBI where the intelligence mission to support counterterrorism would be viewed by the FBI employees as just as important as the criminal investigations they did in support of the law enforcement mission of the Bureau. In other words, the FBI would have two missions (law enforcement and intelligence) and they would be valued equally by the workforce. In theory the new mission created as equal to the law enforcement mission would direct a cultural change at the FBI; one that not only saw the value in intelligence investigations but supported

the development of the skills and mindset of an intelligence investigator within the FBI workforce.

Two Professional Cultures that Conflict

The nature of the work of an intelligence officer is fundamentally different from the work of a criminal investigator.[1031] First, intelligence collection is not about enforcing the law although those who are intelligence collectors must abide by U.S. laws. For criminal investigators their goal is to collect evidence that will be used in a criminal trial to punish someone through a prosecution for violating the law. Because the criminal investigator is focused on constructing individual legal cases his idea and definition of what intelligence is tends to be more clearly and narrowly defined, whereas an intelligence officer's definition of intelligence tends to be relatively undefined as he works towards building a generalized picture of risks and threats.[1032]

A criminal investigator must be concerned about how well his evidence will stand up before a court of law and before a jury. For intelligence officers, a prosecution is not a goal at all in their work. Rather, an intelligence officer will collect information from various sources that may not have any relations to each other or any connection to a crime. The intelligence officer is collecting based upon intelligence requirements stemming from identified strategic intelligence needs of the U.S. intelligence consumers (including law enforcement, Congress, the military, the policymakers, etc.).

[1031] Richard A. Posner, *Countering Terrorism*, Oxford: Rowman & Littlefield, 2006, chapter 5.
[1032] Geoffrey Treverton, "Terrorism, Intelligence and Law Enforcement: Learning the Right Lessons," in *Twenty-first Century Intelligence*, ed. Wesley Abington, Oxfordshire, UK: Frank Cass (2005).

The way the intelligence officer collects is based upon relationships and partnerships with recruited sources.[1033] These sources are recruited primarily based upon an identification of a mutually beneficial opportunity for both the source and the intelligence officer. The intelligence officer will assess and study a potential source and will liking have a close partnership with the source for years as they relationship is developed. The relationship is one built upon trust and collective benefit. This personal relationship between an intelligence officer and his source constitutes the working capital of how trust is built for intelligence collection to be effective. As part of this trusting relationship the intelligence officer promises to do everything in his power to protect the identity of the source and take all measures possible to ensure the safety of the source and his family.[1034] In effect, the intelligence officer is trying to achieve his objectives by operationalizing a form of "soft power." The concept of "soft power" was coined by Joseph Nye to describe processed of geopolitical influences that shape the world system and relations between nation states.[1035] Soft power works through processes of persuasion, negotiation, and agenda setting, providing a far more subtle mode of influence. This notion of soft power seems to be analogous to how intelligence officers seek to use their sources.

In contrast, Nye's notion of "hard power" is more analogous to the work of criminal investigators. For Nye, "hard power" derives from coercive interventions where the capacity to invoke physical force underpins the action performed. In the

[1033] Henry Crumpton, *Transforming U.S. Intelligence*
[1034] Why IC is so concerned about leaks. The defector program.
[1035] Joseph Nye, .*Soft power: The means to Success in World Politics*, New York: Public Affairs (2004).

same fashion, criminal investigators use the coercive power of the law to secure witnesses and obtain information. Sources are usually obtained by threatening them with criminal penalties unless they cooperate against their own criminal enterprise. Usually when criminal investigators or FBI agents try to talk to members of the community they are met with resistance because the public is concerned that the investigators even if they say they are only asking questions, may be investigating them for some violation of the law. The image of investigators is one of coercive power of the law. This can be seen recently when the FBI conducted widespread cold-call interviews during the summer of 2004 in order to collect intelligence that they thought would be helpful in the war in Iraq. The reaction of one American Muslim leader illustrates the previous point: "the FBI agents went out of their way to be low-key but the Muslims were fearful when they got calls, worrying that they were under investigation themselves."

The criminal investigators work is directly tied to the law. Because the criminal investigators goal is to collect evidence to be used in a court of law the investigator must follow the prescribed procedures that dictate how evidence is to be handled and how witnesses are to be questioned. This is in order to preserve the integrity of any information the investigator may collect in order for it to stand up in court in the fact of legal challenges from defense attorneys. The investigator is required to follow the Attorney General guidelines which dictate that criminal investigators must meet certain legal predicate criteria before recruiting sources. For criminal investigator in order to recruit a source, a case must be opened that meets the legal standards under those

guidelines. For intelligence officers outside of the FBI there is no requirement to "open a case" before an intelligence officer recruits a potential intelligence source. In fact, there is no legal predicate at all when an intelligence officer identifies someone as a potential source of intelligence. For an intelligence officer, it is the potential access that the source has to valuable information for the U.S. government that determines whether that source is recruited. In contrast, the criminal investigator is concerned with the legal predicate that he must prove before he gets permission to open a case and use the source. There is no legal predicate required in order to either recruit a foreign national or collect against a foreigner. If this is done domestically with respect to American citizens the only requirement by the intelligence officer is that he or she must be transparent in his affiliation with the CIA and his objectives in recruiting the source. Unlike FBI agents, intelligence officers have no law enforcement authority.

The FBI's effectiveness is ties to how the public perceives the Bureau and whether the Bureau is seen as acting within the bounds of what the public considers appropriate action vis-a-via perceived principles of civil liberties. And it is critical that FBI agents are concerned with maintaining a reputation of one that is above the law, based on integrity a respect for civil liberties. As the Director of FBI Freeh emphasized the significance of the FBI maintaining this reputation by emphasizing repeatedly and in most FBI publications the "core values" of FBI that Freeh believed were vital to the survival and effectiveness of the Bureau:

> Personal and institutional integrity reinforce what other and are owed to the nation in exchange for the sacred trust and great authority conferred upon us. We who enforce the law must not merely obey it. We have an obligation to set a

> moral example which those whom we protect can follow. Because the FBI' success in accomplishing its mission is directly related to the support and cooperation of those whom we protect, these core values are the fiber which holds together the vitality of our institution.[1036]

The criminal investigator needs to be concerned with being viewed by outsiders as acting within the law and obeying the civil liberties of individuals because if the investigator does violate any rights or laws this action could compromise a trial and effect the effectiveness of the FBI as a law enforcement organization. The viability of the FBI's criminal cases will depend on the judgment of others about how well they have stayed with the accepted bounds of the rules of criminal procedure, privacy and civil liberty concerns. As the individual FBI agent focuses on prosecutions and measures success based on them, he will discount the value of any analysis or collection of information that is not focused on a prosecution and that will not likely produce the specific results seen from a prosecution.

Within the FBI, on the other hand, there are two very different missions that the Bureau had the responsibility to carry out – investigations of crime and domestic intelligence to counterterrorism. In the past the FBI realized that it was not that good at carrying out the counterintelligence or counterterrorism missions and therefore concentrated its efforts on what it knew it could do well – collecting evidence to bring to justice those that violated the law. The FBI's history reflects its lack of attention to counterintelligence and counterterrorism because of the Bureau's arguably very legitimate concerns that it would run afoul of the public and Congress' perceptions re

[1036] Freeh, A Report, inside cover.

civil liberties and therefore lost its respectability and effectiveness and therefore purpose for existence.

The two missions of criminal investigation and intelligence collection and analysis require very different and conflicting cultures in order for each mission to be accomplished. It is not just about teaching the different individuals different skills in order to perform the different skills. It is accurate that the professionals who serve as criminal investigators need to be trained differently than intelligence professionals do. They will both need unique skills in order to carry out their different tasks. Training alone, however, is not what distinguishes these two professional fields: culture does. A criminal investigative organization made up of criminal investigators will have a unique culture just as an intelligence organization will have a unique culture. The only question is whether these two professional groups with different cultures can function within the same organization. This study argues that the criminal investigative culture of the FBI based upon its history and necessary dependence with complying with already existing laws, procedures and principles is not compatible with the intelligence culture of a yet existing organization that is needed in the U.S. for preventing terrorist attacks within the homeland.

At the CIA, whether someone is an analyst with the DI or an operations officer with the DO they all call themselves "intelligence officers." They see themselves as intelligence officers and nothing else. The CIA has not law enforcement authorities nor to the employees at the CIA want to have such authorities. To intelligence officers having law enforcement authorities that would allow them to subpoena or arrest people

is not what an intelligence officer does. The CIA officers are focused overseas targeting foreigners. In fact, what the 9/11 investigations uncovered is that this identity is so deeply engrained in CIA (operators and analysts) they when they had information about hijackers travel to the U.S. they failed to act upon it thinking that was the responsibility of the FBI to be concerned with domestic travel. At the FBI, however, one is either an "FBI agent" who carries a gun and does criminal investigations or an "intelligence analyst" that does analysis. At the FBI, the agents see the analysts as lessen employees not because they come from different backgrounds or have different training (as the DI and DO at CIA do) but because they the FBI agents believe that they are serving the main mission of the FBI (criminal investigations) while the analysts are not.

Aside from establishing within the organization of the Bureau an analytical cadre that is in conflict with the FBI agents, both serving two different missions of the Bureau, the reforms have required the traditional FBI agents who did mainly criminal investigations focused on prosecutions to become the US intelligence collectors within the United States. The culture of criminal investigators is fundamentally different from an intelligence collector. While with time the FBI might be able to work out its cultural conflict between the analysts and the agents (especially with the help of a better defined mission with more symmetry between the two groups), the culture clash between intelligence collectors and criminal investigations seems to be one that may never be able to be worked out without one dominating the other. The difficulty and likely inability to combine these two cultures within one organization is not due to a lack of

efforts by leadership either. Organizational theorists emphasize that strong leadership that possesses vision is critical to successful organizational change. No one would argue that Jack Welch was short of strong leadership with great vision and yet he sat at the helm of GE and witnessed the failure of the merger of GE and Kidder-Peabody. Freeh and Mueller both are viewed as strong leaders with vision who tried to bring about a cultural change at FBI and both failed in their efforts. Strong leadership will not resolve the problems caused by cultural incompatibility.

Criminal investigations are focused on after the fact events to put the pieces together in a legal matter that complies with the rules of evidence in order to prosecute someone for a crime. The intelligence collector focuses on preventing an event from occurring in the first place. The job requires the ability to think in general terms while identifying patterns and linkages and being able to make estimates. Criminal investigative warrants and indictment are written in terms of certainty with works such as "eye witness" and "evidence" while the intelligence collectors work is based on "estimate" and "judgments." FBI's mission to investigate crime requires its agents to focus on evidence collected within strict procedures to preserve it for court after the crime has been committed. But FBI's mission to prevent another terrorist attack within the US requires the same FBI agents to think and act in a preventive manner before the terrorist event occurs. The two are very different skills that agents can be trained to do but they also require two different cultures to carry out effectively these tasks and that is not something that an agent can be trained on. As in the corporate cases of lower performance with culture incompatibility, one culture will most likely need to dominate

in order for the Bureau to maintain performance. Will it be the intelligence collector culture that dominates or the criminal investigative culture? Either way, the American people loss and the US national security suffers.

Counterterrorism work has both prospective and retrospective aspects. The prospective "precrime" aspects are performed on an ongoing basis and are designed to prevent, deter, and disrupt the activities of those thought to be involved in activities related to terrorism. Involving surveillance of and interventions against people directly involved in groups supporting terrorist action, it also increasingly encompasses measures taken against the support infrastructures for such groups, particularly targeting their financial resources.[1037]

The second dimension to counterterrorism work is more reactive "postcrime" activities and centers upon postincident response. This includes criminal investigations to identify the perpetrators of any attack and to locate any support infrastructure that can be targeted as part of future prevention and deterrence efforts. In the United States, terrorism is both a crime that is and should be prosecuted and it is also an act that the U.S. government must, at all costs, try to prevent from happening. If one wants to prosecute terrorists that function should be given to the FBI arguably the world's most sophisticated law enforcement agency that has demonstrated its ability to bring terrorists to justice in our courts. The FBI has one of the world's leading law enforcement labs and is got a long history of experience and recorded success in

[1037] Mike Levi and B. Gilmore, "Terrorist Finance, Money Laundering and the Rise of Mutual Evaluation: A New Paradigm for Crime Control?" *European Journal of Law Reform*, Volume 4, Number 2, pp. 337-64 (2002).

collecting evidence according to specific guidelines that help to ensure that the evidence collected will be able to be used in court against a defendant. On the other hand, if ones objective is to prevent terrorists from acting in the first place, that intelligence function should be given to an entity that has demonstrated an ability to collect intelligence effectively to prevent a dangerous event for U.S. security from taking place.

Two Missions – Two Cultures

The reformers, the president and the Director of the FBI were creating a new mission, to be equal to the old mission but one that would necessarily have to be supported by a very different culture than the old mission. The elevated mission of intelligence within the FBI would need to be supported by a culture that was dramatically different from the law enforcement culture if the FBI would be truly operating as an intelligence organization. This is particularly the case with respect to the function of the collection of intelligence. As discussed earlier on, the culture of a human intelligence (HUMINT) collection organization like the Directorate of Operations within the CIA is dramatically different from the culture that develops to support the mission of a law enforcement organization like the FBI.

The culture of a HUMINT organization that recruits and handles sources in order to provide strategic analysis on future threats is dramatically different then the culture of a law enforcement organization that collects evidence in anticipation of a criminal trial, always balancing the need to protect the "chain of evidence" and ensure no violations of individuals rights against the need to collect information. FBI agents are the "rules-bound, concrete-thinking men and the CIA officers the more holistic, in-

touch-with your feelings women."[1038] Intelligence looks at the total picture, focusing on the broad, strategic fact patterns. In contrast, criminal investigators are more tactical, they gather specific information in support of specific investigations and prosecutions but with little regard to the broader picture if it does not assist the investigations of the moment.

In deciding that the FBI should maintain its lead position in counterterrorism within the United States, the recommendations called for the FBI to develop an intelligence capability that would support that mission; an analytic capability as well as a collection capability. The result was that the FBI began its efforts to develop an intelligence program that would support that mission. That mission would need to be supported by an intelligence culture as well; a culture that had not been dominant within the Bureau prior to 9/11. In short, the FBI would have two sub-cultures that would exist within the Bureau: (1) the criminal investigators and (2) the intelligence. Ensuring that these two cultures operated effectively together within the same organization would be critical for the Bureau transformation.

Furthermore, the changes that were now required of the FBI demanded that the FBI alter its system of prioritizations. Under Director Freeh the field offices were given the authority to decide what priorities they would address first and then determine when to move on to the next priority. Under the direction of Mueller, however, the FBI's priorities were listed in the order in which they must be addressed and every agent had to run through the priorities in descending order not moving on to the lower priorities

[1038] Interview with Siobhan Gorman, August 2007, Georgetown University.

until the higher priorities were satisfied first. Currently, the FBI's top priority is counterterrorism: "Every FBI manager, Special Agent, and support employee understands that the prevention of terrorist attacks is the FBI's overriding priority and that every terrorism-related lead must be addressed."[1039] The problem with this new priority system, however, is that "every lead must be followed up on no matter how outrage the lead may be. . . . distracting the agents from following up on the more credible leads that come in."[1040]

The next section will look at two examples of corporate mergers that failed in order to illustrate the effects of cultural conflicts within organizations on the performance of the organization. These examples indicate that the FBI may ultimately fail in its merger of equal missions of law enforcement and intelligence.

Two Illustrations: Conflicts Between Sub-Cultures in Corporate Mergers

Mergers of Equals

Within the corporate literature there has also be recognition of the failure of mergers due to conflicting organizational cultures.[1041] In the majority of cases of corporate mergers, performance decreases following the merger.[1042] This fact is often in conflict with the general perception that mergers are good things that are guaranteed to bring increased profitability to a firm. Often times, the supporters of the merger of

[1039] Federal Bureau of Investigation, *The FBI's Counterterrorism Program Since September 2001, Report to the National Commission on Terrorist Attacks upon the United States*, April 14, 2004, pp. 7-9.
[1040] Interview with Dina Corsi.
[1041] Jack Welch with Suzy Welch, *Winning*, New York HarperCollins, (2005), pp. 217-225; Jack Welch with John A. Bryne, *Jack: Straight From the Gut*, New York: Warner Business Books, (2001).
[1042] D.J. Ravenscraft and F. M. Scherer,"Life after Takeover," *Journal of Industrial Economist*, Volume 36, Number 2, (1986), pp. 147-156; D. J. Ravenscraft and F.M. Scherer, "The Profitability of mergers," *International Journal of Industrial Organizations*, Volume 7, Number 1, (1989), pp. 101-116.

the firms will overestimate the expected performance of the merged firm and will erroneously attribute the decrease in performance to members of one or both of the firms (blaming individuals for resisting change and new ways of doing business) rather than to situational difficulties created by conflicting cultures.[1043] Recently more research has been done to examine the role of culture in merger failures.

