

# CRS Report for Congress

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## **Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress**

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# Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress

## Summary

In the aftermath of September 11, 2001, the Federal Bureau of Investigation (FBI) embarked on a program to reform its intelligence and national security programs. In the nearly four years since 9/11 many experts agree the FBI has made progress in some areas (dissemination of raw intelligence), but some believe that the FBI has shown little progress in other areas (establishing an integrated and proactive intelligence program) while the FBI's budget increased by 68% from FY2000 to FY2005. The Weapons of Mass Destruction Commission has recommended, and the White House has approved, the establishment of a National Security Service within the FBI. This Service would integrate the FBI's Counterterrorism and Counterintelligence Divisions with the FBI's Directorate of Intelligence (DI). Whether this organizational change will yield substantive results is an open question.

There are at least two schools of thought with respect to how the FBI has performed in implementing its intelligence reform initiatives. The "optimists" believe there is a critical synergy between the law enforcement and intelligence disciplines, and that the FBI has successfully made changes throughout its history to respond to the threats of the time. Since the FBI's vision for intelligence reform is sound, success is simply a matter of implementing that vision. Alternatively, the "skeptics" believe that law enforcement and intelligence are distinct disciplines demanding different skill sets to achieve different ends. They argue the FBI's vision is fundamentally unsound, and its ongoing implementation has not yielded an integrated intelligence program. According to this group, intelligence collection remains effectively separated from intelligence analysis at the FBI.

This report analyzes the FBI's overall intelligence reform effort, focusing on the implementation of intelligence reform initiatives in the field. Reform policies designed at FBI Headquarters, with field input, may be of marginal utility unless they are fully and effectively implemented across the 56 FBI field offices. The Congressional Research Service (CRS) examined the FBI's reform initiatives with a focus on the implementation of the field intelligence group concept, at five field offices. Allowing for varying levels of progress across field offices, a central tenet of a high-order functioning intelligence organization is its ability to harness collection resources to nationally developed intelligence priorities and gaps. *While areas of promise exist, field research indicates that the FBI's ability to formally harness intelligence collection (including systemic accountability mechanisms) to analytically identified intelligence gaps, remains nascent.*

In addition, this report discusses several overall options for Congress in addressing FBI intelligence reform. Organizationally and structurally, Congress could establish a stand-alone domestic intelligence agency. Alternatively, it could codify the recently announced National Security Service within the FBI. Potential areas are outlined for functional oversight, including the FBI-CIA relationship, and the FBI's efforts to stanch terrorism finance. And finally, the report reviews options for addressing the FBI's intelligence budget, both at the strategic and tactical levels.

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# Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress

## Introduction

This report examines the Federal Bureau of Investigation's (FBI's) intelligence program and its reform.<sup>1</sup> While the report serves as an update of the FBI's efforts in these areas, a substantial part of its focus is on the implementation of the FBI's intelligence reform in the field. An important question is whether intelligence policy designed by senior level Intelligence Directorate personnel at FBI headquarters, with field input, has been accepted, adopted and implemented within the FBI's field structure. The report covers a number of issues of interest to Congress relating to how well the FBI is progressing with its reform efforts. The report also outlines the

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<sup>1</sup> The Congressional Research Service (CRS) conducted its research over a four-month period during late 2004 and early 2005 and benefitted from the extensive access provided by the FBI. CRS conducted 65 interviews, including three with Special Agents-in-Charge, and eight with Assistant Special Agents in Charge, and numerous FBI intelligence analysts and special agents. CRS visited five field offices: New York, New York; Detroit, Michigan; San Francisco, California; and Phoenix, Arizona and the Washington Metropolitan Field Office. The sample of field offices visited was not designed to be representative of the FBI's 56 field offices. Rather, field offices designated for visits were chosen for three reasons: either, (1) they historically had the most advanced counterterrorism, counterintelligence, and intelligence programs; or, (2) they had substantial experience in investigating high-profile national security cases; or, (3) they were linked to the events of 9/11. One could argue that if the field offices visited are not advanced in the implementation of intelligence reform measures, smaller field offices with less institutional knowledge of national security cases have a higher probability of being even less developed. Although a smaller FBI field office with less institutional knowledge of national security cases may be better at implementing some elements of intelligence reform, given the nature of threats to national security, and the location of risk-assessed terrorist targets, the national impact of that smaller office's intelligence reform may pale in comparison to the status of intelligence reform in, for example, New York or San Francisco.

Information was gathered in accordance with a standardized methodology, including a uniform protocol of questions asked of similar categories and levels of FBI and non-FBI employees, including Special-Agents-in-Charge and Assistant Special Agents-in-Charge directly responsible for implementing the Bureau's intelligence reforms. Non-FBI employees interviewed were largely other federal agency Special Agents participating in the FBI-led Joint Terrorism Task Forces. Additionally, numerous Central Intelligence Agency (CIA), as well as state and local law enforcement representatives, were also interviewed for this report.

advantages and disadvantages of several congressional options to make further changes to the FBI's intelligence program.<sup>2</sup> Finally, a number of appendices concerning contextual issues surrounding FBI intelligence reform are provided.

The September 11, 2001 terrorist attacks on the United States have been called a major intelligence failure, similar in magnitude to that associated with the Japanese attack on Pearl Harbor.<sup>3</sup> In response to criticisms of its role, the FBI has introduced a series of reforms to transform the bureau from a largely reactive law enforcement agency focused on criminal investigations into a more mobile, agile, flexible, intelligence-driven<sup>4</sup> agency that can prevent acts of terrorism.<sup>5</sup>

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<sup>2</sup> For a history of the FBI, see CRS Report RL32095, *The FBI: Past, Present and Future*, by Todd Masse and William Krouse. See **Appendix 4** for a summary of the FBI's past attempts at intelligence reform.

<sup>3</sup> There is a large and growing body of literature on the failures associated with the attacks of Sept. 11, 2001, and broader issues associated with the effectiveness of the Intelligence Community in general. The 9/11 Commission attributed the 9/11 attacks to failures in four areas: imagination, policy, capabilities, and management. See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 339. See also William E. Odom, *Fixing Intelligence for a More Secure America* (New Haven, CT: Yale University Press, 2003), p. 187. According to the author, the attacks of 9/11 represent a failure of both intelligence and policy. See also *The Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction: Report to the President of the United States*, Mar. 31, 2005. (Hereafter cited as WMD Report.) Chapter Ten of this report, "Intelligence at Home: The FBI, Justice, and Homeland Security," is the most germane with respect to FBI intelligence reform. See also Senate Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Pre-War Intelligence Assessments on Iraq*, July 7, 2004. See also the National Academy of Public Administration, *Transforming the FBI: Progress and Challenges*, Jan, 2005. Chapter three on Intelligence is most pertinent to the topic of this CRS report. See also Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* (Hoover Institution: Stanford University, 2005). See also 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*, Nov. 2004, recently released in redacted form.

<sup>4</sup> For purposes of this report, intelligence is defined to include foreign intelligence, counterintelligence and criminal intelligence. Experts differ on the extent to which there may be a synergy between traditionally defined foreign intelligence and criminal intelligence. One's perspective on the relationship between the law enforcement and intelligence disciplines can have direct effects on policy preferences, including the role of the FBI in domestic intelligence, and domestic intelligence resource allocation strategies. For a statutory definition of each type of intelligence see **Appendix 1**. For a brief summary of the FBI's traditional role in intelligence, see **Appendix 2**. Finally, **Appendix 3** provides a brief history of FBI intelligence.

<sup>5</sup> P.L. 108-447, the FY2005 Consolidated Appropriations Act provided the FBI with additional human resource tools for recruitment and retention, including authority to provide retention and relocation bonuses to certain categories of FBI employees, and the establishment of an FBI Investigative Reserve Service. These enhanced authorities for human resources, as well as others passed in Title II of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), will be discussed in more detail below.

FBI Director Robert S. Mueller III has vowed to assert Headquarters' control over the FBI's historically fragmented and much-criticized intelligence program. He also has signaled his intention to improve the FBI's intelligence program by, among other measures, consolidating and centralizing control over fragmented intelligence capabilities, both at FBI Headquarters and in the FBI's largely autonomous field offices.<sup>6</sup> Finally, he has contended that intelligence has always been one of the FBI's core competencies<sup>7</sup> and organic to the FBI's investigative mission,<sup>8</sup> and asserted that the organization's intelligence efforts have and will continue to be disciplined by the intelligence cycle (i.e., the development and conduct of intelligence collection requirements, collection, analysis, and dissemination).

Since the September 11, 2001 attacks, Mr. Mueller has attempted to restructure the Bureau's intelligence program. He has created a new Directorate of Intelligence (DI) at Headquarters and established Field Intelligence Groups (FIGs) at each of the FBI's 56 field offices to improve the Bureau's intelligence capacity.

A number of reports has examined the FBI's intelligence reform efforts in the wake of the 2001 attacks, and Congress passed far-reaching legislation reforming the Intelligence Community, including providing the FBI additional authorities. The Administration has also responded by directing the FBI to implement changes.

## **The Congressional Joint Inquiry<sup>9</sup>**

In a sweeping indictment of the FBI's intelligence activities relating to counterterrorism, the Congressional Joint Inquiry Into Intelligence Community<sup>10</sup> Activities Before and After the Terrorist Attacks of September 11, 2001 (JIC),<sup>11</sup>

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<sup>6</sup> See statement of Robert S. Mueller, III, Director, FBI, in U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Commerce, Justice, State, the Judiciary and Related Agencies, June 18, 2003.

<sup>7</sup> Core competencies are defined as a related group of activities central to the success, or failure, of an organization. In the private sector, core competencies are often the source of a company's competitive advantage. See C. K. Prahalad and Gary Hamel, "The Core Competency of the Corporation," *Harvard Business Review*, Apr. 1, 2001.

<sup>8</sup> See statement of Robert S. Mueller, III, Director, FBI, in U.S. Congress, Senate Judiciary Committee, July 23, 2003.

<sup>9</sup> The full report of the *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, available at [<http://www.9-11commission.gov/report/index.htm>].

<sup>10</sup> The Intelligence Community (IC) is comprised of 15 agencies: the Central Intelligence Agency; the National Security Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; and the intelligence elements of the Army, Navy, Air Force, and Marine Corps; the FBI; the Department of the Treasury; the Department of Energy; the Coast Guard; the Bureau of Intelligence and Research of the Department of State; and the Department of Homeland Security (Information Analysis).

<sup>11</sup> See *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist* (continued...)

criticized the FBI for failing to focus on the terrorist threat domestically; collect useful intelligence; strategically analyze intelligence; and, to share intelligence internally, and with the rest of the IC. Prior to 9/11, according to the congressional inquiry, the FBI was incapable of producing significant intelligence products and was seriously handicapped in its efforts to identify, report on,<sup>12</sup> and defend against the foreign terrorist threat to the United States.<sup>13</sup>

## The 9/11 Commission<sup>14</sup>

The National Commission on Terrorist Attacks Upon the United States (hereafter, the 9/11 Commission) essentially endorsed reforms the FBI initiated following the September 11 attacks. The Commission noted that the FBI, under Director Mueller, “has made significant progress in improving its intelligence capabilities.”<sup>15</sup> In its July 2004 report, the Commission recommended leaving the responsibility for counterterrorism intelligence collection with the FBI, but called for an integrated national security workforce within the Bureau. Such an option has often been referred to as “a service within a service.” Specifically, the Commission recommended that the FBI establish a specialized and integrated national security workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture with a deep expertise in intelligence and national security. While rejecting the establishment of a separate domestic intelligence agency, the Commission stated that it wanted to ensure that the FBI’s preventative counterterrorism posture is “... more fully institutionalized ...”<sup>16</sup> so that it survives beyond Director Muller’s tenure. Commissioners also concluded that “... two years after 9/11 we also found gaps between some of the announced reforms and the reality in the field.”<sup>17</sup>

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<sup>11</sup> (...continued)

*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, Dec. 2002, pp. xv, xvi, 37-39, 337-338. (Hereafter cited as *JIC Inquiry*.)

<sup>12</sup> See *JIC Inquiry*, p. 37.

<sup>13</sup> *Ibid.*, p. 39.

<sup>14</sup> The 9/11 Commission is formally known as the National Commission on Terrorist Attacks Upon the United States, and was created by law in late 2002 (P.L. 107-306, Nov. 27, 2003). It was chartered to prepare a full and complete account of the circumstances surrounding the Sept. 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission also was mandated to provide recommendations designed to guard against future attacks.

<sup>15</sup> National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, (Washington, 2004), p. 425. (Hereafter cited as *Final Report of the National Commission on Terrorist Attacks Upon the United States*.)

<sup>16</sup> *Ibid.*, p. 425.

<sup>17</sup> *Ibid.*



## White House Memorandum for the Attorney General

On November 23, 2004, the President issued a *Memorandum for the Attorney General*, titled, “Further Strengthening Federal Bureau of Investigation Capabilities.” In the memorandum, Mr. Bush approved a recommendation made by the 9/11 Commission calling for the establishment of an integrated national security workforce. Specifically, the White House directed the Attorney General to implement the following recommendation of the 9/11 Commission:

A specialized and integrated national security workforce should be established at the FBI, consisting of agents, analysts, linguists and surveillance specialists who are recruited, trained, rewarded and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security.<sup>18</sup>

In adopting the Commission’s recommendation, the President also instructed the Attorney General and the Director of the FBI to provide a “... a comprehensive plan with performance measures, including timelines for achievement of specific, measurable progress...”<sup>19</sup> to the President within 90 days. This comprehensive plan was to address the following issues: (1) Analysis (including standards for recruitment, hiring, training, and performance of FBI analysts), (2) Products (including standards for measuring the responsiveness of those products to nationally determined priorities), (3) Sources (including standards for asset validation and asset contributions for filling intelligence gaps), (4) Field intelligence operations (including standards for assessing staffing and infrastructure), and (5) Contribution of the FBI’s intelligence products to intelligence and national security information made available to the President and Vice President (including the degree to which each Field Office is collecting against, and providing information in response to, national requirements).<sup>20</sup>

## The FBI’s “Comprehensive Plan” and The Weapons of Mass Destruction Intelligence Commission

On February 16, 2005, the FBI responded to the November 23, 2004 White House Memorandum to the Attorney General, issuing its *Report to the President of the United States — FBI Directorate of Intelligence — Comprehensive Plan for the FBI Intelligence Program with Performance Measures*. This classified report outlined steps the FBI had taken or anticipated taking. The report addressed performance measures and milestones in the following five areas: (1) Resources and Authority for the DI, (2) Intelligence Operations, (3) Human Resources, (4) Infrastructure, and (5) Planning, Budget, and Performance.

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<sup>18</sup> Memorandum for the Attorney General, “Further Strengthening Federal Bureau of Investigation Capabilities,” Nov. 23, 2004. A full copy of this memorandum can be located at [<http://www.fas.org/irp/news/2004/11/wh112304ag.html>].

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

An analysis of this classified report by the Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (hereafter the WMD Commission) concluded that while the FBI has taken “... some commendable steps in the direction of an integrated national security workforce...” its plan “... fails to create a truly ‘specialized and integrated national security workforce’...”<sup>21</sup> Moreover, the WMD Commission concluded that “... In essence, the [DI] functions as an overlay on intelligence activities that are managed by other elements of the FBI...” and “... the Directorate’s lack of authority prevents the FBI from vertically integrating foreign intelligence collection, analysis and operations...”<sup>22</sup> With respect to the collection of foreign intelligence within the United States, a function in which *both* the FBI and elements of the Central Intelligence Agency engage, 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 the Attorney General if it is a question of what U.S. law permits).”<sup>23</sup>

The WMD Commission concluded, in part, that

Although the FBI is making progress toward becoming a full member of the Intelligence Community, it has a long way to go and significant hurdles remain. In our view, the FBI has not constructed its intelligence program in a way that will promote integrated intelligence efforts, and its ambitions have led it into unnecessary new turf battles with the CIA.<sup>24</sup>

Regarding the contentious issue of whether the FBI should continue to play a leading federal role in domestic intelligence collection, or, instead, be replaced by a separate agency akin to the British Security Service (MI-5),<sup>25</sup> the 9/11 and WMD Commissions rejected the establishment of a separate entity, although the WMD Commission qualified its rejection, concluding

... We recommend that the policymakers re-evaluate the wisdom of creating a separate agency — an equivalent to the British “MI-5” — dedicated to intelligence collection in the United States should there be a continued failure to institute the reforms necessary to transform the FBI into the intelligence organization it must become.<sup>26</sup>

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<sup>21</sup> 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 (hereafter, referred to as the WMD Commission) concerning the adequacy of plans produced in response to the White House Memorandum to the Attorney General, Mar. 29, 2005, p. 2. A copy of the letter can be found at the Commission’s website at [<http://www.wmd.gov/report/>].

<sup>22</sup> *Ibid.*

<sup>23</sup> See Report of the WMD Commission, March 31, 2005, p. 470.

<sup>24</sup> *Ibid.*, p. 451.

<sup>25</sup> See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, pp. 423-428.

<sup>26</sup> See WMD Commission, p. 468.

**The National Security Service.** On June 29, 2005, the President issued a memorandum stating his acceptance of the WMD Commission's recommendation that a National Security Service be established within the FBI. The White House called for the

... 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.<sup>27</sup>

The President directed the Attorney General, in cooperation with the Director of National Intelligence (DNI) and the Director of the Office of Management and Budget, and any other affected agencies, to implement the following initiatives: (1) combine the mission, capabilities and resources of the counterterrorism, counterintelligence and intelligence elements of the FBI into a new National Security Service, (2) obtain the concurrence of the DNI before an individual is appointed as head of the FBI's National Security Service, (3) ensure the FBI's National Security Service, both at headquarters and in the field, is funded through the National Intelligence Program ..., and (4) establish programs to build an FBI National Security Service workforce....<sup>28</sup> The White House directed that National Security Service be headed by an FBI "Executive Assistant Director (EAD) or other senior FBI Official of an equivalent or higher level of authority, experience, and responsibility."<sup>29</sup>

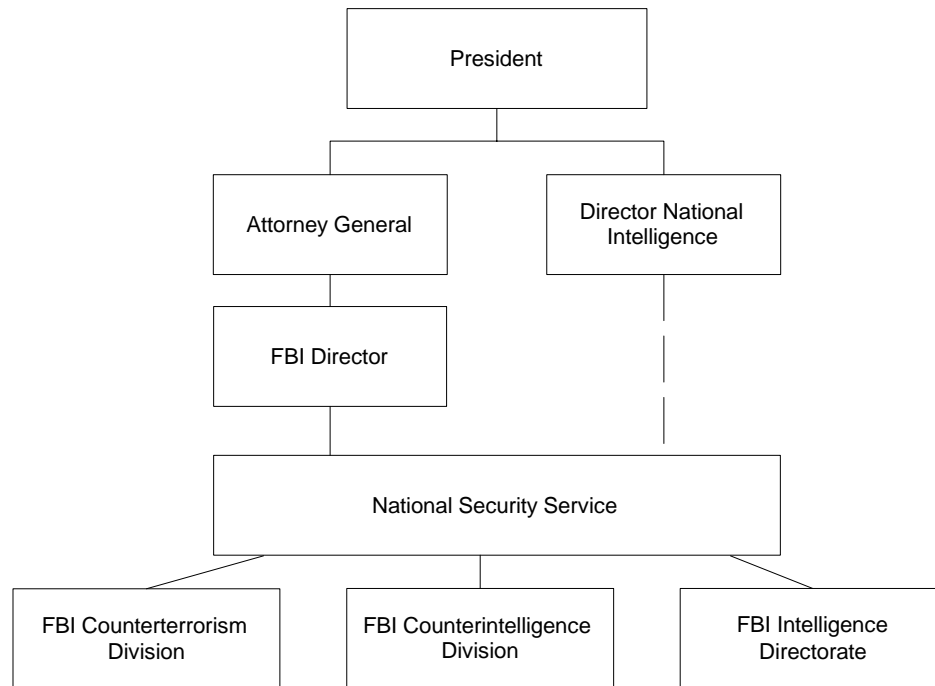
While the details, including the structure and chain of command of this organization have yet to be announced, **Figure 1** provides a possible organizational structure. The dotted line between the DNI and the leader of the National Security Service reflects the still-to-be-determined relationship between the DNI and the head of the Bureau's new National Security Service.

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<sup>27</sup> See White House Memorandum, "Strengthening the Ability of the Department of Justice to Meet Challenges to the Security of the Nation," June 29, 2005. The entire memorandum, along with broader White House Fact sheet outlining additional WMD Commission recommendations the White House has approved, can be located at [<http://www.whitehouse.gov/news/>].

<sup>28</sup> Ibid.

<sup>29</sup> Ibid. According to an FBI press release dated Aug. 12, 2005, Gary M. Bald, the former FBI EAD for Counterterrorism and Counterintelligence has been appointed as the EAD for National Security. The FBI positions of EAD for Intelligence and EAD for Counterterrorism and Counterintelligence have been consolidated to form the new position of EAD for National Security which will lead the FBI's National Security Branch. Mr. Philip Mudd, former Deputy Director of the Central Intelligence Agency's Counterterrorism Center, was appointed as deputy head of the National Security Branch. According to the press release, both Attorney General Gonzales and DNI Negroponte "... have concurred with this decision." See [<http://www.fbi.gov/pressrel/pressrel05/nsbleadership081205.htm>].

**Figure 1. National Security Service – Preview Structure**

**Source:** CRS Analysis of June 29, 2005 White House Memorandum, titled *Strengthening the Ability of the Department of Justice to Meet Challenges to the Security of the Nation*.