Mergers, like acquisitions, in the corporate world have been viewed as beneficial because they are seen as a way to give a firm a faster way to have profitable growth rather then taking much more time to develop organic growth from within the firm. Merging firms as equals has had some success and has been seen as one way to successfully increase profitability quickly. Conceptually this makes sense, you combine the skills, assets and profits of two firms that are equal of strength and importance and both firms can view themselves as of equal importance which can minimize friction. Recently, however, some CEOs have pointed out the flaws of "mergers of equals" and the reality that in the end, the merged firm's performance drops and the merger is seen as a failure.[1044]

Daimler-Chrysler Merger of Equals

In -, the German company Daimler entered into a "merger of equals" with the American owned company Chrysler. Leading up to the merger there was a great expectation that the merger would be successful and bring higher profits to the

[1043] Roberto A. Weber and Camerer Colin, "Cultural Conflict and Merger Failure: An Experimental Approach," *Management Science*, Volume 49, Number 4, April 2003, pp. 400-415.
[1044] Welch, *Winning*

shareholders of both companies.[1045] Prior to the merger, both firms were performing quite well.[1046] The hope and expectations of those that planned the merger was that by bringing the two firms together each firm would be able to benefit from the strengths and capabilities of the other thereby increasing overall performance. Performance after the merger, however, was dramatically lower than expected, especially within the Chrysler division.[1047] Differences in the cultures of the two organizations were found largely to be the cause for this failure.[1048]

Some pointed out that the fatal mistake of those that put together the plans for the merger was that they did not have a "thoughtful pre-deal analysis of cultural fit." Because of their different cultures, the Germans and the Americans operated very differently and the different functional units run by the Americans and the Germans (operations versus management) were never successfully integrated as "equals." The Daimler-Benz's culture stressed a more formal and structured management style, Chrysler favored a more relaxed, freewheeling style. The two units also had very different ideas on critical aspects of the internal operations of the company like pay scale and travel expenses. Ultimately, as the German unit obtained dominance over the American unit and the culture differences continued to cause friction, performance and employee moral within Chrysler dropped. Large numbers of employees and executives

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[1045] W.J Cook, "Maximum Merger," *U.S. News & World Report*, May 18, 1998, Volume 124, Number 19, pp. 45-47.
[1046] Ibid. at 45-47.
[1047] *CNN/Money*, Daimler to Repair Chrysler, *CNN/Money* online. http://www.money.cnn.com February 26, 2001; *CNN/Money*, Chrysler to Cut 26,000 Jobs, *CNN/Money* online http://www.money.cnn.com February 29, 2001.
[1048] B. Vlasic and B. Stertz, *Taken for a Ride: How Daimler-Benz Drove Off with Chrysler*, New York: William Morrow & Co., (2000).

left Chrysler. Chrysler's performance continued to drop and the Chrysler employees blamed Daimler for its performance drop. In particular, Chrysler blamed its poor performance on Daimler's attempt to take control of the organization and force the Daimler culture on the entire organization.

While conceptually a merger of equals made sense for Daimler and Chrysler in practice it failed. The end result, however, after two years of struggling to resolve differences between the two entities the merger of equals failed as performance plummeted.[1049] Ultimately, Daimler took over and dominated. What started out as a merger of equals ultimately ended up as a takeover by Daimler in order to improve the performance of the merged entity. One management system was installed, one culture was developed and one strategy was implemented. This was the only way that "the steep drop in performance would stop and positive performance could begin."[1050] In describing the failed Daimler-Chrysler merger, Jack Welch stated, "Someone has to lead and someone has to follow, or both companies will end up standing still."[1051] For the Daimler-Chrysler merger it was critical to the overall performance of the organization that one culture dominated. The dilemma for the US government in the merging of the criminal investigative function and the domestic intelligence function within the same organization is not as easily resolved as with Chrysler.

It may be that ultimately, one culture will need to dominate within FBI in order to have overall effective performance. The only question is which culture it will be. No

[1049] Welch, *Winning*, p. 223; Welch, *Jack: Straight from the Gut*, p. 389.
[1050] Welch, *Winning*, p. 224.
[1051] Ibid.

doubt there will be costs no matter which one culture prevails. As we learned from the 9/11, the U.S. cannot afford to have the critical function of domestic intelligence to detect and prevent terrorism from attacking the homeland again take a back seat to anything including FBI criminal investigations. Although Mueller has stated that he is confident that both missions will be maintained as top priorities at the FBI, the FBI's track record does not provide much confidence in that happening.

On the other hand, there has been concern that as the intelligence function has been gaining momentum at the FBI, resources and attention has been diverted away from the important criminal investigative function of the Bureau. Some believe that since 9/11 the FBI's "cross-border drug war efforts has taken a back seat to terrorism."[1052] The statistics indicate that "drug seizures are down but drug usage is unchanged" so the logical conclusion reached by many analysts has been that "enforcement has been undermined" in the post-9/11 FBI environment that calls for terrorism to get priority. In the San Diego County area, "drug seizures by U.S. Immigration and Customs Enforcement in the three-year period after Sept. 11 were down 43 percent from the three-year period before the attacks."

GE-Kidder Peabody Merger of Equals

Another example from the corporate literature that illustrates the critical role of culture in mergers is the Kidder, Peabody acquisition by General Electric in 1986. Once again, to those that planned the merger, the expectation was that bringing together the strengths of Kidder, Peabody with its deal-making expertise with GE's money and

[1052] Kelly Thornton, "Anti Drug Efforts Have Taken a Hit as the Fight Against Terrorism has Siphoned Away Money and Personnel," *The San Diego Union-Tribune,* July 31, 2005, p. A1.

management expertise, the merged firm would be able to leverage these different strengths of the two firms that they otherwise couldn't do without the merger and thereby increase profitability and offer clients what no other company could, "'a one-stop shopping center' for leveraged transactions."[1053] There appeared to be a strategic fit between the two firms but most observers and merger planners failed to see that there was a cultural misfit that could potentially be fatal for the merged firm.[1054] Rather than try to understand the complex nature of culture or analyze the likely outcome of merging two incompatible cultures in a corporate merger, the solution for those planning the merger was "declare cultural fit and to allow the merger to go forward."[1055]

Prior to the merger, Kidder, Peabody was a very profitable investment bank. The culture of Kidder, Peabody was one that supported and emphasized entrepreneurial employees who had a lot of free reign in their own operations. The Kidder employees were rewarded for their work by receiving large bonuses based on their individual performance. Independence was highly valued by Kidder employees and the bonus system supported that when individual performance was good. GE, in contrast, including its financial unit that was responsible for overseeing the Kidder acquisition, GE Capital, was an example of corporate management based upon a culture that emphasized teamwork.

At GE the success of all employees was tied to the success of the company. The culture was one based on the principle that profitability is a result of teamwork and

[1053] Leslie Wayne, "Remaking Kidder in GE's Image," *The New York Times*, January 29, 1989.
[1054] Jack Welch, *Jack: Straight from the Gut*, New York: Warner Business Books (2001).
[1055] Ibid.

collaboration. This teamwork culture was supported by processes and procedures (like promotions and bonuses) as well as the CEO Jack Welch's belief that "there is only one equity currency in GE - - and that is GE stock."[1056] When some GE employees in GE Capital equity group wanted a piece of the equity in the deals that they were investing GE money in, Welch said "take a hike." As Welch saw it, and as GE's culture reflects, teamwork would be the defining characteristic of work at GE and therefore exorbitant bonuses, like some in other firms were receiving, would not be how individuals would be rewarded for good performance. Rather, they would receive GE stock, "different amounts for different levels of performance."[1057]

General Electric implemented its philosophy and culture in the Kidder, Peabody group. That was not received well by some of Kidder's best performers and Kidder employees began to leave. This exodus hurt the profitability of the Kidder group. Meager bonuses to the Kidder employees also accelerated the exodus. The thought at Kidder was that personal success and the success of the firm was not linked. In 1988, the Kidder employees were angered because after they had produced $145 million of GE's pre-tax profits, the Kidder employees had received only $48 million of GE's $120 million bonus pool. Ultimately, GE sold Kidder to Paine Webber in 1994 for $670 million. The net cost to GE was estimated to be $170 million.

CEO Jack Welch stated that from this experience he learned that "culture does count, big time." In future corporate opportunities Welch used the lessons learned about the cultural impact and he based on the lessons he declined numerous

[1056] Ibid. at 237.
[1057] Ibid at. 229.

opportunities to acquire high-tech Silicon Valley firms that appeared to be good strategic fits with GE in the late 1990s because he recognized the culturally incompatible of these firms with the culture at GE.[1058]

Like people, organizations and corporate companies, have unique and often very different cultures. And often, similar to the cases of Diamler-Chrysler and GE-Kidder, merger planners underestimate how severe, important and persistent conflicts in culture can be. When two joined firms differ in their cultures to the point that the cultures are incompatible, this can create a source of conflict and misunderstanding that prevents the merged firm from realizing economic efficiency. Often, the extent of these conflicts is unexpected because observers focus on the tangible aspects of firms' practice and ignore aspects that are more difficult to measure such as culture. This leads to an overestimation of the value to be gained by the merger of the two firms.

An Analysis: Government Mergers of Equals

The Military: One Strong Mission & Separate Command Structures

In his book *Bureaucratic Politics and Foreign Policy*, Morton Halperin describes how "the different military services within DOD had very different cultures . . . . and yet even though there were problems involved in managing multiple cultures between the services, DOD has still be able to function effectively overall."[1059] Although the tasks varied among the services, they all were focused on one overall strong department wide mission: to defend the United States using military might. Each service had their own tools in which they sought to carry out this mission and there even

[1058] Ibid. at. 229.
[1059] Morton Halperin, *Bureaucratic Politics and Foreign Policy*.

was rivalry between the services with all services arguing that they were more critical to that mission, but they all had the same mission.[1060]

The CIA: One Strong Mission & Separate Command Structures

In his 1986 memoir, former DCI Robert M. Gates related that each CIA directorate remains a "distinct, very different bureaucratic culture."[1061] These subcultures, which often foster bureaucratic politics, result from groups of employees possessing disparate functions, values, backgrounds and mindsets. These two very different cultures of the DO and the DI at CIA, however, have been able to co-exist in harmony within CIA over the years and have not detracted from the overall performance of the organization. There are two basic reasons for this: (1) there is one central mission of CIA and (2) there is a structural "protective chain of command" for each of the two directorates.[1062] At CIA, there is one clear overall mission for the entire organization – to function as a foreign intelligence organization. Both the analysts and the operators (collectors) see their jobs as supporting that mission of providing the organization's customers with the timely and accurate foreign intelligence information (FI). The operators within the DO collect the raw FI and the analysts within the DI evaluate and assemble that information, along with additional information gathered through other sources (SIGINT, open source, etc) and create a finished analytical product for the customer.

[1060] Ibid.
[1061] Robert M. Gates, *From the Shadows: The Ultimate Insider's Story of Five Presidents and How They Won the Cold War*, New York: Simon & Schuster (196), p. 32.
[1062] This idea is attributed to John Gannon who mentioned this insightful point to me during my interview with him on 2-25-08.

Analysts within the directorate of intelligence come from a different pool of applicants with different academic credentials then case officers hired into the directorate of operations. Analysts usually have advanced degrees as well as language skills and country area expertise. Case officers may come from very different backgrounds – real estate agents, teachers, etc. That's not to say that operators do not have advanced degrees but the specific degrees they have are often different than the analytical cadre of advanced degrees. The individuals in these two groups will also be trained differently. The operators will go to the Farm where they will spend 2 years taking part in classroom exercises that concentrate on recruiting tradecraft and surveillance detection. They will also take part in outside physical training involving evasive driving, firearms training and explosives training as well as physical fitness exercises. An analyst on the other hand will usually start working immediately at a desk job at headquarters learning the job "on the job." That analyst, depending on his level of education may be sent off to language training. The intelligence analyst and the intelligence operator are trained differently and are recruited from different pools of applicants with different backgrounds. This makes sense since the day to day job of the analyst is different from the operator. The job descriptions, career track and promotion criteria for analysts and operators differ.

While the CIA employees that work within the DI and the DO tend to come from very different backgrounds and pedigree, both of these groups see themselves as intelligence officers supporting a foreign intelligence mission. The overall identity of these individuals as intelligence officers bridges the gap between the two different

subcultures as both groups work to support the mission of intelligence activities. While there may be professional competition between analysts and operators which leads to "prestige hierarchy," with the DO at the top, these status differences have not threatened goal attainment by the CIA because the goals and mission is clearly defined; DI analysts and DO operators both understand their mission to be the same – foreign intelligence. They merely perform different tasks at different points along the intelligence cycle. While typically understood as the DO officer collecting raw data first and reporting it to the analysts who then act upon it and produce finished intelligence the analysts also should be tasking operations based upon their analytical work. The point is that no matter who comes first or second in their job tasks in the intelligence cycle (analyst or operator) they both are working in support of the same mission of the organization; foreign intelligence.

In other words, because the CIA has been endowed with so strong a sense of mission the CIA has been able to manage the different cultures within the organization. With one strong mission the CIA workforce as a whole has developed an identity under which each employee sees himself foremost as an intelligence officer and not necessarily a member of a particular professional culture such as the DO or DI. The goals of CIA are so clearly defined that its core tasks are well-understood by all of its members across different cultural occupational divides. On the other hand, for many working at the FBI there is confusion as to what the FBI's mission is now after 9/11; it is law enforcement or intelligence. There is no "strong sense of mission" that would

support an environment under which the two cultures could co-exist without taking away from the overall performance of the Bureau.

Furthermore, at CIA both of the directorates, the DI and the DO, have a command structure that serves to protect the integrity of each of the directorates – its function within the organization as well as the employees serving within each directorate. Each of the directorates has its own hiring guidelines, career assessment and promotion systems and training requirements. Within both the DI and the DO there are managers and senior analysts and operators that provide both mentoring and OJT to new and existing officers. This structure of two different systems built around the two directorates (and therefore their two cultures) allows there to be a form of protection the preserves the integrity of the work of both directorates. For example, if there was a disagreement between an analyst within the DI on an issue and an officer from the DO, each of their chains of command would support their own employee, thereby ensuring that the two sides of the issue had proper airing and a fair determination was made based on that airing. Irrespective of which side won on the issue, this process allows for the preservation of the integrity of each directorate (the function it fulfills) and the protection of the employees in each directorate from being tried as second class citizens.

The FBI: Two Separate Missions & No Separate Command Structure

Unlike the CIA, the FBI has no such command structure that insulates and protects the intelligence cadre from the historically dominate criminal law enforcement investigators within the Bureau. The intelligence analysts that exist at FBI have "no status in its insular and hierarchical culture, because they are not law enforcement

officers."[1063] Because of this, within the Bureau, the intelligence professionals will continue to be treated as "furniture" as long as the power belongs to the special agents from the criminal division who preside over the fifty-six field offices distributed throughout the United States.[1064] As long as intelligence analysts within the FBI are not given equal stature within the Bureau with the criminal agents, there is little likelihood that the intelligence culture will ever be able to co exist with the law enforcement culture within the FBI.

Being able to retain its qualified talent as the FBI hires new intelligence analysts will be critical for the Bureau as it undergoes the development of an intelligence capability and enhances its counterterrorism and counterintelligence programs. Retaining these analysts, however, may become difficult for FBI if the analysts continue to be undervalued or relegated to second best after the agents. According to the Inspector General report issued by the Department of Justice in May of 2005, the IG found that analysts hired within the past 3 years were less satisfied than earlier hires by FBI.[1065] The report further found that 22 percent of the FBI's current analysts reported that they planned to leave the Bureau within the next five years – for those hired in the last 3 years the comparable proportion was 35 percent. Only 16 percent of those hired since 2002 say they are "very likely" to stay for the next five years.[1066]

[1063] Daniel Benjamin and Steven Simon, *The Next Attack: The Failure of the War on Terror and a Strategy got Getting it Right*, New York: Times Books (2005), p. 252.
[1064] National Academy of Public Administration, "Transforming the FBI: Roadmap to an Effective Human Capital Program," September 2005.
[1065] U.S. Department of Justice, Office of the Inspector General, Audit Division, "The FBI's Efforts to Hire, Train, and Retain Intelligence Analysts," Audit Report 05-20, Amy 2005, pp. xii-xiii.
[1066] Ibid.

Today, these special agents-in-charge (SACs) are still driven by the "crime-busting" needs of the localities where they are based not only because they believe that "bin Laden is never going to Des Moines," but because dealing with crime is better for an agent's career at the FBI. [1067] In the work involved in investigating crimes there are easy metrics for success that can be easily identified - number of arrests an agent makes – in evaluating an agents performance for promotion purposes. In contrast, in the murkier area of counterterrorism and intelligence investigations there are no easily identified metrics that can be easily applied to measure success. As far as professional advancement, an agent is best advised to stay out of the business of counterterrorism and intelligence at the FBI.

Historically, the criminal law enforcement mission inside the FBI has been very strong. In fact, that mission was strong enough that the FBI was able to resist any new tasks that outsiders tried to place upon it that the bureau saw as threatening to its core culture.[1068] For example, the FBI resisted taking on the task of investigating organized crimes and narcotics trafficking because the bureau viewed these types of investigations as potentially threatening to the bureau's culture. In rebuilding the public reputation of the bureau, Hoover's bureau's policies were meant to ensure that agents would not revert back to past behavior involving corruption or any activity that could be ethically challenged. For Hoover, undercover work would place his agents in very precarious positions. This threatened the culture of the bureau and therefore the bureau resisted

[1067] Quote from a 2004 interview with a special agent in charge, quoted in *The Final Report of the Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction*, March 31, 2005, p. 453.
[1068] Halperin

these new tasks. The bureau culture dictated that agents would investigate crimes that had already been committed. In doing these types of investigations, bank robberies and kidnapping, the agents would interview victims and witnesses and work with the physical evidence.

Narcotics trafficking and counterterrorism investigations, however, posed a much more complicated dilemma for the FBI and threaten its core culture. With these crimes there are usually no victims or witnesses for agents to interview. In fact, there is usually no crime that has occurred yet. In order to detect a potential drug deal or terrorist act by a terrorist, an FBI agent has to either recruit an informant who is part of those organizations or become a member of the organization. Working undercover in these organizations is not only difficult and dangerous for the agent but it opens the bureau up to allegations of participating or supporting illegal activity or being corrupt. By working with paid informants the agents could be viewed as supporting or condoning the illegal activities of the informants as they infiltrated the target organizations. If the agent infiltrated the organization himself, the agent could come under suspicion of "going naïve" and becoming involved in the illegal activities of the organization. These types of investigations that often consisted of preventing a crime from taking place have the potential of creating embarrassment for the FBI as well as public criticism.

By limiting its investigations to crimes that already had been committed the FBI would be able to avoid any appearances of impropriety or political motivations. This was the G-Man image that Hoover created for the bureau. This image of the G-Man

was a symbol of the Bureau culture – one in which agents would shy away from any tasks that they thought could led to the loss of public support of the bureau's activities. The many recent scandals that have become public regarding FBI's abuse of National Security Letters in support to its counterterrorism function have only confirmed FBI's concerns about these types of investigations and the bureau's desire to stay away from them.

Prior to 9/11 FBI had a culture that was shared across the Bureau widely and served to support the goals and mission of the bureau. After 9/11 and the presidential directive to reform the FBI, the FBI was given a second mission that would be added to the first law enforcement mission of the FBI. It was noted by many analysts that it was important that these two missions (LE & CT) be given the same priority and level importance in the overall operations of the FBI. And Mueller has made much headway in changing internal procedures and regulations to ensure that these two missions are treated as equals within the bureau (so the two career tracks see themselves as equally valued in the org). Many observers recognized as well that in order to support the new mission, there would have to be a cultural change at the FBI. What most people didn't recognize was that each of these missions required a unique culture in order to support the specific mission. These two cultures that would be necessary to fulfill the FBI's responsibilities, as both the U.S. government law enforcement agency and counterterrorism agency are not only different but incompatible.

The merger of the intelligence branch (NSB) with the criminal investigation organization of the FBI reflects a lack of a "thoughtful analysis of the cultural fit"

between the two different cultures. In the drive to fill in the gaps in security identified by the 9/11 Commission reformers hastily moved to fix the problem in our domestic intelligence capability as quick as they could by declaring that that function would be merged with the FBI. In their rush to address the problem that was identified after 9/11 the reformers failed to carefully examine and analyze the cultural fit between these two different functions and cultures. Rather they focused their analysis on the tangible aspects of the two organizations (what would the hiring and training processes be like, what technologies would be necessary, what budgets would be necessary). It is understandable how culture would have been ignored; it is a much more difficult concept to understand and it is difficult to measure. As they failed to analyze the cultural fit of this merger, they appeared to operate under a false assumption that the two different cultures that they were merging were either compatible and could work together under one organization with certain structural changes like training and incentives or that there could be a forced change in culture at the FBI by implementing the same changes.

Organizational Change: How Structure Can Impact Performance

There is ample evidence in academic studies of the human dynamics of organizations that offer compelling evidence that the structure of organizations is a major determinant of employee behavior.[1069] Indeed, corporate experts in organizational change assert that the ultimate success of any organizational change

[1069] P. G. Simbardo and F. L. Ruch, *Psychology and Life*, 9th ed, Glenview, IL: Scott Forsman (1977); James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It*, New York: Basic Books (1989).

effort depends on how well the organization can alter the behavioral patterns of its employees. This relationship is substantiated by organizational theorists who assert that, "most 'people' problems really stem from structural flaws rather than flaws in individuals."[1070] It has been shown that behavioral change can be forced in a desired direction by altering the structural components that would support a particular behavior.

With the proper structure and design it is possible to overcome internal resistance to change and allow for the change process to take place that would lead to the desired behavior. On the one hand, attempts to initiate organizational change or reform that focus solely on changing the behavior of front line employees without consideration of the impact of the structure of the organization will fail. On the other hand, reform attempts that focus only on the organizational chart, ignoring the effect of culture on organizational change will also fail. As James Q. Wilson, an expert in bureaucracy, observed, "The least successful reorganizations have been those that sought to change the behavior of frontline agency personnel or otherwise alter the programmatic outputs of the agency." [1071]

While organizational change can occur specifically through structural alterations, the magnitude of that change will vary depending upon the type of change that is desired, its purpose and the organizational culture of the organization. According to Wilson, in any reorganization of government bureaucracies one must first identify the

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[1070] L.G. Bolman and T.E. Deal, *Reframing Organizations: Artistry, Choice and Leadership*, San Francisco: Jossey-Bass, (1991), p. 355; D. Schon, *Beyond the Stable State*, New York: W.W. Norton, (1971), p. 34.

[1071] James Q. Wilson, "Thinking About Reorganization," in *U.S. Intelligence at the Crossroads: Agenda for Reform*, eds., Roy Godson, Ernest May and Gary Schmitt, Washington, DC: Brasseys (1995), pp. 28-35.

desired goal of the organization, determining the appropriate operating culture that will be necessary to effectuate that goal and then to try to design an organizational structure to create and sustain that culture.[1072] With an understanding of the appropriate culture required to obtain the goals of the organization, reformers can envision the type of structure that would facilitate the necessary changes in the organization.

Among the general theoretical issues underlying the introduction of innovative organizational change is that of discovering the kind of organizational structure that will support and sustain the planned change. In the field of organizational studies, however, organizational change is one of the least developed areas of organizational study.[1073] Even Charles Perrow, in his lengthy analysis of failures of complex systems, he fails to consider how the system or organization must change in order to maximize success and minimize the chances of failure. It is just this lack of a general theory to guide organizational restructuring that has left reform advocates challenged to discover the kind of organizational structure that will maximize the probability of institutionalizing domestic intelligence capabilities within the Unites States bureaucracy. This chapter argues that only with an analysis of organizational culture and its role in organizational change will a theoretical and practical analysis of restructuring be possible in the realm of increased US domestic intelligence capabilities.

Different Types of Organizations

Determining what specific structure will suit an organization will depend upon what type of organization that is at issue. For certain organizations like the CIA and the

[1072] Ibid.
[1073] A.G. Bedeain, *Organization: Theory and Analysis*, Hinsdale, IL: The Dryden Press (1980).

FBI where it is difficult to predict the specific "output" or day-to-day work of the organization or easily measure success (the "outcome" or results of the organization), the decision about the appropriate structure will largely depend on determining first what culture will be necessary in order for the organization to carry out its objectives.[1074] For these types of agencies it is not clear in advance what the results of the organizations should be; in other words, there is no clear understanding of how the work, or output, of the organization will effect/change U.S. national security. Unlike efforts to reorganize agencies whose work and results are usually observable, with these agencies reform efforts must be focused largely on determining the current culture of the agency and/or the change in culture that needs to take place in order to determine what organizational structure is appropriate to support the objectives of the organization.

In these organizations where the tasks are difficult and hard to anticipate, the employees must be trusted to define the ambiguous problems that they face and take appropriate action to solve the problem. In working together to accomplish their work, these employees conduct their tasks in certain ways based upon the norms of the group or organization. In solving problems in the course of their work, the members of the organizations develop specific identities about themselves and others around them. These beliefs and ideas of how work is to be carried out does not come from a handbook or blueprint. Rather it comes from the interaction between the individuals in the group. Even if the core part of the organization, its headquarters, would prefer to

[1074] Wilson, Crossroads, Wilson, Bureacracy, p. 158-171.

have agents follow a carefully drafted script dictating the specific actions an agent ought to take in conducting his work, this is not possible for all circumstances because in organizations like the FBI not all work or results can be knowable in advance. Therefore, to a large degree (more so then employees of the IRS whose work and results can be observed and anticipated in advance) FBI agents work by necessity will involve a certain degree of autonomy and trust from executives of the FBI and others because the details of their work is often unknowable. If the FBI agent's activities are unobservable or esoteric there is the possibility of "moral hazard": the agent may shirk his duties or worse subvert the work of others.[1075] For example, as the work of agents is done outside the review of others often, they could violate the law. Therefore, more so then in other types of organizations, there needs to be a certain level of trust towards the members of organizations with unobservable outputs.

Similar to Orr's technicians in the field (in communities of practice) who are trying to solve technical computer problems,[1076] these FBI agents will interact with others to solve problems that arise in the course of their work in ways that are not necessary outlined in a handbook or even knowable in advance. This interaction and the identities that are developed during this process is the site where the culture of the organization is created, reinforced, or potentially subverted for a new culture. What ever that culture may actually look like, it is a critical aspect to the effective functioning of the FBI agents in their attempts to carry out the objectives of the organization in an environment of uncertainty and ambiguous and changing challenges. The culture of the

[1075] Wilson, *Bureaucracy*; Posner, *Countering Terrorism*.
[1076] Julian Orr, *Talking With Machines.*

organization will bind the members together, and to the organization, in their efforts to carry out their tasks even if the precise results may be unknowable even to them. The culture is the essence of the organization. Facing even dangerous tasks at times, it is the culture of the organizational members that bind members together through peer group support, embedded expectations about the appropriate behavior and established identities as members of the organization. Culture is most critical in achieving success in work tasks in these types of organization where measurement of success may be difficult and at times impossible and members may only have their culture bonds with others (their pride in their identities as members of the organization) that serves as intangible rewards and recognition.

Having a strong mission and an identifiable culture is more important to the effective functioning of organizations like the FBI, the CIA or the DEA then for those organizations like the IRS or the Department of Motor Vehicles where the work of the members can be known in advance and the results from this work can be measured.[1077] In these organizations, the members can be recognized with performance awards because their output is usually observable in great detail and executives can trace their work to visible results. For those organizations that produce results that can be identified in advance and evaluated fairly easily, culture is not as critically important to the success of the organization because there tends to be less ambiguity in the work tasks of these members.[1078] Rather, because it is possible to known in advance the tasks required to accomplish the outcomes desired from these organizations, specific

[1077] Ibid.
[1078] Ibid. at 31.

guidelines and blueprints can be provided to members to be followed in carrying out those tasks, creating less of a need for innovative behavior ("thinking on your feet") to solve a problem and less of the need for a common identity that binds members together to face unexpected and difficult challenges – a culture that will provide members with norms to follow which provide some expectations for behavior and some stability in the mix of sometimes great uncertainty. For those organizations that do not produce results that can be easily identified in advance and whose results may be harder to evaluate because they are not always readily visible, the culture of the organization is critically important to its effective functioning.[1079]

The culture of these organizations brings members together with a clear understanding of their mission. While the individual performance of these members may be hard to determine, evaluate and reward because the work and results may not be visible the cultural identity among the members may not only function to improve performance of tasks but also as a means for intangible rewards to members through a sense of belonging and camaraderie among the members that the culture helps create. It is likely that within these organizations there will be less of an ability to use a tangible rewards system to motivate members. It is important in these organizations (more so than in the other types of organizations were tangible results can be recognized with tangible rewards) to have other methods (albeit intangible methods) to ensure members are motivated. A strong sense of culture can serve to motivate members of the organization.

[1079] Ibid.

In thinking about imposing organizational reforms on these types of organizations, the difficulty is in assessing the culture of the organization. This could mean assessing the culture or cultures that already exists within the organization or a new culture that you seek to establish within the organization. In these types of organizations where results are uncertain it is a challenge to determine the best type of culture that is desired for the organization. To illustrate this difficulty, take the case of the FBI. In the FBI the outputs (or work) of FBI agents are the interviews conducted, the affidavits signed, the investigations initiated and the arrests made. These outputs may or may not be observable but you can a general idea of what the work of an FBI agent entails. For instance, the act of an FBI agent recruiting an intelligence source is, hopefully, not observed. Yet we have a general understanding that part of an agents work includes recruiting sources because recruiting sources is a necessary function of operating as an intelligence organization. The outcome, or results, from this work, however, is less predictable or observable. It is likely that the changes made in the world or the U.S. community that stem from the recruitment of an intelligence source may never be known. This, of course, makes it very difficult to measure the success of the FBI's day-to-day work. Without observable and measurable results how does one assess success? Without knowing the likely results of the FBI agent's work, how can a determination about culture be made?

For instance, if you don't know for certain what results will follow from the FBI agents' recruitment of intelligence sources or opening investigations it is not easy to identity the type of culture that is most appropriate for the FBI. The key to determining

the appropriate culture is in understanding the important processes that we want to see developing within the organization despite not knowing for certain what the ultimate results will be.[1080] For instance, those responsible for reorganizing the FBI may not know for certain the outcome of the FBI's recruitment of a source (will that source provide valuable information? Will he have access to a terrorist group and provide information that leads to the prevention of an attack in the United States?) but the idea that the FBI needs to have an established capability for recruiting intelligence sources is a key process that needs to be understood. Once there is a clear understanding of what a true intelligence collection program is about (to include the function of assessing, recruiting and handling sources) even though you still may not know the likely results from such a program, you can make some determinations about the appropriate culture that the FBI must possess in order to then (and only then) determine the best organizational structure to create based upon an understanding of how that chosen structure will increase the chances of that specific desired culture being creates and sustained. When dealing with reforms efforts of these types of organizations, it is imperative to first determine what type of operating culture is desired or needed to produce "among rank-and-file employees and then to design an organizational structure that will increase the chances of that culture being created and sustained."[1081]

[1080] James Q. Wilson, "Thinking About Reorganization, in Roy Godson, Ernest May and Gary Schmitt, eds. *U.S. Intelligence at the Crossroads*, Washington, DC: Brassey's, pp. 28-35, 30.
[1081] Ibid. at 30.

Managing Cultural Change

In recommending that the FBI function both as a law enforcement agency and an intelligence agency the reformers assumed that the organizational cultures to support these missions would be compatible. This assumption may have been based upon the idea that Mueller testified about – that the function of intelligence is organic to the FBI's investigative mission.[1082] Mueller and other argued that the intelligence and law enforcement were mutually reinforcing disciplines that could operate effectively within the same organization.[1083] These conclusions, however, were derived with little or no attention to the organizational cultures that were critical to each of these functions. In other words, no real thought was given to the difficulties of establishing an intelligence culture within the FBI and the potential results of these two different cultures operating within the same organization. Furthermore, in failing to make these assessments about the cultures, the reformers failed to design an organizational structure for the FBI that could have increased the likelihood of the creation of an intelligence culture and the positive correlation between the two cultures. Furthermore, the reformers place too much weight on the ability of a leader to bring about change within an organization. Organizational theory in the area of cultural change has shown that individual leaders will have limited power within an organization to make widespread and "sticky" cultural changes.[1084] This is especially the case when the leader is not a "founding leader" of the organization; rather he is a leader who has inherited an "old" and well

[1082] Robert S. Mueller, III, Director, FBI, in U.S. Congress, Senate Judiciary Committee, July 23, 2003.
[1083] Louis Freeh, testimony before the 9/11 Commission.
[1084] Wilson, *Bureaucracy*

established organization with a deep culture and a long history of "the way things are done here."

The point here is not to argue that groups with different cultures cannot work together towards a common goal or that cultures do not change. Rather the point is that when confronted with conflicting subcultures within an organization, there has to be careful consideration of how to structurally design the work of these different groups within the organization so as to develop alignment and mutual understandings between the two groups. The choice of the design or organizational structure within which the different cultures operate will impact the effectiveness of the work of both groups.

If the FBI is to remain both a criminal investigative organization and an intelligence agency then its structure will need further redesigning in order to develop an effective linking mechanism between the two very different cultures (law enforcement and intelligence) that are necessary to support these different functions. After 9/11 Director Mueller vowed that the FBI would refocus its efforts and concentrate on counterterrorism. In seeking to improve the FBI's performance in intelligence activities, Director Mueller consolidated and centralized control over the Bureau's fragmented intelligence capabilities, both at FBI headquarters and in the FBI's field offices.[1085]

[1085] Robert S. Mueller, III, Director, FBI, statement, in U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Commerce, Justice, State, the Judiciary and Related Agencies, June 18, 2003. As part of the Director's plan to centralize control, the Director: (1) established a new Directorate of Intelligence within the FBI; (2) established a new position of Executive Assistant Director for Intelligence (EAD-1); created a new Office of Intelligence; (3) established a National Joint Terrorism Task Force; (5) created Field Intelligence Groups (FIGs) in the each field office; and (6) created a National Security Branch within the FBI.

The Role of Founding Leaders on Organizational Culture

In seeking to understand the culture of an organization like the FBI it is useful to examine the history of the organization and its founding leaders since founding experiences for an organization are particularly important to the development of a particular culture or cultures of an organization.[1086] Furthermore, these founding experiences can dictate for future years what culture that organization will have even in the face of internal and external pressures to change that culture. The formative experience of an organization can be largely determined by an early founder of the organization who shapes and interprets that formative experience in a profound way that affects succeeding generations.[1087] That founder can be central to the development of a strong mission for an organization that can lead to a particular culture developing with an organization. The point of creation of an organization is arguably the easiest time in the life span of an organization for a leader to have a lasting impact on the organization and to develop a strong mission -- before any legal or political restraints have been placed on the organization and history has not yet affected the organization.

The longer an organization has existed the more likely will it be that its core tasks are defined in ways "which minimize the costs to the operators performing them" and increases the costs to the workers to change those tasks making it less likely that change could be brought about.[1088] Public organizations, like government agencies, are usually created by detailed statutory laws that provide boundaries for the organization

[1086] Wilson, *Bureaucracy* at
[1087] Ibid.
[1088] Wilson, *Bureaucracy* at 232.

with respect to its authorities and limitations. Those leaders who can be involved in running these organizations before these laws are put into place will likely have the opportunity to have a lasting impact upon the organization.

Typically, the head of the government agency will have less ability to impose his own will and ideas upon the organization and will less likely have a significant role to play in developing a particular mission for an organization but would be limited by the legal and political constraints. However, even with heads of government agencies, if the leader is one of the early founders of the organization he can play an integral role in the development of any legal or political parameters placed on the organization which would allow him to exercise more of his own will upon the mission and culture of an organization. For those organizations that are not burdened by legal and political constraints, including at time government agencies, the founders will have the greatest influence in creating a central mission of the organization.

In examining the role that early key leaders have on the culture of an organization, Schein details how founder beliefs and presumptions form the basis of a new organization's culture.[1089] He further theorizes that organizational culture evolves over time from the original assumptions and beliefs of the founder through a process of "hybrid" evolution. He proffers that while such evolution is driven by new beliefs and assumptions developed from organizational learning and environmental factors, the organizational culture will remain "congruous with the original cultural paradigms for

[1089] E. Schein,

many generations."[1090] The process by which a founding leader imposes his or her will on the first generation of operators in a way that profoundly affects succeeding generations is referred to as a process of "imprinting."[1091] According to Schein it is at this initial stage of the process that the founder has a major impact on how the organization solves its external survival problem and internal integration problems.