The relationship remains less than clearly defined because the language contained in White House memorandum establishing the National Security Service is vague with respect to the degree of authority the DNI will exercise over the new entity. The memorandum states that the Attorney General, in coordination with the DNI, the Director of the Office of Management and Budget and, as appropriate, the head of other agencies, shall

Develop procedures to ensure the DNI, through the head of the FBI’s National Security Service, can effectively communicate with the FBI’s field offices, resident agencies, and any other personnel in the National Security Service, to ensure that the activities of the service are appropriately coordinated, consistent with the authorities of the Attorney General and the DNI granted by law or by the President.<sup>30</sup>

Exactly which “procedures” are established and how the term “communicate” is interpreted and implemented will be critical factors in determining the extent of the DNI’s influence over the activities of the FBI’s National Security Service. This lack of clarity may be intentional to allow flexibility in working out arrangements. It has resulted in some seemingly contradictory comments by executive officials. For example, when asked to whom the Director of the National Security Service would report, Principle Deputy DNI General Hayden reportedly referenced the “dual-hatted” nature of his former post as head of the National Security Agency, where he reported

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<sup>30</sup> See White House Memorandum, “Strengthening the Ability of the Department of Justice to Meet Challenges to the Security of the Nation,” June 29, 2005.

to both the Secretary of Defense and Director of Central Intelligence. He reportedly stated "...We've lived with these kind of arrangements," and added that the new FBI intelligence chief would "have to be sensitive to both" the DNI and the FBI director."<sup>31</sup> When asked the same question, however, an anonymous Department of Justice official was reported to have stated, "The person (Director of the National Security Service) will be reporting to the Director of the FBI. He will work for the Director of the FBI...He will have a relationship with the (Director of National Intelligence) because he will be the person the (Director of National Intelligence) will look to on budget issues."<sup>32</sup> Another anonymous law enforcement official, citing the broad language in the White House memorandum reportedly stated, "It says 'communicate with' not 'issues orders to'" in describing the authority the DNI will exercise over the FBI's new intelligence chief.<sup>33</sup>

If the relationship between the DNI and the new FBI EAD for National Security approximates that described by Deputy DNI Hayden, it could represent a significant change from past practice, where the former Director of Central Intelligence largely deferred to the FBI director with respect to FBI intelligence operations. If on the other hand, the relationship takes on the dimensions outlined by the anonymous DOJ official, it would signify a more "business-as-usual" approach.

Additional information may be available when the Attorney General reports, within 60 days of June 29, the steps taken to implement the memorandum. It is more likely that the true meaning of "procedures" and DNI "communication" with FBI field offices will not be known in practice until months after the procedures are disseminated to the field, and the EAD for National Security or the Office of the DNI audits the procedures to monitor their implementation. The White House memorandum requires a report "...on the progress in implementing this memorandum..." from the Attorney General, in coordination with the DNI, within 180 days of June 29.

Some civil liberties groups have raised concerns about the creation of a National Security Service within the FBI. Timothy Edgar, American Civil Liberties Union (ACLU) Policy Counsel for National Security stated

Spies and cops have different roles and operate under different rules for a very important reason: to ensure that our law enforcement agencies stay within the Constitution. This proposal could erode the FBI's law enforcement ethic and put parts of the FBI under the effective control of a spymaster who reports to the president - not the attorney general.<sup>34</sup>

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<sup>31</sup> See Shaun Waterman, "Intelligence Reforms Raise Civil Liberties Concerns," United Press International, June 30, 2005.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> See American Civil Liberties Union, "ACLU Slams Plan to Place Parts of the FBI Under Control of Intelligence Agencies, Warns of Further Mixing of Law Enforcement with Intelligence Operations," press release, June 29, 2005, available at ACLU's website, at [<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=18608&c=206>].

As indicated in **Appendix 3** of this report, in the past the domestic intelligence activities of the FBI and broader IC have been found to have “...threatened and undermined the constitutional rights of Americans to free speech, association and privacy.”<sup>35</sup> Some critics of the Administration’s plan to establish a National Security Service within the FBI are concerned about the extent to which an investigative and intelligence agency may be vulnerable to political manipulation. Acknowledging this concern, Attorney General Gonzalez reportedly stated that while the DNI will control the FBI’s intelligence budget, intelligence officials “... are not going to be directing law enforcement.”<sup>36</sup>

Notwithstanding some criticism of the FBI’s intelligence reform, prior to the publication of the Report of the WMD Commission report,<sup>37</sup> many observers believe the FBI has adopted a sound approach in its intelligence reforms. Consistent with the findings of the 9/11 Commission,<sup>38</sup> Title II of the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) states “... the Director of the FBI shall *continue* efforts to improve the intelligence capabilities of the FBI and to develop and maintain within the Bureau a national intelligence workforce.”<sup>39</sup> [Emphasis supplied] Moreover, the act re-named the existing Office of Intelligence the DI and accorded its director the responsibility for, *inter alia*, “... supervision of all national intelligence program projects, and activities of the Bureau.”<sup>40</sup> The act also provided the FBI new and strengthened personnel authorities, such as establishing intelligence analyst positions without regard to Chapter 51 of Title 5, U.S. Code.<sup>41</sup> Finally, the FY2005 Consolidated Appropriations Act (P.L. 108-447) provided certain new retention and recruitment authorities for the FBI.<sup>42</sup>

Although some observers believe that the FBI’s success in reforming its intelligence program turned on successfully implementing these and other measures intended to strengthen its intelligence operations, the WMD Commissioners

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<sup>35</sup> See United States Senate, *Intelligence Activities and the Rights of Americans*, Book II, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Apr. 26, 1976 (Church Committee), p. 290. Although reaching this conclusion, the committee also observed “... we do not question the need for lawful domestic intelligence.” (p. 289).

<sup>36</sup> See Douglas Jehl, “Bush to Create New Unit in FBI for Intelligence,” *New York Times*, June 30, 2005.

<sup>37</sup> See The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, A Report to the President of the United States, Mar. 31, 2005.

<sup>38</sup> See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, pp. 423-428.

<sup>39</sup> See P.L. 108-458, §2001, 28U.S.C. 532 note.

<sup>40</sup> *Ibid.*, §2002.

<sup>41</sup> Title 5 U.S. Code pertains to government employees; Part III, Subpart D concerns pay and allowances; and Chapter 51 deals with classification of positions.

<sup>42</sup> See *Congressional Record*, Nov. 19, 2004, pp. H10429-H10431.

suggested that the Bureau's approach may be fundamentally flawed.<sup>43</sup> The Commission recommended instead that the FBI develop an integrated National Security Service within the Bureau that would co-join all elements of the intelligence cycle.<sup>44</sup>

## Report of The National Academy of Public Administration

The National Academy of Public Administration (NAPA), in a January 2005 report, concluded that while the FBI continues to confront implementation challenges, the Bureau's approach to intelligence reform is fundamentally sound.<sup>45</sup> NAPA urged the FBI to "...continue to emphasize intelligence management and that it [the Office of Intelligence] not become encumbered by detailed operational and production responsibilities."<sup>46</sup> Commenting on the relationship between the IC, particularly the Central Intelligence Agency (CIA), which performs some foreign intelligence collection within the United States, and the FBI, NAPA recommended that the FBI "... rely on American intelligence agencies operating abroad to meet their covert foreign intelligence needs and that those agencies rely on domestic intelligence capabilities of the FBI, rather than develop redundant capabilities."<sup>47</sup>

## "Report Card" of The Public Discourse Project

The Public Discourse Project (PDP), a non-profit organization established by the 10 former Commissioners of the now defunct National Commission on the Terrorist Attacks Upon the United States, also plans to issue a report on the progress of intelligence reform. The Project's goal is to "... fulfill the 9/11 Commission's original mandate of guarding against future attacks."<sup>48</sup> Specifically, PDP intends to issue a "report card" on the implementation status of the Commission's 41 recommendations that will be based in part on results from a series of public panel discussions. The Project's first panel, convened on June 6, 2005, addressed the status of FBI and CIA reforms. During the panel discussion, chaired by former 9/11 Commissioner Jamie Gorelick, the following points were noted: (1) a recognition that the FBI has made substantial progress in some areas (intelligence dissemination),

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<sup>43</sup> See WMD Report, Chapter 10, pp. 451-483.

<sup>44</sup> See also CRS Report RL32336, *FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress*, by Alfred Cumming and Todd Masse, Option 2, p. 40.

<sup>45</sup> The FBI commissioned NAPA to undertake a study of the transformation of the FBI. While including intelligence reforms at the FBI, the NAPA study also includes security changes the FBI has made pursuant to the Webster Commission recommendations in the wake of Robert Hanssen's espionage activities at the FBI. The NAPA study also includes an assessment of the FBI counterterrorism strategy and FBI changes in response to the Sept. 11, 2001 attacks. See [<http://www.napawash.org/Pubs/FBI010505.pdf>] for the full NAPA study.

<sup>46</sup> See a Report by a Panel of NAPA for the U.S. Congress and the FBI, *Transforming the FBI: Progress and Challenges*, Jan. 2005, p. 66.

<sup>47</sup> *Ibid.*, p. 68.

<sup>48</sup> See [<http://www.9-11pdp.org/about/index.htm>].

yet little, if any, in other areas (information technology); (2) a belief that there continues to be a lack of clarity and diffused accountability concerning the many agencies that now have *de jure* or *de facto* responsibility for counterterrorism intelligence; (3) the ethos of the FBI continues to manifest itself in a manner that leads to, according to one panelist, FBI intelligence analysts being treated as “furniture” or “carpet dust” because they are not Special Agents; (4) a notion expressed by two panelists that, notwithstanding its problems, the FBI should retain its domestic intelligence mission.<sup>49</sup>

## Report by the Department of Justice’s Office of the Inspector General<sup>50</sup>

In June 2005, the Department of Justice’s (DOJ), Office of Inspector General (OIG), released a redacted version of a report documenting how the FBI handled intelligence information prior to September 11, 2001. Although many of the findings contained in the report are consistent with those outlined in studies previously mentioned, the OIG report went further by concluding that the FBI

... had at least five opportunities to learn about (the presence of hijackers Hazmi and Mihdar) in the United States and seek to find them before September 11, 2001. Much of the cause for these lost opportunities involved systemic problems. We found information sharing problems between the CIA and FBI and systemic problems within the FBI related to counterterrorism investigations. The systemic problems included inadequate oversight and guidance to FBI detailees at the CIA, the FBI employees’ lack of understanding of CIA procedures, the inconsistent documentation of intelligence information received informally by the FBI, the lack of priority given to counterterrorism investigations by the FBI before September 11, and the effect of the wall on FBI criminal investigations.<sup>51</sup>

The DOJ OIG Report also noted that the FBI has “... taken numerous steps to reorganize and strengthen its Counterterrorism Program....”<sup>52</sup> The OIG’s report also recognized that the CIA had failed to provide the FBI information about two of the

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<sup>49</sup> See [[http://www.9-11pdp.org/press/2005-06-06\\_transcript.pdf](http://www.9-11pdp.org/press/2005-06-06_transcript.pdf)] for the complete transcript of the panel discussion. In addition to former Commissioner Jamie Gorelick, other panelists included John Gannon, Richard Thornburgh, and Chitra Ragavan.