The FBI's Founding Leader

There are certain "formative experiences" of an organization such as its creation when an organization can be fundamental affected by an individual. For example, James Q. Wilson describes FBI Director Hoover as having a profound impact on the culture of the FBI, which continues today, for two reasons: (1) Hoover lead the Bureau during one of these "formative experiences," a time when the Bureau was just developing and (2) Hoover's personality was one in which he felt free to "impose his will on the first generation of operators."[1092] Under these circumstances, Wilson argues, a leader may have an impact upon the future of an organization.[1093] These circumstances are clearly not applicable today with Robert Mueller serving as the FBI Director. In fact, one could argue that Mueller's influence is handicapped by the very lasting affect that Hoover's leadership has had on the Bureau. According to a 2005

[1090] Ibid.
[1091] John R. Kimberly, "Environmental Constraints and Organizational Structure," *Administrative Science Quarterly* Volume 20 (1975), pp. 1-9.
[1092]
[1093] Wilson, p. 96.

report by the 9/11 Public Discourse Project, the successor to the 9/11 Commission, "The FBI's culture continues to resist Director Mueller's changes."[1094]

The FBI, like all organizations, was not created accidentally or spontaneously. The Bureau was created, like most organizations, by someone, Hoover, taking a leadership role in seeing how the concerted action of a number of individuals can accomplish something that is impossible through individual action alone. Like most founders of new organizations, Hoover had a vision of how the public could be better served by his organization. While Hoover served as Attorney General A. Mitchell Palmer's right-hand man during the Red Scare, Hoover witnessed as the predecessor to the FBI, the old Bureau of Investigation in the Department of Justice acquired a reputation for actively fomenting the Red Scare, organizing mass deportation and spying on the political enemies of the Harding administration. The Bureau of Investigations reputation had been tarnished as Hoover watched. The lessons Hoover learned as he served in DOJ, he took with him when he accepted the position to direct the new organization that would become the FBI. Without any founding charter or statutory legislation creating the FBI, Hoover had a large amount of free reign to create the Bureau as he saw fit according to his own vision. He turned his attention to cleaning up the bureau, and thereby its public reputation. First and foremost, removed the agents that had been involved in the past scandals of the Red Scare and in order to make sure that new agents would not get caught up in questionable investigations he limited the new bureau to gathering facts about possible violations of federal laws. A

[1094] Public Discourse Project

few among many changes that Hoover made were revamping of the personnel system, hiring better qualified agents, establishing a training academy, and letting the agents know, through his speeches and disciplinary actions, that a higher level of professional conduct and moral and ethical behavior was required at the new bureau.[1095]

When an organization has a solid agreement or consensus on what the organization's tasks consist of and how they are to go about doing those tasks, i.e., the culture of the organization, the organization is described as having a mission. An organizational mission is more than just a particular goal or objective that the organization may have but it is the "essence" of the organization.[1096] The essence or mission of the organization is something that is strongly endorsed by many within the organization and is understood and accepted by most within the organization to be what the organization represents. There are great benefits as well as drawbacks with organizational missions. First, let's address the benefits of the existence of an organizational mission. When members of an organization have a clear understanding and acceptance of the tasks that the organization and therefore they are to perform and how they are to perform those tasks, the job of management an organization is much less complicated for any executive of that organization.

An acceptance by the members of the represented essence or mission of the organization will provide the members with a feeling of belonging and worth as

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[1095] James Q. Wilson, *Investigators*, New York: Basic Books, (1978), chap. 5; Mike German, *Thinking Like A Terrorist: Insights of a Former FBI Undercover Agent*, New York: Potomac Books (2007); Ronald Kessler, *The Terrorist Watch: Inside the Desperate Race to Stop the Next Attack*, New York: Crown (2007).

[1096] Morton H. Halperin, *Bureaucratic Politics and Foreign Policy* (Washington: DC Brookings Institution, 1974), 28.

members of that organization. This sense of mission will bond members together with a loyalty to the organization which provides them a feeling of belonging. This will directly benefit both the executives of the organization and the organization it itself because this sense of belonging will increase the likelihood that members will be retained and new, well-qualified members will be attracted to the organization. It minimizes the amount of shirking that normally occurs in any organization.

In 1924 when Hoover accepted the position to head the Bureau of Investigations, he was determined to avoid the mistakes of the past and to create within the new bureau a strong sense of mission that would become the essence of the FBI culture for generations into the future. The new agents that would represent FBI would place high on their priorities the public respect without which Hoover had learned the bureau would cease to function. The new training, hiring and personnel policies put in place by Hoover left no doubt that the tasks of the FBI agent were to investigate and help prosecute crime. As an organization, the bureau would focus on detecting those that violated the laws and seek to put them behind bars. Hoover created the image of the G-man with a clear and agreed upon (if the agents didn't agree Hoover fired them) mission that was the culture of the FBI.

A Forced Change in Mission: Possible Negative Consequences

What happens when an organization's mission is forced to change because of pressure from external forces? One possible result could be that a new alignment between the new mission and the job tasks of the organization is created increasing the performance of the organization. If, however, by imposing a new mission on the

organization a critical culture is subverted, a culture critical to the performance of the organization, then the results could be fatal for the operations of the organizations. For example, by imposing on the FBI a new top mission of counterterrorism the law enforcement culture of the Bureau is either damaged or degraded significantly, the FBI could potentially suffer from a degraded performance in the area of criminal investigations. The decisions involved in how one designs these types of organizations are critically important. How one organizes these organizations must be based upon an understanding of what culture is critical to support and foster to the success of the organization and the organization design has to be developed with the preservation or the successful cultivation of that particular culture in mind.

The goal of the post-9/11 reforms at the FBI was to force a cultural change to take place within the Bureau. The FBI was no longer to envision itself solely as a law enforcement, criminal investigatory agency. First and foremost, it is now to be a counterterrorism organization. Yet, it still is expected to be the lead criminal investigation agency of the U.S. government. The forced merger of these two conflicting cultures may ultimately compromise the one clear, historically embedded and deeply established organizational mission of the FBI, damaging the success of the FBI as a criminal investigatory agency. Furthermore, the struggle that takes place between these two cultures will fail to produce an organizational mission that reflects the FBI as an intelligence organization.

Clearly, it is easiest to establish a sense of mission within an organization when an organization is first created.[1097] In fact, first founding moments of an organizations life will have a lasting effect upon the organization. One of the drawbacks of having a strong mission within an organization is that it will be much more difficult for anyone to change that mission once it already exists within the organization.[1098] Furthermore, attempts at changing the mission may result in confusion about the central tasks that the organization needs to perform and therefore lead to a loss of any overall mission. No matter how well the Bureau transforms itself into an intelligence agency, a new agency built from scratch, totally dedicated to intelligence work would probably do a better job of developing the structures, procedures and the compatible culture for gathering intelligence and could more easily equip itself with the necessary technology and language expertise. One thing is certain; a newly created domestic intelligence agency would not have to be burdened by the need to integrate old data systems, hard copy files, equipment and personnel with the new.

The FBI's Structure Does not Fit an Domestic Intelligence Function

The tasks and style of domestic intelligence collection and analysis required by a domestic intelligence service are incongruent with the prevailing traditional organizational structure of a law enforcement organization like the FBI. The experience of earlier attempts within FBI to implement innovative changes without consideration for this incompatibility informs the contemporary debate about some of the structural

[1097] James Q. Wilson, *Bureaucracy*
[1098] Ibid.

and cultural issues that may arise in the most recent attempt to transform FBI into an effective intelligence agency.

A notable example of the results of this incompatibility is the initiatives in 1998 and 1999 when the FBI embarked on similar efforts to establish intelligence as a priority. Both efforts are considered to have been failures.[1099] Although observers attribute the failure of these efforts on a number of complex factors, the majority place the FBI's law enforcement culture of the top of the list as the main cause for the failed attempts at reforming the FBI. The failure of the MAXCAP 05 plan is another example of a failure attributed to the incompatibility of the structural requirements of a law enforcement organization and the cultural characteristics of an intelligence agency.

In 2000, the new head of the FBI's Counterterrorism Division drafted a plan that intended to "bring the Bureau to its 'maximum feasible capacity' in counterterrorism by 2005."[1100] A report describing the plan noted that "the goal to 'prevent terrorism' requires a dramatic shift in emphasis from a reactive capability to highly functioning intelligence capability which provides not only leads and operational support, but clear strategic analysis and direction."[1101] When Watson presented his strategy to the FBI agents in charge in the field, however, the response was that the field "did not have the analysts, linguists, or technically trained experts to carry out the strategy."[1102]

One year after the strategy was sent to the field, Watson reported the Director Mueller that almost every FBI field office was operating below "maximum capacity."

[1099] Interview with John Gannon.
[1100] *The 9/11 Commission Report*, p. 78.
[1101] Ibid.
[1102] Ibid.

A review of the FBI's past attempts to introduce innovative change to the bureau finds that virtually all of the theoretical guidelines and criteria for successful implementation and institutionalization of organizational change were violated. Restructuring was incremental and compartmentalized, facilitating internal dissention within the Bureau that in turn prevented integration of intelligence capabilities among the field offices of the FBI.

Initiating investigations, or collecting, for purposes other than law enforcement is foreign to the Federal Bureau of Investigations. Historically, FBI agents have been promoted and awarded based upon how many arrests and convicted come from their investigations. The FBI agents do not get credit for collecting information on targets just for the sake of gathering information that may or not may not be helpful towards some general US policy interest. For intelligence officers, however, their focus is not on collecting evidence in order to support the prosecution of a person for criminal offenses. An intelligence officer seeks to collect information on various targets that are most likely never going to be prosecuted for a crime. The goal of their collection is to collect what may be disparate pieces of information that when combined with other information may reveal the motives and intentions of those who would do harm to the US national security.

Because the focus of intelligence collection is foreign to FBI agents, an organization that is trying to implement an intelligence collection focus would have to implement that focus on a trial-and-error basis. For this reason, the FBI agents in the field need to be permitted the behavioral flexibility to take risks as he or she

experiments to learn "what works." Organizational restructuring needs to follow learning through creative experimentation. If structural change proceeds behavioral change, the organization risks remaining rigid and rule-driven. If structural supports are provided for behaviors that have proven effective for achieving domestic intelligence goals, the organization becomes flexible and dynamic. Restructuring for domestic intelligence must be a self-designing process because the problems and objectives in any given geographic area of the United States are unique.

Revolutionary or Incremental Change to Bring About Cultural Adaptation

The dimension of organizational change can be either incremental or innovative. Incremental changes modify or augment existing routines, patterns of organization and behavior or policy. These are shallow changes that amount to "orientations" which tend to reinforce the basic structure and core values of the organization.[1103] These shallow changes do not alter old philosophies or organizational designs rather they graft new programs onto the old. Innovative changes, however, introduce new routines, patterns of organization and behavior and policies that may represent "transformational" change to the organization.[1104] Innovative changes can be revolutionary. Revolutionary change challenges the basic assumptions and realities around which an organization is structured, and which gives form to an organization's culture. A revolutionary change is one which entails the organization being "recreated," during which the organization is

[1103] G. Ledford, S.A. Mohrman, A.M. Mohrman and E.E. Lawler, "The Phenomena of Large Scale Organizational Change," in A.M. Mohrman and S.A. Morhrman (eds.) *Large Scale Organizational Change*, San Francisco: Jossey-Bass, (1989), p. 1031

[1104] C.P. Egro and J.P. Frost, "Shamanism and Change: Bringing Back the Magic in Organizational tTansformation," *Research in Organizational Change and Development*, Volume 5, (1991), pp. 175-221.

dismantled and "a subset of the system's old pieces, along with some new pieces, [must] be put back together into a new configuration, which operates according to a new set of rules."[1105]

Some organizational theorists, in order for fundamental change to take place in any organization, it cannot take place "piece-meal, slowly, gradually, and comfortably."[1106] Some experts argue that in order to maximize the probability of success, implementation of change, the magnitude of change in the increase in focus on domestic intelligence done by the FBI must precede slowly and gingerly.[1107] They argue that incremental reform measures at the FBI are the best way to proceed. Such theorists or supporters of incremental change within FBI are setting FBI up for failure. There are a number of theoretical assumptions supported in private sector examples that organizational changes that are put in place too quickly and too soon rarely are sustained over time. But these theories from the private sector apply only to change implemented from the top down. It may be, however, that past failed attempts by the FBI to implement change were the result of quasi-military management structure which demands that all changes be initiated from the top. Other theorists that deal with public sector organizations, however, assert that successful structural change depends upon bottom-up initiation.[1108]

[1105] C.J. Gersick, "Revolutionary Change Theories: A Multilevel Exploration of the Punctuated Equilibrium Paradigm. *Academy of Management Review*, Volume 16, Number 1, (1991), pp. 10-36.
[1106] Gersick, 1999, p. 34.
[1107]
[1108] J.M. Pennings, "Structural Contingencies Theory: A Reappraisal," *Research in Organizational Behavior*, Volume 14, pp. 267-309 (1992).

It is understood that intelligence collection is like problem solving and requires creative thinking and risk-taking. Supervisors must be trained to act as advisors and guides more than disciplinarians. Properly trained and provided the freedom to act on their initiative, the rank and file "will grasp the concept, appreciate its many dimensions and skillfully fill their new roles."[1109] FBI's quasi-military bureaucratic management structure, however, imposes a punitive style of supervision that is a disincentive to risk-taking and creativity necessary for the problem-solving orientation of intelligence collection. Furthermore, in order for an organization to learn by trial-and-error regarding what works in the field and how to conduct intelligence collection to better protect the United States, it is critical to push decision making down to the lowest level of responsibility. FBI's structure, however, is incompatible with intelligence collection as well as incompatible with the internal goals of decentralization and empowerment.

The FBI, historically, has been a rule-driven organization which functions based upon general orders of behavior and a specific code of responsibility. Under rule-driven general orders, traditional reward and promotion criteria are based upon quantitative production such as number of arrests, the number of indictments and the number of cases cleared. General orders and guidelines are well suited to deal with statistics that are easy to measure and therefore base promotions on. With activities that are not that easy to observe, however, like the vetting of an asset, the dissemination of intelligence reports, the surveillance of possible spies or other activities that are based on an intelligence preventive approach, it becomes important to recognize for quality of job

[1109] Goldstein. 1993.

performance while de-emphasizing rewards based on quantity. These are metrics that are more difficult to quantify.

The centralized bureaucratic management structure of the FBI is largely a result of the powerful authorities that the FBI has at its disposable; the ability to investigate, arrest and imprison individuals for violation of criminal laws. Any organization with such authorities would have to be organized in a centralized, rule-driven fashion in order to ensure proper accountability and protection of civil liberties. So it is understandable that the FBI may not be able to be reformed into the correct organizational design that would be suitable to implement an effective intelligence collection capability. If an organization is going to have the powerful authority of arresting individuals under investigation it may be that a centralized rule-driven structure is the type of structure that suits that organization.

For this type of organization, like the FBI, it is doubtful that merely centralizing authority at the FBI headquarters and increasing coordination, as Director Mueller has done, will resolve the conflict that will inevitably arise from the overlapping missions within the FBI. Before creating some comprehensive form of organizational structure much more attention needs to be given to understanding the types of cultures that are currently operating within the organization and what type culture that you anticipate ought to be operating within the organization considering the functions that you suspect are important. It is not apparent that Mueller or the 9/11 investigations conducted that kind of deep inquiry into the old FBI culture or the desired new FBI culture before implementing the centralized hierarchical reforms at the FBI.

Arguments for Keeping The Two Missions Within the FBI

Most of the individuals that support the idea of keeping the government function of counterterrorism within the FBI argue that it would take too long to build a new organization with the skills, resources and capabilities to operate effectively as an intelligence organization.[1110] They estimate that "standing up a brand new domestic intelligence agency would take a decade, and we would lose very precious time at a very dangerous time for the United States."[1111] They reason that during the time it took to create this new agency, "the country would be vulnerable to attack as investigators are recruited and trained."[1112] As James Q. Wilson, noted, "it would take a least a year for the lawmakers to pass any legislation on the topic once the issue gets before them." Some estimate that for a new agency to be "built from the ground up and do it in anything short of a decade before they can even walk, let alone crawl, is crazy."[1113]

Another reason against creating a separate domestic intelligence agency is that there is an advantage in having both the law enforcement and the intelligence function together in one organization.[1114] Mueller argued that the two missions of law enforcement and intelligence are complementary and that the U.S. government is most effective in protecting homeland security when it performs these two missions in tandem.[1115] He contends that intelligence has always been one of the Bureau's core

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[1110] Interview with James Q. Wilson.
[1111] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf.
[1112] Kessler, *Terrorist Watch*, p. 103.
[1113] Art Cummings quoted in Kessler, p. 105.
[1114] Interview with Dina Corsi who makes this argument.
[1115] Robert S. Mueller, III, Director , FBI, statement, in U.S. Congress, Senate Judiciary Committee, July 23, 2003.

competencies and it is organic to the FBI's investigative mission.[1116] Mueller's argument implies that separating those functions in two separate agencies would create barriers to information sharing between law enforcement and intelligence organizations making it more difficult to operate together against terrorist targets and bring them to trial. What Mueller's argument misses, however, is the negative impact the cultural incompatibility will have upon the ultimate performance of the law enforcement organization that tries to maintain the two missions within its operations. Furthermore, this argument underestimates the ability of two different organizations (one law enforcement agency and one intelligence agency) to work closely together in sharing information. In fact, the benefit of creating a purely intelligence agency from scratch will likely increase the likelihood that the new agency will have better relations with other intelligence agencies within the intelligence community making it more effective then a law enforcement agency would have with intelligence agencies. Intelligence agencies likely possess similar cultures and identities that facilitate a mutual understandings and expectations of behavior often leading to better working relations.

Furthermore, Mueller's argument is based on an assumption that criminal prosecution ought to be the ultimate goal and therefore the preservation of evidence, best done by a law enforcement organization, should dictate what task takes priority. This may be a false assumption particularly in light of the many complex factors involved that make the prosecution of these individuals difficult and likely untenable (i.e., the potential for the compromise of intelligence sources and methods during a

[1116] Ibid.

criminal trial). Even if it were determined that prosecution should be the ultimate goal, there is nothing that prohibits an intelligence organization from working closely with a law enforcement organization to ensure effective and efficient criminal procedures are followed, to include preservation of the chain of custody of evidence– as the CIA and the FBI have done together in the past..

Those that support maintaining both functions within the FBI also argue that the FBI has unique authorities to bring criminal charges against a suspect and these authorities can be leveraged by threatening a target of an intelligence investigation with a criminal prosecution if they do not cooperate with the FBI.[1117] Those that oppose the creation of a new agency argue that this benefit would be lost if a new non law enforcement agency were created. In support of this position, the WMD Commission noted the benefit of the FBI in that the Bureau "can quickly bring criminal justice tools, such as search warrants, to bear in its national security mission."[1118] Furthermore, the WMD Commission noted, the close contact the FBI has with state and local officials is invaluable to obtaining information in support of the national security mission.[1119]

As far as the WMD Commission's point about the added benefit of having the FBI's unique authorities to use criminal law enforcement measures such as obtaining search warrants through FISA to obtain national security information in support of its national security mission, it is a valid point. There is nothing, however, that would prohibit an intelligence agency from having this authority (whether it is a newly created

[1117] Interview with Dina Corsi.
[1118] *The WMD Commission Report*, p. 466.
[1119] Ibid.

agency or an already existing organization). In fact, if a new agency were created and it was given the authority to use law enforcement measures like the FISA warrant process, the need for the FBI to continue with the FISA authority may be worth revisiting.

The removal of FISA authority from the FBI may actually assuage the concerns from Congress, FISA judges and civil libertarians' about the FBI's abuse of the FISA process to obtain national security warrants with ultimate intentions for criminal purposes. The new intelligence agency would not have arresting authority. Furthermore, there has been much criticism from state and local authorities that the FBI does not work well with them. A new intelligence agency that is developed and dedicated to working closely with the state and locals may work better then the FBI in this area. Furthermore, since the Department of Homeland Security has the mission of being the focal point with state and local authorities related to terrorist and other threats to the homeland, the DHS may find compatible and mutually beneficial arrangements with a new domestic intelligence agency that was not in competition with in for domestic law enforcement authorities.

A New Domestic Intelligence Agency?

A new domestic intelligence agency established within the United States could be created in the fashion of "a hub of a decentralized national network for domestic intelligence with state-of-the-art, multi level security communications, not a centralized intelligence service under the executive branch."[1120] This idea of creating a new domestic intelligence agency within the United States was first raised by former NSA

[1120] Interview with John Gannon

director William E. Odom and has been discussed in numerous reports and testimony before congressional committees and national commissions.[1121] In a Washington Post op-ed piece entitled, "Why the FBI Can't Be Reformed," Odom wrote that the FBI's shortcomings in fighting the terrorist threat were systemic.[1122] He stated, "No one can turn a law enforcement agency into an effective intelligence agency."[1123] In other words, cops do not make good intelligence officers. Odom's analysis was supported by Judge Posner's recommendation to create an American MI-5. He argued that the FBI is oriented toward "arrest and prosecution rather than toward the patient gathering of intelligence with a view to understanding and penetrating a terrorist network."[1124] Posner suggested that the incompatibility of the law enforcement culture and the intelligence culture would inhibit the effective functioning of an organization that consisted of both functions.[1125]

The 9/11 investigations had their fair share of supporters for the idea of a new domestic intelligence agency separate from the FBI as well. The Joint Inquiry recommended the creation of a separate organization.[1126] The 9/11 Commission and the

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[1121] *The 9/11 Commission Report*; William E. Odom, *Fixing Intelligence for a More Secure America*, New Haven, CT: Yale University Press, (2003); *The WMD Commission Report*; Senate Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Pre-War Intelligence Assessments on Iraq*, July 7, 2004; National Academy of Public Administration, *Transforming the FBI: Progress and Challenges*, January, 2005; Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*, Hoover Institution: Stanford University (2005); U.S. Department of Justice, Office of the Inspector General, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks*, November 2004; Mark Sherman, "Panel Weighs Creating New Intel Agency," *Washington Post*, June 17, 2005.
[1122] William Odom, "Why the FBI Can't Be Reformed," *Washington Post*, June 29, 2005, p. A21.
[1123] Ibid.
[1124] Richard A. Posner, "We Need Our Own MI5," *Washington Post*, August 15, 2006, A13.
[1125] Richard Posner, *Countering Terrorism*; Posner provides an excellent description of he differences between the cultures of law enforcement and intelligence.
[1126] *The Joint Inquiry Report*

WMD Commission, although they pointed out enormous failings of the FBI, ultimately deferred to the FBI, leaving it up to the FBI itself to make changes within the Bureau to improve its record on counterterrorism. Former Attorney General Janet Reno and former FBI Director Louis Freeh testified before the 9/11 Commission that the idea of a separate organization was a bad one citing to the lose of the benefits of having law enforcement and intelligence collection working closely together.[1127]

The passage of time, however, has led some to reconsider the idea of a separate organization. In an interview with Lee Hamilton, former co-chair of the 9/11 Commission, stated, "Today I would recommend a separate organization to conduct domestic intelligence within the United States."[1128] Others such as former DCI George Tenet, former counterterrorism czar Dick Clarke and intelligence professionals like Paul Pillar, to name just a few, have argued that it is a worth while effort to assess the idea of the creation of a new domestic intelligence service separate from the FBI. Some original supporters of leaving domestic intelligence within the FBI have been frustrated by the lack of change within the Bureau and have turned to supporting the creation of a separate intelligence agency. By the spring of 2006, John Gannon, who had originally supported the FBI's change efforts, had given up hope that the FBI could change its culture. Gannon stated, "Watching the FBI struggle with its new national intelligence mandate and recalling earlier interagency 'culture wars' in my career" . . . . "I have

[1127] Louis J. Freeh, "On War and Terrorism," testimony before the 9/11 Commission tenth public hearing, April 13, 2004, p. 4, http://www.9-11commission.gov/hearings/hearing10/freeh_statement.pdf; Janet Reno, testimony before the 9/11 Commission tenth public hearing (transcript), April 13, 2004, p. 62, http://www.9-11commission.gov/archive/hearing10/9-11Commission_Hearing_2004-04-13.pdf.
[1128] Interview with Lee Hamilton.

changed my mind. I now doubt that the FBI, on its present course, can get there from here."[1129]

Compelling Reasons to Create a New Agency

There are a number of compelling arguments, however for creating a new and separate domestic intelligence agency. First, the task of changing and creating a new intelligence culture within the FBI is challenging and 7 years after 9/11 appears still to be completed. The historical experiences and the still restrictive Attorney General guidelines that inhibit the FBI from functioning as a true intelligence service contribute to what appears to be an inability by the FBI to change its culture. Furthermore, the structural design that has been imposed upon the FBI (centralization) is not the most appropriate for facilitating this cultural change. In some ways, the structure is working against the efforts within the FBI to change its culture. Furthermore, in the case of the FBI, it is not just a question of what cultures are needed or how to change culture, it is also about developing a structure that supports two very different and incompatible cultures.

Seven years have passed since 9/11 and the consensus is that the goal of cultural change has still not been achieved. Just weeks ago the Attorney General announced that he was seeking to amend the attorney general guidelines, " to allow the FBI to transform itself . . . into an intelligence gathering organization in addition to just a crime solving organization." At least three years have gone by since the reform measures were imposed on the FBI with the goal of bringing about cultural change to

[1129] John Gannon, written testimony submitted to the Senate Judiciary Committee, hearing on "FBI Oversight," 109th Cong., 2nd sess., May 2, 2006.

allow the FBI to operate like an intelligence agency. Why is it that the attorney general in 2008 is still "discussing" (because no determination has been made yet as to whether his proposed changes will be made to the guidelines) more changes that need to be made to the FBI in for it to operate as an intelligence agency? The enemies of the United States who seek to attack the U.S. will not wait for the FBI to transform itself before attacking the United States. Neither should the United States.

Rather than continuing to wait for change to eventually take place, it may be better to create a new clandestine service from scratch that would be separate from any other organization with a new corps of analysts, bringing in veterans only for a definitive time limit during which they would be meeting defined needs of the new agency. This agency would be a decentralized organization which answered, like the CIA, directly to the DNI. The CIA was similarly established in this fashion as President Truman first dismantled CIA's predecessor, the Office of Strategic Services (OSS). Once the CIA was created some OSS personnel were brought on board at the CIA but they were individually selected to fit certain roles within the CIA. The structural design placed upon the FBI does not appear to have tangibly affected the cultural changes that need to be made at the FBI. It may be time to create a new institution with a structure that would be more likely to increase the chances of an intelligence culture being created and sustained within that new organization.

Some have speculated that the issue of "whether the United States adopts a domestic intelligence agency modeled on the United Kingdom's Security Service may be" . . . "a function of the presence or absence of future terrorist attacks on U.S.

soil."[1130] This chapter concludes by arguing that, putting aside whether a U.S. domestic intelligence service should look like Britain's MI-5, the question of the U.S. designing such an agency of its own, that suits America's needs and civil libertarian principles is a question that should not remain unanswered until another terrorist attack occurs within the United States. The lessons from the recent terrorist attack in London should serve as an example of the drawbacks of ineffective domestic collection.

Lessons Learned: 7/7 Bombing in London

In the largest single terrorist attack since 9/11, on July 7, 2005 fifty-two people were killed in London when terrorists exploded three bombs targeting Great Britain's transportation networks (referred to as the 7/7 bombings). Great Britain's parliamentary committee with oversight responsibility over the intelligence agencies of the British government investigated those attacks, specifically the actions of the intelligence agencies leading up to those attacks. In its investigation the Committee specifically looked at "whether any intelligence which may have helped prevent the attacks was missed or overlooked" and "what lessons were learned on the back of the attacks."[1131] In May 2006, the Committee published its final report on the attacks setting out a number of conclusions and recommendations.[1132]

In the report the Committee concluded that while the intelligence agencies and the British authorities were aware of the potential of terrorists to execute terrorist

[1130] Todd Masse, "Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States," *Congressional Research Service, RL31920*, May 19, 2003.
[1131] Intelligence and Security Committee, "Report into the London Terrorist Attacks on 7 July 2005," May 2006, p. 4.
[1132] Ibid.

attacks within the United Kingdom and had been working hard to prevent such attacks, the evidence they found indicated that "there had been room to do more and to do it more quickly, then had been thought possible at the time."[1133] While finding no individual or agency at fault, the Committee concluded it was a tragedy that the attacks were not prevented particularly in light of the fact that the British were aware that such attacks were possible. The report found that the attacks could have been avoided if the British government had collected more domestically on the 'home grown' threats that had been developing in the country. In making this argument the report concluded that "increasing coverage at home" is critical to preventing further attacks.[1134]

The British has a much more aggressive internal domestic service (MI-5), with broader authorities and fewer restrictions for domestic surveillance, than the U.S. government has in the FBI.[1135] The reasons stem mainly from the different legal frameworks and historical experiences dealing with terrorism between the two countries.[1136] Even with MI-5, however, the British government was unable to prevent the attacks mainly because there has not been enough "coverage of the threat at home and abroad."[1137] The government's report found that its intelligence services could have done more to prevent the domestic terrorist attack by collecting more. While collecting more information will also run the risk of adding to the "noise," the British

[1133] Intelligence and Security Committee, "Report into the London Terrorist Attacks on 7 July 2005," May 2006.
[1134] Ibid. at 35.
[1135] Todd Masse, "Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States," *CRS Report RL31920,* May 19, 2003.
[1136] Ibid.
[1137] Intelligence and Security Committee, "Report into the London Terrorist Attacks on 7 July 2005," May 2006, p.

government determined that had there been more collection within the United Kingdom the attacks could have been prevented.[1138] The report concluded that MI-5 "needed to double surveillance and investigative capability to allow more activity in the UK to be followed up."[1139] This included increasing regional presence around the country and delegating more decision making authority in regional stations.

The main lesson learned by the British was that they needed to "get into 'the unknowns'-to find ways to broadening coverage to pick up currently unknown terrorist activity or plots."[1140] The government's investigation found that the focus of its intelligence services (both overseas and domestically) had been on "the pursuit of existing leads" rather then on the threats that were developing outside of those existing leads.[1141] Although the specific recommendations were redacted from the published report, the report describes the recommendations as measures that would allow the British government to "develop a more proactive approach to identifying threats in the United kingdom."[1142]

The lessons learned from the 7/7 bombings in the United Kingdom for the United States are clear. First, as the British government report found, there is a trend by terrorists no use home-grown operators to carry out their attacks. The nature of the threat is changing. No longer will the operators who conduct the attacks look like foreigners, rather, as with the 7/7 bombings the terrorists will look much like the local

[1138] Ibid. at 35.
[1139] Ibid. at 38.
[1140] Ibid. at 34.
[1141] Ibid. at 36.
[1142] Ibid. at 36.

population of the country they are operating within. They may even be American citizens. Second, the British government found that increased coverage and surveillance within the country was necessary to identify the threat. The threat was no longer coming from outside the country but from within. Only by finding them can the next attack be prevented. This requires an increase in intelligence collection within the country and in areas not normally covered as the operators move across the country and 'blend in.' Third, the British government found that relying on leads that have already been developed is not sufficient. Rather there needs to be efforts made to collection information from other means outside of already established leads. In other words, the boundaries of domestic investigations must be expanded to reach beyond those leads to a broader area of collection in order to detect and deter the next terrorist. Whether the FBI remains the institution responsible for domestic intelligence collection or a new agency is established to take over this role, these are the lessons that should guide the U.S. government as it seeks to prevent another terrorist attack within the United States by building an effective domestic intelligence capability.

Chapter 6

Improving Performance One Institution at a Time: Implications for Theory and Policy

> Most people have the will to win, few have the will to prepare to win.
>
> -Bobby Knight

> A framework we routinely use is to start with the performance of a current system and imagine what it would look like in an infinitely efficient world. The mindset difference is to know progress can be made and to set about this in a disciplined, methodical way.
>
> -George David, Chairman, United Technologies Corporation

Introduction

This study has focused on the organizational design of government institutions, in particular, those institutions that comprise the U.S. national security system. One of the central arguments of the study is that the design of an institution matters in that institutional design impacts an institution's ability to attain its strategic objectives. Chapter 1 sets out a framework defining what an institution is in the context of the U.S. national security system: an organized pattern of socially constructed norms and rules, and socially prescribed behaviors expected of and accepted by the actors within the institution. These norms are created and re-created over time by these actors operating within the institution and through their work with others outside the institution. As distinguished from a simple organization, an institution is an entity that is seen as indispensable because of the function it performs. Because of its function the institution

is valued outside of the formal organization itself. This study examines the institutions of the U.S. national security system in the context of the terrorist attacks against the United States on September 11, 2001. In particular, this study focuses on those national security institutions that were central to the 9/11 investigations and their findings -- the CIA and the FBI.

In light of the nature of the threats from the environment and given the strategic objectives of foreign policymakers, the institutions that comprise the U.S. national security system are the critical pieces of the puzzle to ensuring the successful implementation of any national security strategy. This study argues that there are a number of specific elements that comprise an institution that are central to the efficacy of an institution: its structure, rules and guidelines, culture, and people. Together, these elements determine what specific functions an institution performs and, significantly, how well it performs them. In order to assess or improve the overall performance of these institutions, one must first understand the role these various elements of an institution play (their impact on the performance of the institution) in carrying out the functions of an institution. Only then can one assess the appropriate institutional changes that need to be made.

The most visible element of an institution is usually its formal structure. At times this causes some advocates of organizational reform to emphasis this element of an institution (recommending only structural changes for reform) while ignoring the other elements. The specific structure of an institution will create certain capabilities, limitations and jurisdictions for the institution and its members. The choices between

the various structures, with their particular properties, for an institution have important consequences for the institutions effectiveness. The various properties of structure, such as functional differentiation, degree of integration, connectedness and "coupling," the centralization and concentration of authority, the formalization of rules and procedures all impact an institution's ability to achieve its specific goals.

These structure properties determine the location of decision-making authority; who makes decisions; who performs which tasks by what authority as well as the likelihood the institution is able to adapt to solve problems. For example, an institution whose structure is closely integrated with tightly coupled interactions will likely be effective in controlling activities within the institution but will not be as effective in supporting innovative activities or experimentation among the work force. An institution with a hierarchical, centralized structure will be more effective at controlling decisions from the top of its chain of command but it will be less likely to adapt as quickly to changes in its environment and may negatively affect the work force morale and motivation. As a subset of the formal structure, an institution's rules, guidelines and procedures operate to support the function of the institution by outlining the details of how decisions are to be made and the specific tasks to be performed. These elements of the structural framework of an institution constrain and enable an institution to perform its function. In other words, it sets the boundaries for the operations of the institution. In creating these boundaries the structure can have an impact on the overall performance of the institution.

The culture of an institution has a more invisible role to play in the performance of an institution and is, therefore, often neglected by those that are responsible for institutional reform. Organizational culture, broadly defined, is comprised of norms, identities, symbols, rituals and practices which give meaning to the activities of an institution. Like structure an institution's culture will define certain parameters within which the institutions and actors will function. Unlike structure, however, culture is less visible, more complicated to understand and, therefore, less likely to be analyzed. Importantly, the culture or sub-cultures of an institution dictate how the members of an institution view the world and their role in it. As members of an institution interact among themselves and with outsiders to the institution solving problems and completing tasks, institutional norms guide the members' behavior by establishing expectations of what behavior is appropriate under the circumstances and what behavior is not appropriate. In this way, the norms of an institution create specific identities among the members of an institution. In the context of the specific circumstances the members are operating under, the members see themselves as individuals acting in a certain accepted way. These identities are developed through the interaction of the members and the norms of the institution. During the process of socialization, the norms can function to develop, re-enforce or re-create identities for these members and others working with them. This point of interaction between members of the institution and outsides is critical to understanding the possibility of bringing about culture change within institutions. This social interaction is critical to understanding the culture of an

institution (where it comes from, how it is developed, the ability for it to be changed and its impact on institutional performance).

In the aftermath of the terrorist attacks against the United States on September 11, 2001, the American public and the U.S. government sought to understand the reasons why the U.S. government was unable to prevent the attacks. People, both inside and outside of the government, wanted to know why the system designed to protect the American people from such harm had failed in such a catastrophic fashion. Under unprecedented pressure from the family members of the 9/11 victims and the public, the Congress and the White House organized investigative inquiries to provide some answers. A number of official investigations were conducted examining the role of the U.S. government, specifically the intelligence community, in the years leading up to those attacks. As is not uncommon for investigations under political pressure to take action and operating within a limited timeframe, these 9/11 investigations placed much weight on the role of individuals within the government and the impact their actions may have had on the events leading up to the failure under investigation. The republican investigators looked to blame President Clinton, the democratic, for not doing enough against the terrorist threats prior to 9/11. In the same vein, the democrats pointed fingers at President Bush, arguing that he ignored the warnings provided to him about the threats from al –Qaeda and instead focused on issues like ballistic missile defense. Other investigators blamed CIA managers for the way they managed the terrorist accounts within the CIA prior to 9/11. In seeking to find quick answers to system failures individuals are the easiest target for blame and, therefore, it not

surprising that this is the path taken by some of the investigations. Too much focus, however, on individual behavior can lead to rushed and misguided systemic solutions to the problems that led to the system failure. These solutions, especially since some were codified into law and unlikely to be undone in the near future, rather than repairing the weaknesses identified after the 9/11 attacks may have served to further weaken the system.