<sup>50</sup> In recent months, the DOJ IG’s Office released four reports related to the FBI’s intelligence and national security programs. In May 2005, it published *The Federal Bureau of Investigation’s Efforts to Hire, Train, and Retain Intelligence Analysts*; and in June 2005, it released publicly redacted versions of two reports: (1) *A Review of the FBI’s Handling of Intelligence Information Prior to September 11 Attacks*, and (2) *A Review of the Terrorist Screening Center*. In June 2005, it also published *The Department of Justice’s Terrorism Task Forces*. See [<http://www.usdoj.gov/oig/>] for these and other related reports.

<sup>51</sup> See 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*, Nov. 2004, p. 353.

<sup>52</sup> *Ibid.*, p. 355.



hijackers “... when it [CIA] should have and we believe the CIA shares significant responsibility for the breakdown in the Hazmi and Mihdar case.”<sup>53</sup>

## FY2006 Congressional Appropriations Reports

Both the House and Senate Appropriations Committees have approved FY2006 spending bills for the FBI, and although each acknowledged the Bureau’s progress in reforming its intelligence programs, both committees called for more progress. In its report accompanying the FY2006 appropriations bill (H.R. 2862), the House Appropriations Committee acknowledged FBI’s improvements but also recommended that as a “next step”<sup>54</sup> the Attorney General implement the recommendations of the WMD Commission. Specifically, the House panel directed the Attorney General to “... create within the FBI an Associate Deputy Director for National Security to oversee and coordinate the activities of the EAD for Counterterrorism and Counterintelligence and the national security activities of the DI.”<sup>55</sup> According to press accounts, subsequently confirmed by White House action, the Administration “... has agreed to adopt the recommendations of a presidential commission and will allow the Director of National Intelligence, John D. Negroponte, to help choose a powerful intelligence chief at the FBI.”<sup>56</sup> Because the details of the new service remain to be sketched and its chief’s authorities remain to be determined, it is unclear how the Bureau ultimately will decide to integrate its national security and intelligence missions. What does seem clearer is that the President has extended to the DNI concurrence authority with the FBI Director in filling the new position — an authority first extended to the DNI under the Intelligence Reform Act of 2004, and which applied at that time to the FBI’s EAD for Intelligence, the Bureau’s then senior intelligence position. The joint appointment of a senior FBI official by the chief executive officer of the Intelligence Community (IC) represents a degree of IC influence in FBI personnel decisions that had not existed prior to the 2004 Intelligence Reform Act.<sup>57</sup>

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<sup>53</sup> Ibid., p. 353.

<sup>54</sup> See U.S. Congress, House of Representatives, Committee on Appropriations, Science, State, Justice, and Related Agencies Appropriations Bill, Fiscal Year 2006 (H.Rept. 109-118), p. 22.

<sup>55</sup> Ibid., p. 22-23.

<sup>56</sup> See David Johnson, “Antiterror Chief Will Help Choose an FBI Official,” in *New York Times*, June 12, 2005, p. A1. The title of this article may be slightly misleading, as it is the DNI, and not the director of any counterterrorism organization, who will choose jointly with the Director of the FBI, the high ranking FBI intelligence official.

<sup>57</sup> Prior to the IRTPA (P.L. 108-458), if there was a vacancy in the Assistant Director, FBI National Security Division, the Director, FBI was to provide the Director of Central Intelligence with “timely notice” of the recommendation of the Director, FBI of an individual to fill the position “... in order that the Director of Central Intelligence may consult with the Director of the FBI before the Attorney General appoints an individual to fill the vacancy.” See 50 U.S.C. 403-6. According to a conference report for the Intelligence Authorization Act of 1997, conferees stated that for purposes of DCI consultation of the Assistant Director, National Security Division of the FBI, “...timely notice means notice will be provided at a sufficiently early stage in the process that

(continued...)

Employing somewhat similar language, the Senate Appropriations Committee, found that “... the FBI has made significant strides in its efforts to transform itself from an agency whose primary mission was investigating crimes to one whose top priority is preventing terrorism...”<sup>58</sup> The Committee also stated that despite an “astounding 66% budget increase” the FBI has “... not permanently realigned its workforce to reflect its new priority missions...”<sup>59</sup> The Committee asserted that while the FBI had enhanced its national security and intelligence training, it “... does not have the capacity to train its newly hired agents, analysts and support personnel and cannot ensure that its analysts are adequately trained before being assigned to the field.”<sup>60</sup> The Committee recommended that in addition to supporting the requested spending increases for the Directorate of Intelligence (DI) and training, \$15.1 million be appropriated to “... construct a new regional intelligence and training center.”<sup>61</sup>

While observers generally agree that the FBI has made substantial progress in reforming its intelligence program, they sharply disagree as to whether the FBI’s changes are adequate. Some, for example, continue to argue that because the disciplines of law enforcement and intelligence so fundamentally differ, that the United States should establish a stand-alone domestic intelligence service, independent of the FBI.

While there may be no correct “blueprint” for the optimal organization and execution of domestic intelligence, there remain serious questions and debate over the efficacy and appropriateness of the FBI’s intelligence reforms. The continuing discussion is defined by *at least* two “schools of thought.”

## Two “Schools of Thought”

The first school of thought argues that the FBI’s vision for intelligence reform is sound; the FBI must, however, overcome certain capacity constraints in order to implement successfully its vision. Effective personnel recruitment, morale building measures, training and retention measures are the primary capacity limits that adherents to this school of thought could cite as important. An alternative school of thought contends that the FBI’s vision for intelligence reform is fundamentally

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<sup>57</sup> (...continued)

consultation is still meaningful and that the DCI will be provided sufficient time to respond to the notification prior to the recommendation being forwarded to the Attorney General.” Moreover, the conferees stated that by requiring the DCI “... to be consulted regarding the appointment of the head of the FBI’s National Security Division, they do not intend to give the DCI control over FBI law enforcement activities....Nevertheless, the head of the National Security Division manages a significant portion, both in budgetary and substantive terms, of the NFIP, and the conferees believe it is wholly appropriate that the DCI have some voice in his or her appointment.” See H.Rept. 104-832, Section 815, Sept. 24, 1996.

<sup>58</sup> See U.S. Congress, Senate, Committee on Appropriations, Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill, 2006, (S.Rept.109-88), p. 25.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.* p. 26.

<sup>61</sup> *Ibid.*

flawed, insofar as it does not fully integrate all the activities traditionally associated with the intelligence cycle. Without full and formal control, including budget execution authority, over all elements of the intelligence cycle, from the setting of collection requirements to collection to analysis and dissemination, adherents of this school of thought could argue, the failed history of intelligence reform at the FBI is likely to repeat itself.

**School 1: The Optimists/“Synergists”.** The optimists/“synergists” recognize that the events of 9/11 represented a substantial shock to the FBI’s traditional priorities and culture. They argue, however, that the FBI has developed a *coherent and sound vision* for an intelligence program that integrates and leverages what they assert is a synergy between the FBI’s criminal and national security missions. This group also argues that the FBI has made, or is in the process of making, well thought out organizational, business process, and budgetary changes that will allow it to implement fully policy and legal changes that once hampered the Bureau’s efforts to be more effective and efficient members of the U.S. Intelligence Community. While adherents to this school might concede that the pace of FBI reform could be quicker, they believe that the FBI has changed its focus and priorities before, and is capable of changing them again to meet national security demands today. For this group, the only hurdles to be overcome are the timely implementation of the vision. These hurdles might include capacity limitations regarding the recruitment, training, performance rating, and retention of intelligence professionals. Although additional resources might be welcomed by this group, some adherents to this school might also argue that it may be appropriate for the FBI’s budget (having increased from \$3.1 billion in FY2000 to a requested amount of \$5.7 billion for FY2006) to level off, as increases of this magnitude may be difficult to absorb effectively in such a short period of time.

**School 2: The Skeptics.** The skeptics believe that there is some limited synergy between the disciplines of law enforcement and intelligence with respect to terrorism fund-raising,<sup>62</sup> but they doubt it extends to other issues. Moreover, they contend that the benefits of a focused and integrated intelligence program would far outweigh the intangible benefits derived from any existing synergy. As a result, skeptics of the FBI’s approach believe the FBI’s vision for intelligence reform is fundamentally flawed. Indeed, they argue that rather than the Bureau’s criminal division generating more leads for the Bureau’s intelligence investigators to pursue, just the opposite occurs. They believe that the newly created DI is constrained by limited personnel and budget execution control over the Bureau’s intelligence activities, and by minimal control over intelligence collection. In structuring the Directorate, the FBI, they further assert, is modeling itself after the CIA, which has a intelligence directorate responsible for analyzing intelligence, and a Directorate of Operations charged with collecting it. Some observers blame this bifurcated structure for what they characterize as the IC’s poor performance, and recommend

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<sup>62</sup> For perspectives on linkages between terrorist groups and criminal activities, see Douglas Farah, *Blood from Stones: the Secret Financial Network of Terror* (New York: Broadway Books, 2004). See also Rachel Ehrenfeld, *Funding Evil: How Terrorism is Financed and How to Stop It* (Chicago: Bonus Books, 2003). See also National Commission on Terrorist Attacks Upon the United States, *Monograph on Terrorist Financing*.

that analysts and collectors be co-located as part of an integrated intelligence work force. Skeptics conclude that the FBI must at least unify intelligence analysis and collection under one chain of command within the FBI. Some go further, suggesting that the government adopt Britain's MI-5 model and establish a domestic intelligence agency, independent of the FBI.<sup>63</sup>

## Major FBI Intelligence Reforms

In response to the 9/11 attacks, Director Mueller vowed that the FBI would refocus its efforts, and concentrate on counterterrorism, counterintelligence and cyber crime as the Bureau's three priorities.<sup>64</sup> He also committed to improving the FBI's intelligence program by consolidating and centralizing control over the Bureau's historically fragmented intelligence capabilities, both at FBI Headquarters and in the FBI's field offices.<sup>65</sup> He also reaffirmed his belief that intelligence had always been one of the FBI's core competencies and central to the FBI's investigative mission,<sup>66</sup> and asserted that the organization's intelligence efforts had and would continue to be disciplined by the intelligence cycle of intelligence requirements, collection, analysis, and dissemination.

In 2005, the FBI says its also plans to (1) establish a dedicated funded staffing level for agents within the intelligence program and assign those agents to work as collectors, target developers and reporters; (2) incorporate a strategic intelligence unit into the DI; (3) incorporate strategic analysis into each FIG; (4) integrate Intelligence

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<sup>63</sup> For an assessment of the arguments associated with the establishment of a new agency to fulfill the domestic intelligence mission in the United States, see CRS Report RL31920, *Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States*, by Todd Masse. For a comparison of how four other democracies (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). See also Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* (2005). See also William E. Odom, "Why the FBI Can't Be Reformed," *Washington Post*, June 29, 2005, p. A21.