In overlooking the complex unanticipated interactions that occur within systems, the investigations focused too much on individuals, recommending the easier, more obvious structural changes to be made to the system but missing the harder-to-find, more complicated to understand, flaws in the system. With a view to holding individuals accountable, the 9/11 Commission recommendations ultimately led to reforms that imposed a more centralized decision making authority over the intelligence community and at the FBI's headquarters. In doing so, this reform measure neglected to account for the other factors that caused the failure. The result was the creation of a centralized position without real authority over most of the government organizations involved in protecting the U.S. from terrorist attacks like 9/11. For example, the DNI has no direct authority over the DOD intelligence agencies, the FBI or the Department of Homeland Security. It is true, that having one individual such as the Director of National Intelligence, in name, responsible for the performance of the entire intelligence community will make it easier for the Congress to hold that individual accountable for the performance of all those agencies and the next potential intelligence failure. The creation of that position, for instance, however, will not alter the organizational culture

of the FBI which is necessary for the Bureau to be an effective intelligence institution. Furthermore, punishing managers at the CIA for some of the decisions they made based upon the best information they had at the time, as recommended by the Joint Inquiry, will not help build upon the innovative work that these managers were involved in while working at the agency. Such misguided reforms based on a desire for accountability may have weakened the strengths within the intelligence community prior to 9/11 and may have created a less effective U.S. national security system.

While institutions, by themselves, cannot guarantee good policy outcomes or zero intelligence failure, they can significantly affect what gets done and how effectively it gets done. An effective institution is the key to the implementation of any policy strategy. This study argues that the design of an institution will, in part, dictate how effective an institution will be in carrying out its function. If design matters, then, it is also important to study the trade-offs involved in the various design choices for an institution in light of the strategy the institution is to implement and the environment it faces. The elements of an institution, as defined in this study, therefore, are important in weighing the benefits and costs of the different design choices. No single design will be adequate for all strategies under all environmental constraints. In sum, in order to maintain an appropriate fit between policy strategies, institutional design and the threats from the environment, constant attention to the design options for an institution and the periodic changes that may be necessary is necessary.

This study examines the U.S. national security system through an institutional framework in an attempt to understand the institutional factors that may have led to the

U.S. government's inability to prevent the attacks on September 11, 2001. It seeks to draw specific conclusions about the design of the institutions that comprise that system and the reforms made to those institutions since 9/11. In drawing upon institutional theory and organizational theory, this study has applied theories such as normal accident theory, new institutionalism and the constructivist approach to system failures. By drawing upon insights from these theories, this study uses organization theory and political science theories as building blocks to develop the initial steps towards a framework for assessing the adequacy of an institutional design for national security agencies.

Working across these social science fields, in applying the insights from the theories, the findings of this study suggest that the U.S. government was unable to prevent the attacks against the United States on 9/11 mainly because of three deficiencies within the U.S. national security system. First, the national security institutions were not aligned properly against the terrorist threat that had been emerging since the 1990s. Prior to 9/11, there was a lack of attention to the institutional designs of the government agencies responsible for carrying out the national security strategy of the United States. While the U.S. National Security Strategy recognized the growing threat from terrorism and how it was different from past threats like the Soviet Union, there were no major efforts to make changes at the institutional level within the U.S. government.

Prior to 9/11, no one -- neither practitioners nor academics -- looked within the "black box" of the intelligence agencies to inquire whether the institutions needed

redesigning. The intelligence community had been operating effectively under the same institutional designs that it was created under in 1947. No serious attempt had been made to redesign the intelligence institutions since its original creation. For example, in the years leading up to 9/11, there was no emphasis placed on domestic intelligence collection and no evaluations done on the performance of the FBI, although it had the lead for domestic collection. Furthermore, in lieu of the FBI operating domestically there was no suggestions of giving the CIA any new authorities or any attempt to create a new entity to fill in that gap.

After the end of the Cold War, the threat environment had changed for the United States: terrorist groups were more inclined to intimidate and use force operating covertly within a country, including the United States, rather then building a large arsenal of arms and utilizing spy planes and submarines overseas. While these changes took place in the threat environment, the division of labor between the U.S. government agencies had remained the same, for the most part, throughout the Cold War and beyond. The Defense Department still remained the institution that would be responsible for fighting the enemy although traditional wars were likely not to occur that often given the enemies chosen preference for non traditional battles. The intelligence community continued to get slighted when it came to the deference of agreements with the Defense Department over budget issues or the use of national intelligence assets. Throughout the 1990s, domestically, the DCI had virtually no authority over intelligence; rather the FBI was the lead on counterintelligence and counterterrorism although the Bureau had little to no intelligence capabilities. The CIA

was required to defer to the FBI inside the United States. While individual institutions adapted using new and innovative methods for combating the terrorist threat (this is the focus of Chapter 3) the U.S. government, as a whole, failed to change how it organized government agencies to address the threat. No attention was given to the structures, cultures or rules of the various institutions and whether those institutional designs were suited to the new threats.

Second, the national security system had a significant weakness in its domestic collection capabilities. While the 9/11 commission argued that terrorists exploited a "seam" at the borders of the U.S. territory, the gap that terrorists exploited was inside the United States. With no effective intelligence collection from the FBI and no overlap of collection operations by other intelligence agencies within the United States, the terrorists lived within the United States free from U.S. government surveillance. The Bureau's past experiences, the Attorney General guidelines under which it operated, and the criminal investigative culture of the FBI agents all negatively impacted the FBI's ability to operate effectively as an intelligence collection organization. The law enforcement culture created a collective identity at the Bureau that dominated any other cultural identity within the Bureau's workforce, the FBI agents saw themselves as, first and foremost, criminal investigators. Even agents who ran "intelligence investigations" acted in line with the assumptions, values and expectations of "criminal investigators" --collecting information on matters only when there was a criminal nexus, tasking intelligence assets for information related to investigations that were already opened rather then pursuing leads related to non-criminal interests.

Third, the nature of the work of intelligence, anticipating events that have not yet occurred and difficult to detect is inherently challenging and prone to inefficiencies and limitations. In short, the nature of the work of intelligence, coupled with the nature of the terrorist threat in particular (global, diffuse, alien, mobile, elusive and indistinct), makes intelligence failures probable. The conclusion, however, that another intelligence failure is probable (and may even result in another successful attack on the homeland) is not to say that the performance of the institutions responsible for intelligence cannot be improved or that efforts to determine the appropriate reform measures are not worthwhile.

Three Issues Identified by the 9/11 Investigations

This study applies insights from social science theories like "new institutionalism" and "normal accident theory" to the reform measures that have been imposed upon the U.S. intelligence community since 9/11 based upon the recommendations of the various 9/11 investigations. In doing this, the study examines three areas of criticism that the investigations argued as deficiencies within the U.S. intelligence community that contributed to the inability of the government to anticipate and prevent the attacks of 9/11: lack of imagination to anticipate the types of threats the U.S. faced after the Cold War, lack of accountability for intelligence failure, and the lack of an effective domestic intelligence capability.

Issue #1: lack of imagination within the intelligence community

The 9/11 Commission argued that within the U.S. government, in general, and within the CIA, in particular, there was a lack of imagination about the different kinds

of threats that would come to haunt the United States after the Cold War had ended. For example, the 9/11 Commission Report argues that the CIA was unable to develop strategic analysis on al Qaeda because the CIA lacked the ability to imagine that the enemies of the U.S. like al Qaeda would use force against the U.S homeland. The reform legislation, in accepting the 9/11 Commission's findings, attempted to institutionalize imagination by creating the position of the Director of National Intelligence (DNI) with the intent that the individual in this position would have responsibility and authority over the entire intelligence community and would be able to standardize community practice and improve the performance of the community. Applying insights from organizational theory and new institutionalism, Chapter 3 of this study analyzes this allegation by the 9/11 Commission (and other like academic Amy Zegart) that CIA lacked imagination. This chapter demonstrates how, contrary to the conclusion of the 9/11 Commission Report and others, the CIA has, on numerous occasions during the years it has existed, prior to 9/11, acted in innovative and imaginative ways adapting to the new challenges that the U.S. faced. Citing examples of such innovation by the CIA (in the technological, operational and organizational arenas), Chapter 3 illustrates how the CIA used its institutional imagination and acted innovatively to counter new and emerging threats. As the chapter illustrates, two institutional factors contributed to the CIA's ability to act in such innovation ways: its organizational culture and its structural design which supported a cultural that encouraged experimentation, innovation and adaptive behavior.

In assessing this allegation of a lack of imagination within the intelligence community, Chapter 3 examines two elements of the CIA's institutional make-up: its formal structural design and its culture. In applying the insights from cultural theories, the chapter counters the charges of the 9/11 Commission and exposes some of the inadequacies of its explanation for the events leading up to 9/11. The lessons taken from these theories and applied to the CIA in Chapter 3 can be applied to other institutions in assessing the ability of an institution to adapt and made the necessary changes, in innovative ways, in order to meet the challenges from the environment.

This study concludes that the need for institutions to constantly review the fit between the institution's strategy, structural elements and environment requires greater attention be given to the role that an institution's structure and culture play in enhancing an institution's ability to adapt and behave in an innovative fashion. The CIA has shown that as an institution, it has been able to adapt as necessary to meet challenges. The examples provided in Chapter 3 of institutional innovation by the CIA may serve as a useful roadmap to other institutions that seek to support innovative behavior.

As related to innovation and an institution's structure, organizational theory highlights the trade-offs or costs of a centralized structure. While there are benefits that arise to an institution from a centralized structural arrangement (increased control, accountability, standardization of work tasks, increased coordination), organizational theory informs us that there are also drawbacks to such a structure (increased "coupling" of the interactions within the system, decrease of slack and redundancy, potential decrease in organizational learning and innovation). Specifically in light of

the need for an institution to be able to adapt and act innovatively in the face of threats like terrorism (a threat that can frequently change and quickly adapt to its environment) the government institutions that are responsible for countering those types of threats need to be flexible and able to adapt in the face of changing threats. As Chapter 3 demonstrates, this call for adaption will need to be supported by an institutional arrangement that supports innovation, flexibility and experimentation with an acceptance for mistakes and failures. A centralized system, as recommended by the 9/11 investigations, often allows little room for such experimentation.

Issue #2: lack of accountability within the intelligence community

The 9/11 investigations, led most prominently by Senator Richard Shelby, as a member of the Joint Inquiry, argued that there was a lack of accountability with the intelligence community which contributed to intelligence failures like 9/11. Chapter 4 applies insights from "normal accident theory" in assessing the effectiveness of investigating system failures like 9/11 with a focus on accountability. As is often the case with investigations of organizational failures, the 9/11 investigations focused on specific actions by individuals in determining the point of failure within the system. Normal accident theory, however, argues that mistakes made by operators within the system can never be the root of the causes of system failures like 9/11. In fact, it is the nature and characteristics of the system that cause such system failures to be inevitable and catastrophic at times. Borrowing the insights from normal accident theory on investigating system failures, Chapter 4 analyzes the conclusions of the CIA's inspector general's report on accountability for the events leading to 9/11. This chapter applies

Charles Perrow's normal accident theory in the analysis of a failure of a non-technical system -- the U.S. national security system. In doing so, the study extends Perrow's theory that had been developed to examine only technical system failures such as nuclear power plant failures. This study argues that in putting too much emphasis on the role of individuals within the system (the actions they took, the decisions they supported and the mistakes they may have made), CIA's IG focuses almost exclusively on blaming the operators within the system for flaws that were caused by the nature of the system itself and not operator error. In doing so, the chapter concludes, the CIA IG missed an opportunity to improve the true weaknesses of the system. This study argues that by focusing on blaming individuals, the CIA IG report distorted the facts of what happened within the intelligence community prior to 9/11 and produced flawed conclusions.

Issue #3: lack of an effective domestic intelligence capability

There was a general consensus by the 9/11 investigations of the lack of an effective intelligence collection capability within the United States that contributed to the U.S. government's inability to prevent the attacks on 9/11. Chapter 5 examines the FBI and its role as the lead government institution responsible for counterintelligence and counterterrorism within the United States. In applying the insights from organizational culture theory and new institutionalism, specifically focusing on the affect that culture has on the performance of an institution, this chapter draws upon the lessons from these theories and argues the FBI will unlikely be able to adapt and effectively operate as an intelligence organization unless some dramatic organizational

changes are made to the Bureau. Taken together, three factors – the historical experiences that have informed the FBI's identity as a criminal investigative organization, the nature of the laws and guidelines that the FBI must operate under as part of the Department of Justice, and the deeply engrained criminal investigative culture which is at odds with an intelligence culture within the FBI – provide the basis to explain the FBI's institutional behavior and (1) why the FBI failed to adapt to the terrorist threat emerging within the United States before 9/11, (2) why the FBI has resisted institutional change since 9/11 after reform efforts were imposed upon the Bureau, and (3) why the FBI is not the best solution for a domestic intelligence organization for the United States.

Much has been learned about the U.S. national security agencies and their performance from the theories that are applied in this study. In applying theories to the examination of the U.S. intelligence institutions, this study addresses an area that is mainly left unaddressed by scholars and practitioners. Unlike most academic endeavors into organizational behavior that focus, for the most part, on the private sector, this study examined public sector institutions within the intelligence community as organizations whose performance it is critically important to assess. Furthermore, unlike some political scientists who examine national security affairs but treat national security agencies as inputs to policy decisions, and not as phenomena to be studied, this study has addressed these agencies head-on by looking inside the black box of these organizations to examine how they operate. One general theoretical contribution made by this study has been to build a bridge in order to unify some of the different theories

that have developed within these different disciplines of political science and organizational theory in order to begin to develop a general model for understanding how U.S. intelligence institutions perform and how their performance can be improved.

Theory: Conclusions & Recommendations

1. Using and Extending Normal Accident Theory to Non-Technical Systems

a. Conclusion

Charles Perrow's initial formulation of what has come to be known as Normal Accident Theory introduced the idea that in some technological systems, accidents are inevitable or "normal." Perrow defines two related dimensions of a system – interactive complexity and loose/tight coupling – which he argues determine a system's susceptibility to accidents. Perrow's theory made an important contribution in identifying these two risk-increasing system characteristics. As applied to the U.S. national security system, insights from normal accident theory help explain why a system like the U.S. national security system fails providing a roadmap for future improvements in the system to minimize failure. Based the theory there are two key characteristics of the system that must be taken into consideration when examining why a system will fail: (1) the nature of the complexity of the interactions between the parts of the system where such interactions cannot be thoroughly planned, understood or predicted and (2) the nature of the coupling of the interactions within the system. As Perrow describes the characteristics, for those systems that are complex (versus linear) the interactions between the different parts of the system cannot be thoroughly planned, understood or predicted. As for coupling, those systems that are loosely coupled (as

apposed to tightly coupled) there will be slack and flexibility build in between the interactions which will allow for some time to anticipate interactions and make appropriate changes within the system in order to avoid disaster. The riskiest systems (those that are more likely to fail), according to Perrow's theory, are those systems that are complex and tightly coupled.

After 9/11 there was a rush by the reformers to centralize decision making authority within the intelligence community with the intent to increase coordination and information sharing between the different agencies. Normal accident theory illustrates, however, that this move towards centralization may actually increase the likelihood of system failure because such a move will increase the number of tightly coupled interactions within the system. With an already existing complex system (such as the national security system) the introduction of more tightly coupled interactions increases the likelihood that the system will become more susceptible to failures in the future. Based upon Perrow's theory, in order to avoid system failure, one is left with the only solution being not to build such systems in the first place. This conclusion, this study would argue, is overly pessimistic and unrealistic. The U.S. national security system is a complex system that needs to exist for the security of the United States. The more optimistic argument advanced in this study is essentially that efforts to improve safety in interactively complex, tightly coupled systems should focus on decoupling the structural interactions as much is feasible within the system. While it is unlikely that the U.S. national security system can be designed to be less complex, it is feasible to

design a system where there is slack build into the interactions providing more time for changes and experimentation within the system.

As this study argues, attempts to minimize system failure may be effective if more attention is given to the affect that structure has on the performance of the system. As Perrow notes, in a loosely coupled system, decentralization it probably the preferred structural arrangement, allowing flexibility and slack within the system in order to allow more time to compensate for component failures within the system before they cascade into a system failure. Perrow notes that reducing interactive complexity and tight coupling in the design of systems will reduce the likelihood of system failures. Interactively complex and tightly coupled designs are created because they often allow greater functionality and efficiency to be achieved, but simpler, decoupled designs can usually achieve the same basic goals. The problem boils down to tradeoffs and determining how much risk is acceptable in order to achieve goals other than ensuring that the system does not fail. Such insights from Perrow's system approach can benefit those people that investigate and consider design options of the U.S. national security system.

b. Recommendation

Organizational sociologists in general have made an important contribution to safety by emphasizing the organizational aspects of accidents. Normal Accident Theory has provided much insight in that it recognizes the difficulty of dealing with uncertainty but underestimates and oversimplifies the potential ways to cope with uncertainty, for example, focusing only on simple redundancy. One way in which the theory can be

extended and be even more useful for analysis of intelligence reform is if the theory looked beyond just redundancy to other possible ways in which ensure safety. The work of political scientists may be what Perrow's theory needs in order make it more relevant to the subject of intelligence reform. A political scientist, Scott Sagan, in his work on near accidents in the nuclear weapon system is an effort in this direction. His discussion of the limits and dangers of redundancy as a safety device corrects the rather casual point that Perrow makes that redundancy constitutes a major safety device. More work with both these arguments about redundancy could improve the recommendations for ways to compensate for the inevitable reality of intelligence failure.

2. Blaming Individuals for System Failures Will Not Lead to Useful Recommendations for Reform

a. Conclusion

The most common explanation, especially from officials charged with managing complex systems, for why institutions fail to perform and why technology breaks down is human or operator error. Consider, for example, space shuttle accidents like the Challenger or Columbia incidents. In both cases, the official investigations into the incidents determined that it was the fault of managers and engineers who did not take the necessary steps to ensure safety. Also consider, the terrorist attacks against the U.S. on 9/11, a topic that has received a tremendous amount of public attention since the attacks. The official investigations all focused on individual human mistakes. Even the 9/11 Commission that ultimately offered structural changes to the intelligence community, focused on human errors and based its structural changes to increase

centralization based on the assumption that those structural fixes could resolve the problems identified in its report of human error. Other investigations like the Joint Inquiry and the CIA's IG report called for specific individuals to be blamed for the failings and to be held accountable. In December 2002, in reviewing the findings of the Joint Inquiry report concerning what led to the attacks on 9/11, Senator Shelby declared, "In urging the Intelligence Community to hold its employees accountable, the IC must therefore both discipline those who fall down on the job and reward those who have excelled."[1143] These declarations are common in all accidents that involve failures, whether they be industrial or institutional.

Certainly humans err, and often patterns appear in how and why those errors occur, but accidents usually result from factors other than individual characteristics. Work by both organizational theorists examining safety within risky technical systems and political scientists looking at formal organizations have shown how other factors other than human error are the cause of such accidents. Charles Perrow points out that the human errors made in technical systems like nuclear plants may cause "component failures" but not total system failures which cause an entire nuclear plant to fail to prevent a catastrophic accident like the one at the Three Mile Island nuclear power plant in 1979. Perrow's normal accident theory goes well beyond human error by theorizing failures as a function of how organizations are configured. Perrow classifies systems in terms of how system components interact (varying from complex to linear) and degree

[1143] Richard Shelby, "September 11 and the Imperative of Reform in the U.S. Intelligence Community: Additional Views of Senator Richard C. Shelby, Vice Chairman, Senate Select Committee on Intelligence," *The Joint Inquiry Report*, appendix.

of coupling (varying from tight to loose). A political scientist, Amy Zegart, in applying insights from new institutionalism to the review of formal organizations, the national security agencies, has similarly explained how organizational factors inherent within an institution (structure, incentives, culture) will lead to the institution failing to adapt in order to attain its goals.

The power of normal accident theory and new institutionalism is in locating the source of the failure in organization per se. Chapter 5 of this study builds upon the insights offered by normal accident theory and new institutionalism in critiquing the CIA's IG report as it focuses on blaming individuals for the failure of 9/11. In reviewing the events (actions within the US government institutions) which led up to 9/11, one can see human erring, but because of social structure and culture rather than individual failures. As highlighted in this chapter, any theory of failure based upon human error presumes more than it explains, obscuring the complexities of interaction between humans, the rules and procedures and organization. We can learn more about how risks of failure are produced, even within the national security system, by theorizing organizational factors such as operational pressures, rule imposed restrictions and structural effectiveness than by focusing on human error. In fact, as noted in Chapter 5, there are negative consequences of blaming accidents on operator error—deflecting attention from systemic failures and, by placing nearly all responsibility on individuals, potentially keeping an institution in place as designed, rather then making efforts to change the factors of the institution that cause the institution to be failure-prone.

If the theory of human error is weak, it is not clear why then it is used by those examining failures in the first place. It seems that the standard operating procedures for investigating intelligence failures give rise to the idea that "human error" is the main problem in incidents of intelligence failures. The analytic procedures of these commissions and reviews prevent investigators from going much beyond attributions of human error in final reports. Even those reports, like the 9/11 Commission report, that recommend changes to the structure of the system, end up with these recommendations by focusing on human error. The investigations focus on the types of human error responsible for the failure, rather than possible underlying causes of the errors. For example, the 9/11 Commission report described a lack of coordination and sharing of information between the different agencies within the intelligence community, particularly the CIA and FBI. The Commission report, however, did not address or analysis the possible underlying causes of those errors. Rather the Commission recommended centralization as the solution to the problem of lack of coordination. As a result, therefore, readers of the reports are not invited to focus their attention on the culture of the agencies and the guidelines and rules that regulate how the agencies do their work. It may be that these types of investigations have little control over the rules and guidelines that regulate the agencies' behavior or the means to change the cultures. It is no surprise then that these investigations place responsibility on operators and little or none on the system itself.

b. Recommendations

Although pessimistic about the possibility of reducing system failure, Perrow's theory shows that, "As inevitable as normal accidents may be, their frequency can be frequently affected by the configuration of the system because that configuration can discourage, even in error-inducing systems, the small errors that make the unanticipated interaction of errors possible."[1144] Therefore, there needs to be more work on the possibilities of minimizing the likelihood of system failures within the intelligence community by focusing more on changing the design characteristics rather than only those structural aspects that are linked to human errors. For example, more attention needs to be devoted to examining how culture impacts the interactions between the parts of the system. New institutionalism can add to normal accident theory here in the area of the culture of organizations and how that impacts the performance of the organization in general. The theories, in other words, are not incompatible but rather can inform each other. This requires, however, a detailed examination of system characteristics that neither theory gives enough thought to – cultural characteristics of the system and the specific institutions within the system. Sociological studies on culture and the work done by constructivists within political science would benefit from a cooperative effort in this area. This would require a detailed examination of system characteristics, in effect, a contingency theory of system accidents.

[1144] Perrow, p. 372.

3. Theories of Power: Incorporating the Role of Culture

a. *Conclusion*

Normal accident theory argues that organizational factors play a role in accidents and are a critical part of understanding and preventing them. Zegart argues, using insights from new institutionalism, that organizational factors play a role in the failure of institutions to reach their goals. Both theories therefore address the organizational aspects of safety. Both theories, however, place a great deal of emphasis on power from outside of the system or the institution and the negative affect these factors have upon the organization. Both theories de-emphasize the role of culture within the organization, placing more emphasis on the impact of power relations. Zegart argues that the competing interests of politics involved with the creation of the national security agencies (i.e., CIA, JCS and the NCS) caused these agencies to be flawed by design, from the very beginning of their existence they were created by parties that did not have the national security interests of the United States as their foremost concern. Therefore, Zegart argues, the agencies that exist today are ineffective and unable to operate successfully mainly because of their original design.

Similarly, Perrow asserts, "The question of what the problem really is has a lot to do with the role of 'externalities.' These are the social costs of an activity (pollution, injuries, and anxieties) that are not reflected in the price of the activity."[1145] Perrow argues that complex systems exist and fail because of those that create those systems as complex as they are. For Perrow, it follows from this that if the systems have

[1145] Perrow, p. 341.

catastrophic potential they should be "abandoned, drastically scaled back, or drastically redesigned."[1146] Those that create such complex systems that will inevitably fail causing catastrophic damage do it for political and power reasons and only by convincing them not to rely on such systems will failure be reduced. Perrow, however, is pessimistic about the possibilities of managers and decisionmakers designing such systems with safety in mind first. He argues that "few managers are punished for not putting safety first even after an accident, but will quickly be punished for not putting profits, market share, or agency prestige first."[1147] For Perrow there are no incentives for those in power to ensure that the system that they create and design operated in a manner that reduces the chances for failure. While both theories mention culture as having an impact on the behavior of the organization, they fail to address the power of culture thereby minimizing its impact upon the ability of an organization to attain its goal and avoid failure. Perrow declares, "Rather than look to national cultures, or even to cultures of companies and the workplace, we might look at plain old free-market capitalism. . . ."[1148] Even Sagan, in his extension of normal accident theory, "develops the notion of organizations as tools to be used for the interests of their masters."[1149] Sagan, like Perrow, emphasizes the role of group interests in negating commitments to safety within the system. Groups interests and power pervade his book without much attention to the role of culture in reducing the failure rate of a system.

b. Recommendation

[1146] Ibid. at 369.
[1147] Ibid. at 370.
[1148] Perrow, p. 360.
[1149] Ibid. at 368.

Recently there has been some work done on work group culture and safety. In *The Challenger Launch Decision: Risky Technology, Culture, and Deviation at NASA*, sociologist Diane Vaughan uses ethnographic techniques to explore the organizational culture and norms at NASA and the "native view" of management working groups of engineers, and key contractors to explain the Challenger accident in January 1986 when that shuttle mission ended with the explosion of the shuttle killing all seven crew members.[1150] Vaughan challenges the conventional explanations of the Challenger disaster based on management wrongdoing and argues instead that the development of routine procedures and exemptions permitted shuttle launches to proceed without violating organizational safety rules despite evidence that the fundamental design of the rocket boosters remained unresolved. Daily decisions that were made about acceptable risks evolved into formalized processes that helped to develop "shared understandings of emerging problems and the development of routinized procedures that resulted in an incremental descent into poor judgment" about the safety of specific launches. In indentifying the factors that lead to this process Vaughan calls "the normalization of deviation," she argues that the "cultural norms of working groups of engineers permitted NASA and Thiokol engineers to adopt incremental adjustments for coping with technical deviations rather than engage in expensive and time-consuming design modifications of the rocket boosters." NASA's problem solving approach was encouraged by a "culture of production" that included engineering norms and beliefs about the adequacy of "learning by doing." Vaughan concludes that "The

[1150] Diane Vaughan, *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA*, Chicago: University of Chicago Press (1996).

organizational structure of NASA's three centers and multiple contractors creates layers of structural secrecy ensuring that the patterns of information and the lessons learned by members of organizational units would differ."

Vaughan's analysis has a wider theoretical significance as she identifies several factors associated with organizational culture and routine procedures that contributed to the accident. Her approach is important because it argues against the simplier operator error explanation of managerial wrongdoing and instead addresses the role of culture within organizations. Unlike Perrow, Sagan and Zegart who emphasize the power of competing outside interests in organizational behavior, Vaughan explores the power of culture within the organization in explaining the failure of an organization. This approach is important in understanding other complex institutions' rules for interaction as well as the institutions' standard operating procedures, formal rules, and structures and how these factors shape culture within the institution as well as the behavior of the institution. Her research highlights the role of culture as she describes the components of the shared world view of engineers and their general faith in the ability to "learn by experience" in order to explain how specific micro factors influenced the development of procedures that ultimately resulted in the approval of the Challenger launch. These cultural factors of shared beliefs and occupational world views were reinforced by a number of environmental factors as well – structural secrecy, the culture of production, information flow patters, constraints imposed by established procedures, time and specialization of activities.

There are two major theoretical contributions of Vaughan's work on the case study of the Challenger accident that can be applied to this case study of the U.S. national security system and the 9/11 attacks. First, she exposes several factors embedded in the organizational or environmental context that are often overlooked in explanations of how and why mistakes happen and failures occur. Similar to Perrow' analysis of nuclear power plant failures and Sagan's analysis of breakdowns in safety procedures for nuclear weapons, by emphasizing that accidents are socially constructed, Vaughan's study illustrates the inherent weakness in blaming individuals for organizational failures. Similar to the Challenger disaster, the actions of individuals (operators and managers) did not cause the U.S. national security system to fail in its mission to prevent the terrorist attack on 9/11. Holding individuals accountable for mistakes made within the national security agencies prior to 9/11 will not effectively improve the performance of the U.S. national security system. Instead, like the Challenger accident, the disaster of 9/11 was embedded in the mundane organizational routines and interactions of individuals and agencies that possessed certain organizational cultures and beliefs about their work. Mistakes were made even though the decisions that led to the mistakes were made on the basis of a rational calculus by participants. As this study argues and Vaughan's analysis supports, a system approach to organizational failure is a better theoretical explanation for why organizations and institutions fail. Future theoretical work needs to be done on institutional failure of national security agencies from an organizational approach rather than an individual approach.

In addition, beyond this insight regarding the futility in blaming individuals, Vaughan's approach explains how the structure and culture of organizations shape the beliefs and behavior of organizations. This study has attempted to examine the role of culture within the national security system in line with Vaughan's insights. Future research needs to be done to continue to emphasis the power of culture as well as the power of other environment factors that authors such as Perrow and Sagan have done in their research. As scholars such as Perrow and Zegart have illustrated that the power of outside interests can influence the performance of an organization, Vaughan in her case study and this study also illustrate the power of culture within an organization to influence the behavior of the organization. Scholars, as well as intelligence reformers, need to examine the role of both external power factors as well as internal cultural and structural factors to better understand and explain institutional failure. Both types of factors, combined, will assist in explaining how individuals in organizations think, interact and make decisions which impact the entire organization.

4. Levels of Analysis: Subcultures

a. *Conclusion*

Some recent work on organizational behavior has usefully expanded upon the insights from normal accident theory by examining organizational aspects from different levels of analysis. This approach to address multiple levels is important in analyzing culture in particular as culture impacts organizational behavior. In his book, *Friendly Fire: The Accidental Shootdown of Black Hawk Over Northern Iraq*, Scott Snook, analyzed the 1991 shoot down of two UN peacekeeping helicopters in Northern

Iraq by two U.S. jets.[1151] Snook analyzes the shootdown examining three different levels of the construction of the shootdown. First, he describes the individual level of the jet pilots and the AWACs pilots and their training and culture. Second, he examines the group level of the interaction of the two pilots and the AWACs controllers, and lastly, he describes the larger system level that could not integrate helicopters into its air operations and the system that could not integrate the air force, the army and the peacekeepers. His analysis is a major contribution because he takes what Perrow examines on the larger system level and extends it further by addressing the lower levels of the organization as well. Snook effectively separates the different levels for analysis and then brings then back together for explanations. By addressing the lower levels at the individual and group working levels, Snook is able to bring into his analysis critical nuances of cultural development within the organization that would otherwise be lost if examining only the larger system level cultural impact.

In a similar attempt, this study has examined culture at the three different organizational levels of analysis. First, at the individual level, this study describes the culture of criminal law enforcement officers within the FBI that has developed as the Bureau has evolved over the years. Secondly, the study analyses the working group level of criminal investigative collectors and intelligence collectors at CIA and FBI and within FBI. In analyzing these different working groups, the study has addressed the conflict between the sub-cultures within the FBI that exists between those FBI employees who are criminal investigators and those that are intelligence collectors.

[1151] Scott A. Snook, *Friendly Fire: The Accidental Shootdown of U.S. Black Hawks over Northern Iraq*, Princeton, NJ: Princeton University (2000).

Thirdly, the study describes the organizational culture of the Bureau as a criminal investigative organization that has developed a criminal investigative culture over the years based upon its historical experiences and the rules and procedures that have been institutionalized within the organization.

In concentrating on the subcultures within the FBI, this study has sought to analyze the FBI's ability to carry out its counterterrorism function domestically when two incompatible subcultures are in conflict within the organization. The identification of the two subcultures within the FBI was based upon the following characteristics: (1) individuals identifying themselves as a group – a collective identity that has evolved over time, (2) the existence of a feeling of solidarity among the members of the group and the creation of boundaries against outsiders to the group, (3) the development of distinct shared understandings, interpretations and assumptions about the work of the group, and (4) the establishment of specialized language (or jargon) by which the group defines itself and helps establish the boundaries from outsiders.[1152] The subcultures identified in this study were those of the (1) criminal investigators within the FBI and (2) the intelligence collectors within the Bureau. The criminal investigators have been the dominate culture within the Bureau for years while the intelligence collectors (and analysts) are a newly developed group that the FBI is currently trying to establish within the Bureau based upon post-9/11 reform recommendations. In focusing on the role of subcultures, this study has illustrated the impact that conflicting subcultures can have on

[1152] Geoffrey Bloor and Patrick Dawson, "Understanding Professional Culture in Organizational Context," *Organization Studies*, Volume 15, Number 2 (1994); Douglas Bolon, "A Reconceptualization and Analysis of Organizational Culture," *Journal of Managerial Psychology*, Volume 9, Number 5, (1994).

the effectiveness of the entire organization. The results from this study demonstrate that the subcultures (criminal investigators and intelligence collectors) have differing attitudes, expectations, knowledge and assumptions about their work and the mission of the Bureau as it relates to counterterrorism. Conceiving of culture as a set of subcultures within this study and focusing on the lower level of analysis below the larger system culture has served to highlight the potential flaws in having a criminal law enforcement organization, dominated by a criminal investigative culture, also function as an intelligence organization as it pertains to counterterrorism activities.

b. Recommendation

The idea of the concept of subculture as a unit of analysis needs to be explored further through more research in this area. There are benefits to be gained from examining organizational culture as a secondary aspect of the higher organizational larger system culture that can be derived from the interactions (and conflict) between the subcultures of an organization that should be analyzed. One advantage of such an approach is that this interpretive, context-sensitive approach that concentrates on the meanings created by the cultural members of the different subcultures will provide more detailed insight into the impact of culture within the organization itself. Furthermore, in order to understand whether the changes made within the FBI will effectively improve the performance of the Bureau, it is necessary to analyze the interactions between the subcultures of the Bureau and how those impact the performance of the organization. This is something that none of the 9/11 investigations have sought to do.

Policy: Conclusions & Recommendations

1. Organizational Design: Not One is Perfect or Permanent

a. *Conclusion*

While the 9/11 investigations' recommendations and the legislation that followed have failed to make the U.S. as safe as it could be, they are not without merit. For example, in chapter 13 of its report entitled "How to Do It? A Different Way of Organizing the Government," the 9/11 Commission gives some accurate glimpses into some solutions to the mismatch between the threats from the international environment and the organizational design of the institution. In this chapter, the report describes the fatal flaw of a gap within the U.S. government bureaucracy where no agency was collecting intelligence within the United States where the threats existed. A key insight from this chapter is that as the threats change (moving from those emerging against the Untied States from overseas during the Cold War to one emerging from within the United States on 9/11), the government's institutions dedicated to fighting these threats must allow change.

The design of the U.S. national security system and the institutions within it is never permanently set, but should adjust to changes in values and functions based upon the nature of the security threat that the country faces in order to ensure that there is an appropriate fit between the designs and the environment. The designing should be done with the understanding that there are tradeoffs involved in each choice for a design and the question around the need for reform should be ones that are constantly attended to. For instance, after the end of the Cold War, there should have been reforms made to the

U.S. intelligence community. None were made. In fact, there were attempts made in 1992 and 1996 to reform the CIA by Senator David Boren and Representative David McCurdy, the chairmen of the Senate and House intelligence committees, but they met with resistance from their colleagues on the Hill.[1153] There were other efforts at reform initiated within the FBI in 1998 and 1999. These efforts also faced resistance and floundered. While not rushing to reform just for the sake of reforming, there ought to be constant attention to the possible need to reform – especially during times of no crisis rather than in a knee-jerk reaction to a crisis that had just taken place. Furthermore, in considering any recommendations for reform, careful consideration ought to be given to all of the tradeoffs involved with every choice for change. As Judge Posner had asserted in reference to intelligence reform recommendations, "Insufficiently considered recommendations are the bane of intelligence reform; the number of them that have been adopted in the spreading wake of the 9/11 Commission's report bodes ill for the safety of the nation."[1154]

b. *Recommendation*

[1153] On February 5, 1992, Sen. David Boren (D-OK), chairman of he Senate Select Committee on Intelligence, and Rep. Dave McCurdy (D-OK), chairman of the House Permanent Select Committee on Intelligence, introduced bills (S. 2198 and H.R. 4165, respectively) reorganizing the U.S. Intelligence Community. *Authorizing Appropriations for FY 1991 for the Intelligence Activities of the U.S. Government*, report, U.S. Senate, Select Committee on Intelligence (Rpt. 101-358), pp. 4-5; *Review of Intelligence Organization*, hearing, U.S. Senate, Select Committee on Intelligence (S.Hrg. 102-91), March 21, 1991. The proposed bills by Boren and McCurdy called for replacing the then current director of Central Intelligence (DCI) with a Director of National Intelligence (DNI). This individual would preside over four separate agencies, one agency for each major category of collection (human intelligence, signal intelligence and imagery) and a fourth agency to produce analyses of the intelligence received. One subject that was not addressed by either of the draft bills was the divide between foreign and domestic intelligence.