<sup>64</sup> According to the FBI's 1998-2003 Strategic Plan, issued in May 1998, the FBI, prior to 9/11, had established three tiers of priorities: 1) National and Economic Security, aimed at preventing intelligence operations that threatened U.S. national security; preventing terrorist attacks; deterring criminal conspiracies; and deterring unlawful exploitation of emerging technologies by foreign powers, terrorists and criminal elements; 2) Criminal Enterprise and Public Integrity; and 3) Individuals and Property. Countering criminal activities was a prominent feature of each tier. See Department of Justice, Office of Inspector General, *Federal Bureau of Investigation: Casework and Human Resource Allocation*, Audit Division, Sept. 2003, pp. 03-37.

<sup>65</sup> See statement of Robert S. Mueller, III, Director, FBI, in U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Commerce, Justice, State, the Judiciary and Related Agencies, June 18, 2003.

<sup>66</sup> See statement of Robert S. Mueller, III, Director, FBI, in U.S. Congress, Senate Judiciary Committee, July 23, 2003.

and Law Enforcement Community partners fully into the FIGs; and, (5) incorporate the review element “intelligence” into the performance plans of each FBI special agent and supervisory agent, measuring them on the number of sources developed and intelligence produced. The FBI also will add an Assistant Special Agent in Charge (ASAC) for each of the 21 Field Offices that currently are served by only one ASAC. This individual will be responsible for guiding that office’s national security mission and will undergo training in intelligence processes and procedures before assuming the post.<sup>67</sup>

Since 9/11, the FBI has initiated, or been encouraged to initiate, numerous organizational, business practices, and resource allocation changes in an attempt to strengthen its intelligence program. Organizationally, the Bureau first established an Office of Intelligence — now redesignated as the DI as a result of P.L. 108-458, in an effort to focus its intelligence efforts. The Bureau also established Field Intelligence Groups (FIGs) in each of its 56 field offices. Other changes include hiring additional intelligence analysts and Special Agents dedicated to intelligence collection; developing a new intelligence training curriculum; and, establishing new information systems to manage the intelligence flow.<sup>68</sup> The following sections detail some of these changes. Whether the newly appointed EAD for National Security and deputy head of the National Security Branch will alter these changes remains an open question.

## Organizational Changes

The FBI is restructuring to support an integrated intelligence program. The FBI Director also has created new intelligence-related positions and entities at FBI Headquarters and across its 56 field offices to improve its intelligence capacity.

**The Directorate of Intelligence (DI).** At the direction of Congress, Director Mueller in 2004 established a new DI within the FBI that he said would have “broad

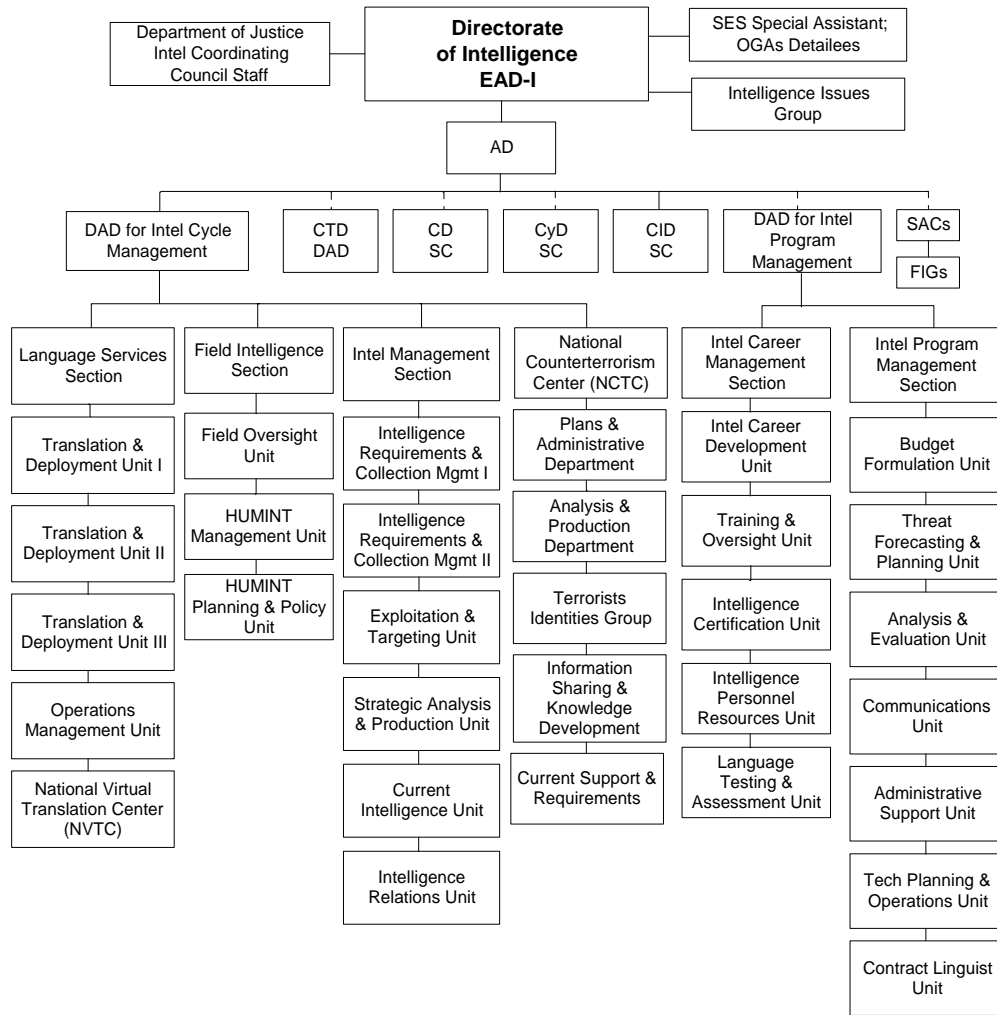
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<sup>67</sup> U.S. Department of Justice, FBI, *Report to the President of the United States — FBI Directorate of Intelligence Comprehensive Plan for the FBI Intelligence Program with Performance Metrics*, Feb. 16, 2005. (Hereafter cited as FBI Comprehensive Report.)

<sup>68</sup> While information technology is critical to management of the intelligence cycle, this report does not focus on the FBI’s information management practices. The FBI’s activities in this area have been extensively documented by others. See statement of Robert S. Mueller, Director, FBI, Before the U.S. Congress, House Committee on Appropriations, Subcommittee on Science, Justice, State, and Commerce, and Related Agencies, Mar. 8, 2005; House Appropriations Surveys and Investigations Staff, *The Federal Bureau of Investigation’s Implementation of the Virtual Case File System: A Report to the Committee on Appropriations of the U.S. House of Representatives*, Apr. 2005; U.S. Department of Justice, Office of the Inspector General, Audit Division, *The Federal Bureau of Investigation’s Management of the Trilogy Information Technology Modernization Project*, Audit Report 05-07, Feb. 2005; and National Research Council, May 2004, *A Review of the FBI’s Trilogy’s Information Technology Modernization Program*.

and clear authority over intelligence related functions” at the Bureau.<sup>69</sup> **Figure 2** provides a picture of the Directorate.

**Figure 2. FBI Intelligence Directorate**



**Source:** FBI Comprehensive Report, Feb. 15, 2005.

<sup>69</sup> See Director Mueller Testimony before the House Appropriations Subcommittee on Commerce, Justice, State, June 3, 2004. The first public official mention of a DI came in June 2004 when Director Mueller testified that the FBI intended to take the first step towards creating an intelligence service within the FBI by creating an intelligence directorate on the foundation of the already extant Office of Intelligence. Later, Congress, in two separate bills, each subsequently signed into law, directed the FBI to establish a DI. See P.L. 108-458, Section 2002, which re-designated the former Office of Intelligence as the DI. See also P.L. 108-447 and the accompanying Conference Report 108-792 as printed in the *Congressional Record*, Nov. 19, 2004, p. H10429, which adopted House report language establishing a DI. The 9/11 Commission in June 2004 recommended that the FBI create a “specialized and integrated national security workforce.” See the 9/11 Commission Report, p. 425.

The FBI describes its Directorate as a dedicated national intelligence workforce within the Bureau that is comprised of intelligence analysts, language specialists, physical surveillance specialists and special agents. One of the Directorate's principal responsibilities is to manage the Bureau's intelligence collection and analysis. The DI also is responsible for (1) analyzing intelligence gaps and developing sources to collect intelligence to fill those gaps; (2) developing uniform human source management and evaluation procedures; (3) developing standard dissemination policies; and, (4) ensuring appropriate focus on tactical intelligence.

Establishment of the new directorate is the most recent in a series of steps the FBI has taken since the 9/11 terrorist attacks as part of its effort to centralize control over, and thus improve the Bureau's intelligence program. The newly established directorate builds on earlier changes the Bureau made in its intelligence operations following 9/11.

In the immediate aftermath of the attacks, Director Mueller established a dedicated analysis section in the FBI's Counterterrorism Division. In December 2001 he centralized the Counterterrorism intelligence program under a new Office of Intelligence<sup>70</sup> within the Counterterrorism Division. Expanding on his 2003 efforts to centralize control over the FBI's intelligence program, Director Mueller took three additional actions. First, he directed the Office of Intelligence to implement an integrated FBI-wide intelligence strategy to improve intelligence analysis, collection, and sharing, and to develop an intelligence analyst career path. Second, he elevated intelligence from program support to full program status. And, third, he established the new position of Executive Assistant Director for Intelligence (EAD-I).<sup>71</sup>

**New Position of Executive Assistant Director for Intelligence (EAD-I) and the Office of Intelligence.** As part of his effort to centralize control, Director Mueller established a new position — the EAD-I. The EAD-I manages a single intelligence program across the FBI's four investigative/operational divisions — counterterrorism, counterintelligence, criminal, and cyber. Previously, each division controlled and managed its own intelligence program. To emphasize its new and enhanced priority, the Director also elevated intelligence from program

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<sup>70</sup> The Office of Intelligence has had an uneven, albeit short, leadership history since its establishment. Although Director Mueller announced OI's established in Dec. 2001, the position of OI Assistant Director was vacant for 1½ years, until Apr. 2003. The selected individual served four months before being appointed to another FBI position. The position then was vacant for almost five additional months before Michael Rolince, Special-Agent-in-Charge of the FBI's Washington Field Office, was appointed to lead the office on an acting basis in mid-Dec. 2003.

<sup>71</sup> The FBI established the position of EAD-I in early 2003, and the position was filled in Apr. 2003, when Maureen Baginski, the former Director of Signals Intelligence, National Security Agency, was appointed. It was four months before EAD-I Baginski began working in her new capacity, and an additional four months before Congress approved the reprogramming action formally establishing the EAD-I position. Some critics date whatever progress the FBI has made in upgrading intelligence to Baginski's arrival, but contend that because this critical position was left vacant for an extended period of time, the FBI made little, or no progress, between Sept. 11 and Baginski's arrival almost 1½ years later.

support to full program status, and established a new Office of Intelligence (OI). The OI, redesignated the DI by Congress (P.L. 108-458), is responsible for implementing an integrated FBI-wide intelligence strategy, developing an intelligence analyst career path, and ensuring that intelligence is appropriately shared within the FBI as well as with other federal agencies.<sup>72</sup> The Directorate also is charged with improving strategic analysis, implementing an intelligence requirements and collection regime, and ensuring that the FBI's intelligence policies are implemented. Finally, the office oversees the FBI's participation in the National Counterterrorism Center (NCTC).