[1154] Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps*, New York: Rowman & Littlefield Publishers, (2006), p. 210.

In order to do that it is recommended that regular and institutionalized assessments be conducted by the U.S. government in order to determine what design is appropriate focusing specifically on the threat to the homeland. This assessment needs to be different and separate from any "Homeland Security Strategy" or "National Security Strategy" that is usually done on an annual basis. The formal assessments should involve White House policymakers as well as representatives from all of the U.S. agencies (not just the members of the intelligence community). The assessments could be run by the deputy National Security Advisor who would be charged with coordinating the government agencies that are involved with homeland security (this would work well if HSC was combined with NSC and the new deputy national security advisor would effectively do what the head of the HSC use to do). The frequency of the assessments can vary depending upon the understanding of the rate at which the nature of the threats is changing. Annual assessments, however, probably made sense in light of how frequently the threats may change.

2. **Reorganizations: A Preference for Incremental Reforms**

a. Conclusion

Alterations in the design of the institutions within the US national security system do not need to be radical or revolutionary. In fact, revolutionary changes may cause more harm than good. Most of the time, the narrower the recommendation, the more specific the focus, the more sensible it is. For example, the WMD Commission recommended that when an agency discovers that one of its spies is a liar and issues a fabrication notice to other agencies who have been relying on the spies information, the

fabrication notice should be attached to all of the prior intelligence reports that included the "liar's" information in them. This was a very sensible recommendation. It is reasonably easy to do (once one figures out the technologically sensible way to do it) and a recommendation that can really make a difference; avoiding a possible situation where an intelligence agency might rely on reporting from the fabricator based on the old reports without knowing that the information in the reports was based on misinformation from a fabricator.

b. *Recommendation*

Therefore, incremental change should be sought as long as the change is perceived to be sufficient to address the issue of creating an system where the institutions are competently designed to deal with the current threat. One example, that the 9/11 investigations did not look at for incremental changes is with the cabling system of the intelligence community. As the example of the unread cable in March 2000 about Hazmi's travel to the U.S. indicates, the manner in which cables are sent and categorizes and saved in databases should be reviewed (if it has not already be done internally at CIA) in order to ensure that there is some kind of trigger in the system for cables that include information about travel to the US by a known terrorist so if the recipients of the cables do not read them because they are in a queue of 1000 other cables to go through that somehow that cable gets automatically flagged from review.

3. **Insights from Theory: Useful in Intelligence Reform**

a. Conclusion

One the greatest mistakes make by the 9/11 investigations is that they failed to accept that insights from theory, while they cannot guarantee zero intelligence failure, do provide useful insights from historical, comparative and social scientific perspectives. Investigations to investigate and reform the intelligence community should look to the theoretical literature and the scholars in order to benefit from their insights. The 9/11 investigations ignored a number of insights from organizational theory that would have been helpful to them in formulating their recommendations.

The fact that the recommendations of the 9/11 commission were immediately accepted by both John Kerry and President Bush may have more to do with the political realities of the fact that a presidential election was imminent. In fact, there was very little time for either Kerry or Bush to have read the report in its entirety never mind evaluate its recommendations. The reality was that the "commission's report was viewed as sacrosanct, and nobody dares challenge its recommendations," even thought many intelligence professionals did not believe that its recommendations would improve the U.S. security and would more likely inhibit a better functioning intelligence community.[1155] The commission's work reflects a failure to adequately take into consideration the insights from theory as well as the views and insights from intelligence professionals. Congress, in its race to accept the reform recommendations of the commission (except those recommendations related to the reform of Congress of

[1155] Jack Devine, "An Intelligence Reform Reality Check," *The Washington Post*, Monday, February 18, 2008, A17.

course), without serious public discussion of their merits, also failed to adequately reflect on insights from theory and experienced professionals of the intelligence community.

b. Recommendation

Academics, on the other hand, have the time, with fewer deadlines, and the tools to support an analysis of the problem within a broader context. Their analysis is usually rooted in the previously existing literature on the same types of problems of the past. Unlike the academics, the practitioners and investigators will probably not have the time and may not have the expertise to do this type of necessary analysis. The objective of governmental inquires or investigations are usually determined largely by their timescale and terms of reference that are often imposed by law and difficult to alter during the course of the inquiry.

4. 9/11 Investigations: Missed Insights About Influence of Culture

a. Conclusion

Different institutions will have different institutions; this is just as true for national security agencies as it is for businesses. Most organization theorists know this but the 9/11 Commission did not think much about what organizational theory could add to their "insider insights." Knowledge is tranmitted and the task at hand approached in highly different ways, with profound implications for overall performance. The "rules" in a n organizational handbook or a doctrine manual may be far from the practice in the field. A particular concern of many organizational cultures facing a new situation is whether change is in keeping with the institution's current

identity. Institutions and their ways of doing things often remain constant despite mounting problems with the task at hand. The extent of cultural embeddedness will dictate who likely it is that a culture can be changed within an institution in the face of new tasks. And conflicting sub-cultures within an institution will negatively impact the effectiveness of the overall institution.

Both the 9/11 investigations and the new legislation neglected one factor of intelligence reform which is critical to the effective operations of this newly designed national security system: incompatible cultures. This is not surprising since the people who design government reorganizations are not mindful usually of the lessons from organizational theory. As described elsewhere in this study, business mergers have been seen to flounder based upon incompatible cultures of the merging entities. Mergers of government organizations can flounder for the same reasons. Yet the 9/11 Commission, although both recognizing the deficiencies of the FBI, concentrated on the lack of resources and legal impediments to effective change at the FBI. The investigation as well as the new legislation passed in December of 2004 failed to analyze the cultural impediments to having FBI try to operate both as a law enforcement organization and an intelligence organization.

These insights come from organizational theories. In failing to analyze some of these insights the 9/11 Commission recommended some reforms that have doubtful prospects for success; i.e., leaving the domestic collection program with the FBI. FBI's culture lead the FBI to fail to intercept the 9/11 plotters and more generally to appreciate the danger that the country faced. Not only were these failures attributable to

FBI's culture but also FBI failed to learn and adapt as the threat information about al Qaeda continued to come.

b. Recommendation

In structuring future commissions that will investigate other intelligence failures it is important that the membership of the commission be composed of academics that are knowledgeable about the theories of the social sciences and not just the foreign policy making process or national security agencies per se. In this way the investigations will have a better chance of having an impact upon the analysis of the facts as uncovered as well as the recommendations that are made.

5. The Effectiveness of Investigations into System Failures

a. *Conclusions*

The failure of 9/11 was a system failure of the U.S. national security. In examining that failure with an eye to finding the causes of the failure and eliminating them, the investigations will need to focus on the nature of the system and the specific nature of the interactions between the different parts of the system in order to get to the root causes of the failure. Normal accident theory argues that it is the complex nature of the system itself where interactions cannot be anticipated and the nature of how tightly connected those interactions are that will determine the likelihood of the system failing. In search for the causes of system failures then investigations must move past the operator errors to examine the harder to identify nature of interactions within the system. Identifying the true nature of the system will lead to the appropriate recommendations for change. Diane Vaughan's examination of the Challenger tragedy

also raises questions about the effectiveness of investigative commissions that investigate system failures. The Presidential Commission which investigated the January 1986 Challenger disaster confirmed prevailing wisdom about government organizations – the launch decision was made by NASA bureaucrats who were driven by financial and political pressure over the last minute protests of NASA engineers to launch. In her 1996 book analyzing the decision to launch, Vaughan describes a fundamentally different reason for the decision. Vaughan describes a culture of production which had developed over the years within NASA which lead to the decision to launch even with evidence that the rocket boosters were not safe. In addition to the implications for the study of cultural factors that impact system failure, Vaughan's work raises some serious questions about the effectiveness of investigative commissions.

b. Recommendation

As seen through the case study of the CIA's IG report seeking accountability, investigating system failures based on an approach that focuses on individual accountability will fail to provide adequate recommendations for system reform. Changes imposed based on this approach may, in fact, result in more harm than good. This is not to say that Inspectors General within organizations should not conduct investigations of alleged wrongdoing by agency employees or managers. Rather, it is to argue that it may be more appropriate to limit investigations by IGs to matters that are not system failures like 9/11. Instead, IG offices may be better equip to investigate

specific instances of alleged wrongdoing while other types of commissions and studies may be better suited to analyzing complex system failures.

6. **A Domestic Intelligence Program: Creating A New Institution**

a. Conclusion

The FBI's culture and organization fosters many of its problems before 9/11. the FBI failed to collect on the al Qaeda threat within the U.S. and advise the policymakers on that threat. When the Bureau did collect information it was not disseminated even internally. The FBI's case-file approach to holding information meant that information was not regularly passed from the field to headquarters and to other offices. Its deficiencies in electronic communication meant that photographs could not be electronically sent to FBI headquarters and to field offices. The FBI did not see itself as part of the national security apparatus and did not share information with the national security agencies. FBI's law enforcement culture meant that agents would spend their time looking for the perpetrators of the last attack and not the next one.

Six years after 9/11, the prognosis for FBI is not good. Organizational obstacles that have been clearly identified since before 9/11 continue to leave the U.S. vulnerable to intelligence failures and another devastating attack inside the United States. For example, the FBI still cannot get a handle on technology. The Virtual Case File system failed at a loss of $170 million. That computer system was supposed to enable the Bureau's agents to share information across field offices and with headquarters. That computer system was abandoned in 2005 in favor of Sentinel. It is estimated that

Sentinel will cost $500 million or more, a recent article stated, "it is not clear that the bureau has a management system in place to prevent the huge cost overruns that plagued previous incarnations of the project" – the Virtual Case File.[1156] A Department of Justice IG report on the system concluded, "it was not yet satisfied that the overhaul, even if successful, would allow the bureau to share information adequately with other intelligence and law enforcement agencies." The problem is not one of a lack of technological capabilities; it is a problem rather of cultural resistance rooted in the identity of the FBI agents at headquarters and in the field who operate as criminal investigators. To a criminal investigator, sharing information or providing a documentary trail that might be discoverable in a criminal proceeding, is threatening to the very work that you exist to do – bring successful prosecutions against criminals.

In the struggle between the two sub-cultures of the FBI, the criminal investigative culture has dominated the intelligence culture. In 2005, Gannon, told former 9/11 Commission members that the FBI culture still denigrates analysts versus agents. "If you are not an agent, you are furniture," he testified.[1157] Some critics of the FBI contend that the Bureau's reforms are moving too slowly and are too limited. In testifying before the 9/11 Commission, a former FBI official stated, "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. Today, however, the FBI is still exceptionally sensitive to investigating religious-based terrorism in the United

[1156] Eric Lichtblau, "Cost Concerns for F.B.I. Overhaul," *New York Times*, (2006), March 14.
[1157] For Gannon quotes, see Dan Eggen, "FBI Fails to Transform Itself, Panel Says; Former September 11 Commission 'Taken Aback' by Personnel, Technology Problems," *Washington Post*, June 7, 2005, A4; Stephen Dinan, "Panel Fears Shortcomings Remain in Intelligence," *The Washington Times*, June 7, 2005

States. Congressional investigations into the FBI's COINTELPRO operations or the deaths at Ruby Ridge and Waco have increased the FBI's sensitivity through the years.

In general, the FBI preferred to err on the side of respect for civil liberties, setting a high bar for surveillance and not getting close to crossing the line. When the "wall" procedures were imposed on the FBI, the FBI misinterpreted them taking an even more restrictive interpretation of the rules which hindered efforts to track al Qaeda activities in the United States. Because of the FBI's law enforcement culture, and the fact that is operated under the Department of Justice, the "wall" procedures did not seem to bother the FBI as much as they should have as they disrupted intelligence operations. Despite some complaints in the FBI ranks, FBI leaders did not feel it necessary to push DOJ officials in order to change those procedures. The problems of the "wall' seemed to come from the culture of the FBI as well as from leadership. FBI leadership under a former agent and judge but also, importantly from leadership issues under two different Attorney Generals; Reno who created the wall and Ashcroft who kept the wall and cut the FBI budget for counterterrorism.

b. Recommendation

A new domestic collection agency needs to be created that is separate from the Department of Justice and like the other collecting agencies (CIA, NSA, NGA) answers to the Director of National Intelligence. Currently, the DNI has no authority over the Attorney General or the FBI Director. The creation of a new, stand alone agency would resolve that problem. It would also allow the development of a true intelligence collection and analytical cadre within a separate agency protected from the dominant

criminal culture of the FBI's agents. The new agency could serve as a hub of a decentralized national network for domestic intelligence rather than a centralized intelligence service under the executive branch. Similar to the CIA, the new agency would have no law enforcement authorities. It would take over the FBI's responsibility for counterintelligence and counterterrorism within the United States. It would be authorized to use the FISA process in order to obtain warrants for its collection. This could mean that the FBI would no longer use the FISA process and instead the FBI investigations would be limited collecting intelligence for its criminal investigations that would be dictated by the Attorney General guidelines. Creating the new agency by statute would allow a certain level of transparency into the process giving the organization more legitimacy. This would also allow an opportunity to amend the Attorney General guidelines so they are more appropriately drafted for a domestic intelligence organization with the appropriate and necessary authorities. One way to minimize concerns from civil libertarians would be to create within the new agency's charter legislation a prohibition that would restrict the use of information collection domestically in criminal cases against American citizens.

The new organization could be built based upon the CIA's already existing Natural Resource (NR) stations within the United States. This would eliminate the need to obtain new office space and, importantly, would provide the new organization with facilitates that already had classified connectivity to the other national intelligence agencies, defense department agencies, Department of Homeland Security as well as state and local authorities. An additional benefit of using CIA's NR stations for the new

agency would be the access that new agency employees would have to CIA officers who could help them transition into the new office spaces. This would provide an opportunity for CIA officer to train the new agency employees as the CIA moves out of its NR locations. Presumably, the new agency would take over the function at the CIA currently carries out through its NR stations. This would mean, in effect, that the CIA would no longer be responsible for any NR stations within the United States. There is no guarantee that the CIA would not object to this recommendation but since the CIA's NR function is relatively small compared to its overseas operations and considering that the NR function is not core to the mission of the CIA, it is likely that the CIA would not strongly object to the proposal.[1158]

7. **The Conflict Between Subcultures**

a. *Conclusion*

The FBI has been asked to reorganized itself and develop a culture within the Bureau that supports a preventive approach to combating terrorism. This approach is based upon a need to be able to detect terrorists within the United States before they take action to carry out another attack like 9/11. In response to this call to change, the

[1158] Interview with John Rizzo, Acting CIA General Counsel, DATE, TIME, LOCATION. In the interview John Rizzo agreed with the author's assessment of CIA's response to this proposal. Rizzo also thought it was an interesting idea (one he had not heard proposed before inside the intelligence community). Judge Richard Posner also proposes a change related to NR and domestic intelligence collection which is similar to this author's idea but slightly different. In his most recent book on terrorism and intelligence reform, Judge Posner recommends moving the FBI's Natural Resource Branch out of the FBI's headquarters and the "NSB personnel could work out of the offices of the CIA's National Resources Division, its domestic branch." Richard A. Posner, *Countering Terrorism: Blurred Focus, Halting Steps*, New York: Rowman & Littlefield Publishers, Inc. (2007). Although Judge Posner agrees with the position of this author that there is a need to create a separate domestic intelligence agency, this recommendation by the Judge entails keeping FBI in charge of terrorism domestically and having the FBI operate out of CIA's space at NR locations. Interview with Judge Richard A. Posner, DATE, TIME, LOCATION.

FBI has hired hundreds of intelligence analysts and has tried to elevate the respect for intelligence work within the Bureau by improving the pay scale and incentives system within the bureau. In effect, over the last seven years the Bureau has tried to carry out its counterterrorism responsibilities while at the same time developing and maintaining two very different cultural workforces within the Bureau. Historically, the Bureau has operated and been dominated by a criminal investigative culture which prioritizes arrests and prosecutions, not intelligence work. After 9/11, the FBI was forced to accept a more active intelligence function in support of its counterterrorism mission. As this study describes, the Bureau is faced with a particularly challenging task of ensuring that both of these functions (intelligence and law enforcement) are given equal weight and priority. This has resulted in the FBI Director and the head of the National Security Branch struggling in order to support the intelligence culture within the Bureau as it collides with the dominate criminal investigative culture of the Bureau.

b. Recommendation

If a new agency is not established created a separate domestic intelligence collection organization, it will be imperative that the subcultures with the FBI be aligned in order that the intelligence and the law enforcement missions of the Bureau can operate effectively in support of counterterrorism. In order to create such alignment between the intelligence culture and the criminal investigative culture there needs to be enough mutual understanding and cross-cultural dialogue as possible. As organizational theorist such as Schein have suggested such alignment between different cultures could be accomplished by the establishment of workshops in which the

members of the divergent subcultures sit down and strive towards a cross-cultural dialogue.[1159] It is important that if the FBI is to maintain the lead in counterterrorism within the United States that there is an effort to identify the incongruence in the views, beliefs and norms of the two cultures. It is important that the Bureau seeks an alignment and mutual understanding between the two subcultures in order to increase the likelihood that these subcultures will be able to operate within the same organization and not negatively impact the FBI's mission in counterterrorism. One way to try to do this would be to have workshops that included the members of the groups (both managers and line operators) from the different subcultures whose ways of working or modes of thinking are to be altered should be present. At these meetings it should be made clear how the work of the different groups will be affected as the organization works towards the alignment of the different cultures.

[1159] Edgar Schein, "Culture: The Missing Concept in Organization Studies," Administrative *Science Quarterly*, (1991), p. 41.

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