The DI, headed by an Assistant Director who reports to the EAD-I, is comprised of six units: (1) Career Intelligence (works to develop career paths for intelligence analysts); (2) Strategic Analysis (provides strategic analyses to senior level FBI executives); (3) Oversight (oversees FIGs); (4) Intelligence Requirements and Collection Management (establishes and implements procedures to manage the FBI intelligence process); (5) Administrative Support; and, (6) Executive Support.

***FBI Says EAD-I Has Necessary Budget Authorities; Skeptics Disagree.*** Director Mueller has stated on several occasions that the EAD-I, working first through OI and now through its replacement, the DI, wields important new authorities. In testimony in February 2005, the FBI Director said the FBI had invested "... unified intelligence authorities..."<sup>73</sup> in the FBI's Office of Intelligence led by the EAD. Referring to the then-new DI, Director Mueller testified in March 2005, that "... the FBI has established the DI with clear authority and responsibility for all FBI intelligence functions..."<sup>74</sup>

Earlier, with regard to the former Office of Intelligence, the Director testified on September 8, 2004, "... The Office of Intelligence continually monitors performance through imbedded intelligence elements in the field and headquarters and adjusts tasking and resources based on nationally directed intelligence requirements: the authorities and responsibilities of our Office of Intelligence allow it to carry out two broad areas of responsibilities: management of the FBI intelligence component; and direction to it to ensure that its activities are in keeping with the priorities established by the President and the needs of the users of intelligence."<sup>75</sup>

Critics, however, counter that the EAD-I's lack of authority is pervasive. The EAD-I, according to the WMD Commission, lacks control over FIG analysts, special agent collectors, and intelligence resources. The Commission concluded, for example, that the DI has little direct control over FIGs, and that the FIGs' impact on

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<sup>72</sup> See statement of Robert S. Mueller, III, Director, FBI, before *Joint Inquiry*, Oct. 17, 2002.

<sup>73</sup> See "Global Threats to the U.S. and the FBI's Response," Testimony of Robert S. Mueller, III, Director, FBI, before the Senate Select Committee Intelligence, Feb. 16, 2005.

<sup>74</sup> See Testimony of Robert S. Mueller, III, Director, FBI, before the House Appropriations Committee, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies, June 3, 2004.

<sup>75</sup> See "FBI Views on Intelligence Reform," Testimony of Robert S. Mueller, III, Director, FBI, before the (then-named) Senate Committee on Governmental Affairs.



how field offices conduct counterintelligence and counterterrorism investigations remains questionable. With regard to collection, the Commission concluded that the Directorate lacks the authority necessary to direct intelligence gathering, and commands no operational resources. The Commission further asserted that the EAD-I controls only 4% of the Bureau's intelligence spending.<sup>76</sup>

In its second principal change to the Bureau's intelligence program, the FBI established FIGs in each of its field offices. And it is in the field where the essential collection of intelligence takes place, making the FIG a critical determinant of the FBI's eventual success in improving its intelligence operation.

**New Field Intelligence Groups.** If the FBI's intelligence reform program has a centerpiece, it arguably is the newly created FIGs. Established in October 2003 in each of the Bureau's 56 field offices, the FIGs are stand-alone entities comprised largely of intelligence analysts, linguists, and surveillance specialists<sup>77</sup> who are responsible for executing field intelligence operations at the direction and under the supervision of FBI headquarters. Formerly, Bureau intelligence analysts were assigned to field operational squads, where they often were tasked by FBI special agents to check data bases and perform other largely day-to-day functions — including clerical work — in support of operations. Field analysts rarely were called on to conduct strategic analysis and to produce analytic reports.<sup>78</sup>

Each FIG is comprised of intelligence and language analysts, who conduct largely tactical analyses; special agents, who are responsible for intelligence collection; reports officers, a relatively newly created position; and security specialists.<sup>79</sup> Reports officers are expected to play a key role by sifting raw, unevaluated intelligence and determining to whom it should be disseminated within the FBI and other federal agencies for further processing.

Through its FIGS, the FBI says it intends to accomplish two goals. First, it wants to use each FIG to serve as a linchpin in the FBI's plan to integrate law enforcement and intelligence operations in the field. By establishing intelligence

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<sup>76</sup> See WMD Report, p. 459.

<sup>77</sup> For the purposes of this report, intelligence analysts are defined as all-source analysts who conduct tactical and strategic analysis. Until recently, the FBI had two categories of analysts — Intelligence Research Specialists, who were responsible for all-source analysis, and Intelligence Operations Specialists, who provided tactical analytic support for cases and operations. The FBI has merged these two positions with the newly created "Reports Officer" position, and re-titled the consolidated position as "intelligence analyst." The FBI says its purpose in doing so is to standardize and integrate intelligence support for the FBI's highest priorities. Within the intelligence analyst position, there are four "areas of interest" — counterterrorism, counterintelligence, cyber, and criminal; and three specific work "functions" — all source, case support, and reports (dissemination).

<sup>78</sup> See 9/11 Commission Staff Statement no. 9, "Law Enforcement, Counterterrorism and Intelligence Collection in the United States Prior to 9/11."

<sup>79</sup> The number of individuals in a field intelligence group varies, depending upon the size of the field office. See "FBI Field Office Intelligence Operations," *Concept of Operations*, Aug. 2003.

units in each office, the FBI aims to create an atmosphere and structure whereby the discipline of intelligence will infuse all operations conducted by special agents. Second, the Bureau, through the FIG, says it wants to elevate the importance of analysts within an FBI law enforcement culture that has long celebrated the role of the special agent and had less regard for analysts.<sup>80</sup>

Ultimately, the Bureau maintains that it wants to reverse that relationship by empowering analysts and enabling them to analyze available intelligence, identify gaps in that intelligence and then direct FBI special agents to collect intelligence that will fill those gaps. According to the FBI, it expects each FIG to progress through three phases, in a fashion somewhat analogous to a software release, with versions “1.0 through 3.0.” During version “1.0,” the intent is to bring together analysts in the FIG and conduct any necessary hiring of new analysts. As part of version “2.0,” the FIG assumes responsibility for managing the intelligence cycle in the field, insuring that collected intelligence is analyzed and disseminated. In version “3.0,” the FIG tasks special agent collectors to collect intelligence against gaps in intelligence that analysts have determined exist.

***FIGs and Driving Intelligence Collection.*** Whether the FBI will achieve its stated goal of creating a culture in which its analysts — historically of less status than special agents — will acquire the institutional authority to task special agents to collect intelligence remains at least uncertain, and in the view of some, highly unlikely. Although Bureau reforms are a work in progress, there are indications that the FBI may be falling short of this particular goal. For example, the 9/11 Commission noted that analysts continue to be assigned menial tasks, including covering phones at the reception desks and emptying the office trash bins.<sup>81</sup> The WMD Commission in its 2005 report concluded that there is evidence of analysts’ continuing subordinate role.<sup>82</sup> CRS’s recent field research largely confirmed those observations. Although the picture is mixed, and pockets of promise exist, CRS research indicated that FIG analysts often continue to lack the institutional standing and authority to direct special agents to collect needed intelligence. One senior FIG analyst said that the Bureau eventually would accomplish its goal of analytically driven intelligence collection, but cautioned that “the FBI is still an investigations driven agency,” where the Bureau’s special agents, rather than its analysts, effectively determine what intelligence will be collected.<sup>83</sup> In a comment that reflected the views of many of those interviewed — both special agents and analysts — an analyst conceded, “I cannot imagine [FIG] analysts driving collection.”<sup>84</sup>

CRS found that analysts who had established credibility in the eyes of special agents could and, on occasion, did direct special agent to collect needed intelligence,

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<sup>80</sup> Ibid. See FBI, *Concept of Operations: FBI Field Office Intelligence Operations*, Aug. 2003.

<sup>81</sup> See “Reforming Law Enforcement, Counterterrorism, and Intelligence Collection in the United States,” 9/11 Commission Staff Statement, No. 12., pp. 4-5.

<sup>82</sup> WMD Commission, p. 455.

<sup>83</sup> FIG interview, Nov. 29, 2004.

<sup>84</sup> Ibid.

but that their success in doing so depended on their professional credibility established over time, rather than on institutional authority derived from their association with a FIG. Professional credibility undoubtedly is an important ingredient if an analyst is to successfully direct intelligence collection; so too is institutionally-derived authority that FIGs are intended to provide. CRS detected little evidence of the latter. One Supervisory Special Agent commented, “the special agent will always be the center of the universe.”<sup>85</sup>

Another contributing factor to the FIGs’ success is the credibility with which FBI special agents view the intelligence requirements process. If the FIG analysts lack the institutional power necessary to direct intelligence collection and hold special agents accountable for that collection — one of the Bureau’s principal justifications for establishing the FIGs, the FIG construct could become increasingly marginalized.

***FIGs and the Intelligence Requirements Process.*** One of the tools used by analysts and special agents to guide intelligence collection is the “requirements process,” a structured procedure employed by intelligence professionals to establish intelligence collection priorities. Specifically, the Bureau identifies gaps in its understanding of terrorism and instructs its special agents to fill those gaps by collecting certain intelligence. The FBI also provides unclassified, law enforcement sensitive versions to state, local and tribal law enforcement partners, so that they can assist in broadening the Bureau’s understanding of domestic terrorism through their own intelligence collection. Both sets of requirements — those used by the Bureau and those used at the state and local level — are supposed to be refined versions that reflect national collection requirements established by the DNI.

Most observers view the FBI’s development of a formal requirements process as a new and positive development that will bring more rigor to the Bureau’s intelligence program. But whether field agents accept and act on the requirements will turn on their willingness to conform to a more formal intelligence process than they are used to, one in which collection priorities essentially are established by intelligence analysts, and special agents are held accountable for collecting needed intelligence. A central tenet of a high-order functioning intelligence organization is that it is able to harness its collection resources to nationally developed and coordinated intelligence priorities and gaps. The intelligence cycle is just that, a cycle, in which analysts and collectors interact regularly to incorporate new information and refine intelligence collection requirements; analysts and collectors are central to the cycle.<sup>86</sup>

The 9/11 Commission noted with concern that it found gaps between some of the announced reforms and the reality in the field. Specifically, the Commission stated, “... that management in the field offices still can allocate people and resources to local concerns that diverge from the national security missions. This system could

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<sup>85</sup> Ibid.

<sup>86</sup> The conceptually pure intelligence model, one in which analysis “drives” intelligence collection is difficult to achieve, and, as many intelligence professionals are aware, there is no one agency in the IC that implements such a model flawlessly.

revert to a focus on lower-priority criminal justice cases over national security requirements.”<sup>87</sup> The WMD Commission expressed similar concerns with regard to the requirements process, noting that many field offices are still tempted to put law enforcement ahead of intelligence-gathering.

CRS field interviews surfaced similar concerns. Acceptance of the intelligence requirements process appears to be mixed. *While pockets of promise exist, field research indicates that the FBI’s ability to formally harness intelligence collection (including systemic accountability mechanisms) to analytically identified intelligence gaps, remains nascent.* Although some found the formal intelligence collection requirements document to be useful, the prevailing view was that special agents, rather than intelligence analysts, were best positioned to determine what intelligence needed to be collected. Referring to the new formal collection requirements, one federal official stated, “We do it intuitively ... I know what the information requirements are.” Another official said, “If I have a piece of information, I’ll find the requirements that it fits.” The latter sentiment, could be a troubling indication that some agents continue to rely on reactively collecting intelligence in response to an event, than fit into an existing collection requirement. Although some intelligence collection requirements can be filled in this manner, many observers believe it not a proactive or efficient means of doing so.

Such views raise questions about the role of FBI intelligence analysts and the viability of the new FIG structures. While the progression of the FIGs through various stages of analysis will take time, what remains to be seen is whether the FBI is capable of making the cultural change necessary to implement an effective, efficient, and formalized intelligence cycle.

***FIGs and Tactical Versus Strategic Intelligence Analysis.***<sup>88</sup> In addition to ultimately driving intelligence collection through the requirements process, FIG analysts are expected to tactically and strategically analyze intelligence, disseminating their results to the Bureau, state and local law enforcement partners, and, when appropriate, to the rest of the IC. Historically, analysts in the field have spent the bulk of their time providing tactical support to ongoing cases; external dissemination and strategic analysis generally were secondary functions.

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<sup>87</sup> See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 425.

<sup>88</sup> Tactical analysis is generally thought of as analysis which provides direct support to an ongoing intelligence operation or investigation. Strategic analysis, on the other hand, provides a broader scope of analytical activities designed to assess national threats, threat trends, and the *modus operandi* of individuals or groups that threaten U.S. national security. As defined by the 9/11 Commission, the role of strategic (counterterrorism) analysis is to “... look across individual operations and cases to identify trends in terrorist activity and develop broad assessments of the terrorist threat to U.S. interests.” See “Law Enforcement, Counterterrorism, and Intelligence Collection in the United States Prior to 9/11,” Staff Statement no. 9, p. 8. Although strategic analysis can be highly useful to operational personnel, its intended consumer set includes, but is not limited to, national level policy and decision makers. Tactical and strategic intelligence analyses are mutually supportive.

While the WMD Commission said that the FBI had made significant progress in tactically analyzing intelligence, and disseminating it, the Commission expressed concern that the Bureau's strategic capabilities — those that are central to guiding a long-term, systematic approach to national security issues — have lagged. The Commission attributed this to the Bureau's failure to carve out time for the its analysts in the field to do long-term, strategic analysis. According to the WMD Commission, the FBI currently publishes approximately a quarter as many long-term (non-current) analytical pieces as CIA does in a given year.<sup>89</sup>

CRS interviews indicated those FIGs visited have been disseminating a substantially increased number of Intelligence Information Reports (IIRs).<sup>90</sup> However, there appears to be a continued relative dearth of strategic analysis produced. According to the FBI's statistics, in the first eight months of FY2005, Bureau analysts produced 5,630 IIRs and 80 strategic assessments. There could be a number of explanations for this. One could argue that it is a question of resources — that only when the FIGs are fully staffed, will individuals be allocated to the strategic analytical functions. Each field office handled the three analytical work functions differently — for example, some wanted analysts cross-trained in each of the three work roles, and others had individual analysts allocated to one of the three functions. Critics may contend that local FIG management is not allocating sufficient resources to strategic analysis. That is, if focused strategic analysis is one of the core principals of FBI intelligence reform, one could expect that some percentage of on-board intelligence analysts should be dedicated to that function regardless of how many intelligence analysts each field office has.

### **New National (and More Regional) Joint Terrorism Task Force(s).**

In July 2002, the FBI established a National Joint Terrorism Task Force (NJTTF), which coordinates its nationwide network of 103 Joint Terrorism Task Forces (JTTFs).<sup>91</sup> The NJTTF also coordinates closely with the FBI's newly established Counterterrorism Watch, a 24-hour operations center, which is responsible for tracking terrorist threats and disseminating information about them to the JTTFs, to the Department of Homeland Security's Homeland Security Operations Center and, indirectly, to state and local law enforcement. CT Watch is located at the FBI's 24-hour Strategic Intelligence Operations Center (SIOC).<sup>92</sup> With respect to JTTFs, the Bureau has increased their number from 35 (2001) to 103 in 2005, and the

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<sup>89</sup> See Report of the WMD Commission, Mar. 31, 2005, p. 454.

<sup>90</sup> IIRs generally provide raw, unevaluated intelligence to a wide variety of consumers. FBI-wide and according to the FBI Director's testimony, the FBI had a "222% increase in the dissemination of Intelligence Information Reports ..." from calendar year 2003 to calendar year 2004. See Mar. 8, 2005 testimony.

<sup>91</sup> JTTFs are FBI-led and are comprised of other federal, state and local law enforcement officials. JTTFs serve as the primary mechanism through which intelligence derived from FBI investigations and operations is shared with non-FBI law enforcement officials. JTTFs also serve as the principal link between the IC and state and local law enforcement officials.

<sup>92</sup> See statement of Larry A. Mefford, Executive Assistant Director — Counterterrorism and Counterintelligence, FBI, U.S. Congress, House Select Committee on Homeland Security, Subcommittee on Cybersecurity, Science, Research and Development; and the Subcommittee on Infrastructure and Border Security, Sept. 4, 2003.

number of federal, state and local participants has more than quadrupled — to over 5,000, according to the FBI.

**Participation in the New National Counterterrorism Center.** President Bush in his January 2003 State of the Union address announced the establishment of the Terrorist Threat Integration Center (TTIC), which was responsible for issuing threat assessments based on all-source intelligence analysis.<sup>93</sup> The TTIC was a joint venture comprised of a number of federal agencies with counterterrorism responsibilities, and was directed by a CIA-named official, and a deputy director named by the FBI. Subsequently, and pursuant to P.L. 108-458, (50 U.S.C. 401 note) “... all functions and activities discharged by the Terrorist Threat Integration Center...” were transferred to the newly established National Counterterrorism Center (NCTC).<sup>94</sup> Congress directed that the Director of the NCTC “... shall administer the Terrorist Threat Integration Center ... as a component of the DI of the National Counterterrorism Center...”<sup>95</sup> As of early 2005, the NCTC had more than 600 employees, with approximately 250 being provided by various U.S. government agencies and the remainder consisting of private sector contractors.<sup>96</sup>

**New Position of Executive Assistant Director for Law Enforcement Services.** The FBI has been criticized for failing to effectively share intelligence within the Bureau, with other intelligence agencies comprising the U.S. Intelligence Community, and state and local law enforcement authorities. In an effort to address these concerns, Director Mueller established the new position of Executive Assistant Director for Law Enforcement Services under which was placed the new Office of Law Enforcement Coordination. A former state police chief now heads that office and is responsible for ensuring that relevant intelligence is shared, as appropriate, with state and local law enforcement.

In addition to these organizational changes, the FBI has attempted to alter its business practices. A major theme in this area is an attempt to formalize the intelligence cycle.

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<sup>93</sup> See CRS Report RS21283, *Homeland Security: Intelligence Support*, by Richard A. Best, Jr.

<sup>94</sup> See P.L. 108-458, §1092.

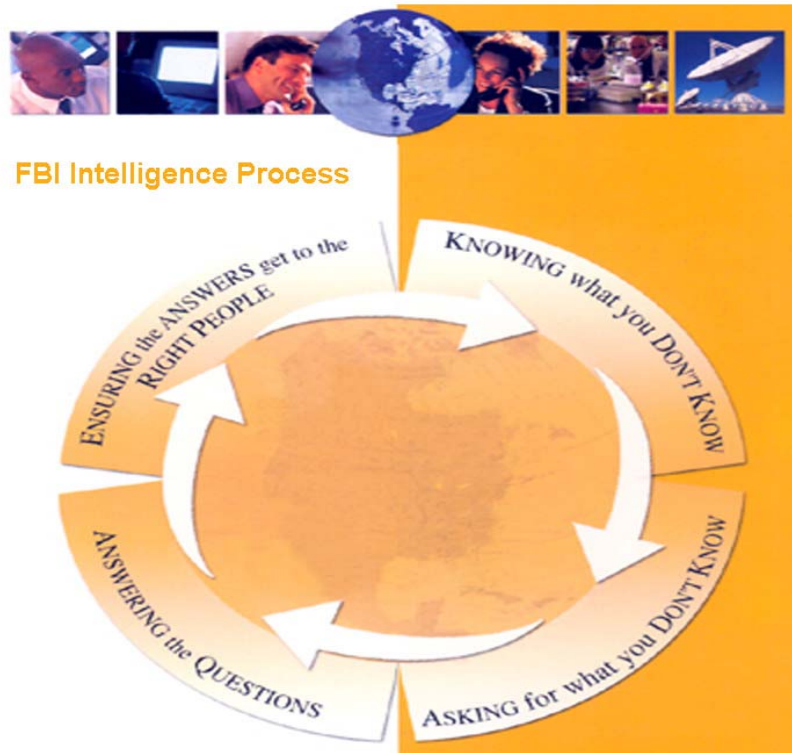
<sup>95</sup> *Ibid.*

<sup>96</sup> See Faye Bowers, “U.S. Intelligence Agencies Make Headway on Reform,” *Christian Science Monitor*, Mar. 14, 2005. CRS interview with NCTC official, Mar. 29, 2005. For additional information on the NCTC, see CRS Report RL32816, *The National Counterterrorism Center: Implementation Challenges and Issues for Congress*, by Todd M. Masse. On June 10, 2005, President Bush nominated Vice Admiral John S. Redd for the position of Director of NCTC, Office of the DNI. The Senate Select Committee on Intelligence held confirmation hearings on July 21, 2005. Mr. Redd was subsequently confirmed by the Senate by voice vote on July 28, 2005.

## Business Process Changes

To transform and upgrade its intelligence program, the FBI is changing how it processes intelligence by formally embracing the traditional intelligence cycle, a long-time practice followed by the rest of the IC.

**The Intelligence Cycle.** The FBI is attempting to formalize and discipline its approach to intelligence by embracing the traditional intelligence cycle (See **Figure 1**, below), a process through which (1) intelligence collection priorities are identified by national level officials, (2) priorities are communicated to the collectors who collect this information through various human and national technical means, (3) the analysis and evaluation of this raw intelligence are converted into finished intelligence products, (4) finished intelligence products are disseminated to consumers inside and outside the FBI and DOJ, and (5) a feedback mechanism is created to provide collectors, analysts and collection requirements officials with consumer assessment of intelligence value. To advance that effort, the EAD-I developed and issued nine concepts of operations, which essentially constitute a strategic plan identifying those areas in which changes must be made. These changes are seen as necessary if the FBI is to successfully establish an effective intelligence program that is both internally coordinated and integrated with its IC counterparts. However, as outlined above, many observers have concluded that due to certain structural and cultural factors, despite its many changes the FBI does not yet have an integrated intelligence cycle. If, as limited CRS field research indicates, obstacles to the establishment of an intelligence gap-driven collections strategy continue, the intelligence cycle could become disjointed, a series of discrete events, versus a reinforcing cycle between intelligence collector, analyst, and consumer.

**Figure 3. The Intelligence Cycle**

**Source:** [<http://www.FBI.gov>], as altered by the Congressional Research Service.

The FBI is trying to improve and upgrade its functional capabilities at each step along the cycle. Success may turn, in part, on the performance of the Directorate of Intelligence, as it executes its responsibility to "... manage and satisfy needs for the collection, production and dissemination of intelligence" within the FBI and to ensure requirements "levied on the FBI by national, international, state and local agencies" are met.<sup>97</sup>

With regard to counterintelligence, which is information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities, the FBI has established six field demonstration projects led by experienced FBI retirees. These teams are responsible for assessing intelligence capabilities at six individual field offices and making recommendations to correct deficiencies.<sup>98</sup>

<sup>97</sup> See FBI, *Concept of Operations: FBI Intelligence Requirements and Collection Management*, Aug. 2003, prepared jointly by FBI Headquarters divisions, reviewed by FBI field office representatives and coordinated by the FBI's Office of Intelligence, Aug. 2003. The Assistant Director, Office of Intelligence, reports to the EAD-I.

<sup>98</sup> Funding was authorized under the FY2004 Intelligence Authorization Act (P.L. 108-177).  
(continued...)



## Resource Enhancement and Allocation Changes

In the last several years, Congress has approved increases in FBI spending totaling 68% — raising spending from \$3.1 billion in FY2000 to \$5.2 billion in FY2005.<sup>99</sup> For FY2006, the Bush Administration requested \$5.7 billion for the FBI, which would finance 2,086 new positions — 615 Agents and 508 Intelligence Analysts — and \$496 million in new investments aimed at strengthening the Bureau’s Intelligence Program, and support Counterterrorism and Counterintelligence activities.<sup>100</sup> **Figure 4** below illustrates the increases in terms of gross new budget authority (appropriations). Although Congress has not given final approval to the requested increase, the House Appropriations Committee supports the Administration’s request but noted its concern over what it views as a growing imbalance between continuing Administration requests for funding for additional staff and fund spending requests to improve the Bureau’s infrastructure. In its report, the Committee stated, “... while the FBI has been provided a significant number of additional staffing resources since September 11, 2001, investment in the FBI’s infrastructure has not increased correspondingly.”<sup>101</sup> The panel reduced requested personnel funding to 1,629 new positions, and devoted the funding difference to the following programs: information technology program management, training, information technology network connectivity, administrative staff, expanded secure space, and recruitment and retention.<sup>102</sup>

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<sup>98</sup> (...continued)

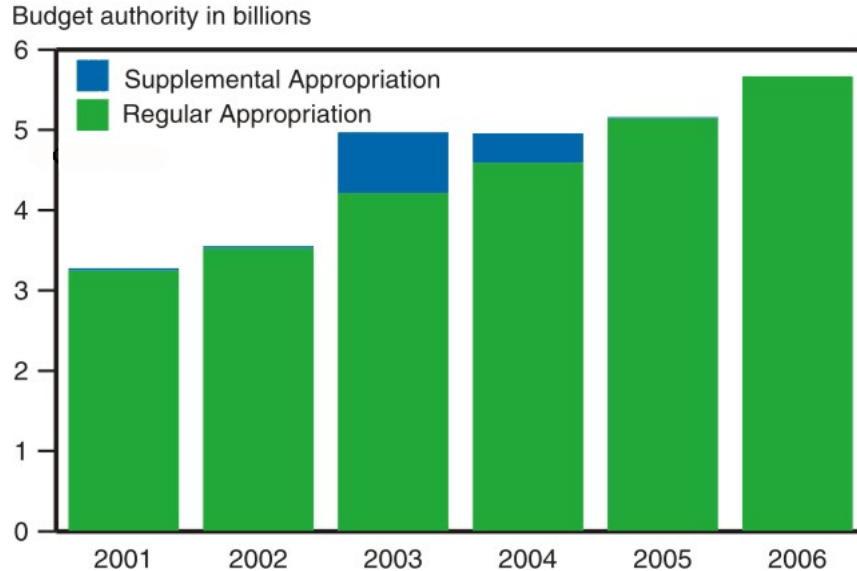
The legislation permits the FBI Director to “... enter into personal services contracts if the personal services to be provided under such contracts directly support the intelligence or counterintelligence missions of the FBI.”

<sup>99</sup> See [<http://www.usdoj.gov/jmd/2003summary/html/FBIcharts.htm>] and U.S. Congress, House Committee on Appropriations, Commerce, Justice, and State Subcommittee, *Where the Money Goes: Fiscal 2004 Appropriations*, Conference Report, H.Rept. 108-401. For FY2006 numbers, see U.S. Department of Justice, Justice Management Division, Department of Justice Request Information by Appropriation, FBI.

<sup>100</sup> See Testimony of Robert S. Muller, III, Director, FBI, before the House Appropriations Committee, Subcommittee on Science, State, Justice, and Commerce, and Related Agencies, Mar. 8, 2005. See also Department of Justice, Justice Management Division, *2006 Budget and Performance Summary*.

<sup>101</sup> See U.S. Congress, House of Representatives, Committee on Appropriations, Science, State, Justice, and Related Agencies Appropriations Bill, FY2006 (H.Rept. 109-118), p. 24.

<sup>102</sup> *Ibid.*

**Figure 4. FBI Funding Increases**

\***Source:** Office of Management and Budget, Department of Justice FY2006 Budget Request.

**Note:** FY2006 numbers represent the Administration's request. The requested amount, \$5.7 billion, does not include the \$74 million supplemental for the FBI in the Iraqi War Supplemental. In part, these funds will be allocated to the Terrorist Screening Center.

**Intelligence Analyst Cadre.** By January 31, 2005, the number of newly hired FBI analysts had climbed 76% since FY2001 — increasing to 1,800 from 1,023.<sup>103</sup> (See **Figure 5**.) For FY2006, the Administration requested an additional 508 Intelligence Analysts for the Bureau.<sup>104</sup>

According to the Office of Management and Budget, the Administration's total FY2006 total budget request of \$5.7 billion would adequately support a total analytic cadre of 2,700.<sup>105</sup> It appears, however, that adequate infrastructure support for Bureau analysts is still lacking in certain critical areas. For example, as of this writing, some analysts in the field still did not have Internet access on their

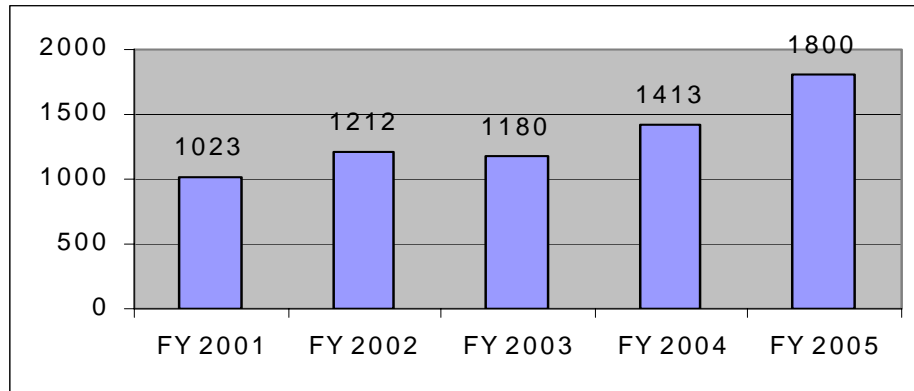
<sup>103</sup> U.S. Department of Justice, FBI, *Report to the President of the United States — FBI Directorate of Intelligence Comprehensive Plan for the FBI Intelligence Program with Performance Metrics*, Feb. 16, 2005, p. 65.

<sup>104</sup> See Testimony of Robert S. Muller, III, Director, FBI, before the House Appropriations Committee, Subcommittee on Science, State, Justice, and Commerce, and Related Agencies, Mar. 8, 2005.

<sup>105</sup> See Office of Management and Budget, Department of Justice, *Budget of the United States Government, FY2006*. As of Jan. 31, 2005, the FBI had approximately 1,800 intelligence analysts on board. See also U.S. Department of Justice, FBI, *Report to the President of the United States — FBI Directorate of Intelligence Comprehensive Plan for the FBI Intelligence Program with Performance Metrics*, Feb. 16, 2005, p. 41.

desktops.<sup>106</sup> And some analysts had yet to receive the Bureau's training in basic analytic skills. One possible conclusion is that the Bureau has failed to adequately fund infrastructure support for its new analysts. If true, this could pose long-term retention issues as new analysts scan a very competitive environment for analytic talent and gravitate toward those employers who are able to fully support them.

**Figure 5. Intelligence Analysts On Board**



**Source:** FBI Comprehensive Report, p. 65.

**Note:** FY2005 numbers through Jan. 31, 2005.

Inadequate support may also raise retention issues. Although the turnover of FBI intelligence analysts has decreased for two consecutive fiscal years, from 10% in FY2002 to 9% in FY2003 and 8% in FY2004, according to a recent Department of Justice OIG Audit Report, 35% of intelligence analysts hired since 2002 “do not plan to remain in those positions for the next five years.”<sup>107</sup> If that percentage holds true, of the 777 analysts hired since FY2003, 270 can be expected to leave their current positions over the next five years. Moreover, approximately 75% of intelligence analysts employed by the FBI who served six or fewer years as Bureau analysts, departed in FY2004. The Department of Justice OIG concluded that analysts, particularly those who have earned advanced degrees, are most likely to leave the Bureau within two years of being hired — a matter of no small consequence given that 56% of all new intelligence analysts hired by the FBI between FY2002 and 2004 had advanced degrees.<sup>108</sup>

**Existing Analytical Resource Allocation.** The FBI also faces a challenge in striking the appropriate balance in allocating its analytic resources in the field between counterterrorism and its other largely criminal investigations. Director Mueller has established counterterrorism as the Bureau's priority. And, yet, in some field offices, the deployment of analytic resources does not appear to reflect that priority. For example, in one field office CRS visited, almost 40% of analysts were

<sup>106</sup> The lack of desktop access to the Internet, according to FBI officials, is shared by other intelligence agencies across the IC.

<sup>107</sup> See U.S. Department of Justice, Office of the Inspector General, Audit Division, *The Federal Bureau of Investigation's Efforts to Hire, Train, and Retain Intelligence Analysts*, Audit Report 05-20, May 2005, pp. xii - xiii.

<sup>108</sup> *Ibid.*, p. 15.

detailed to support white collar and violent crime investigations. The remaining 60% were evenly split between supporting counterterrorism and counterintelligence cases. The Bureau contends that the information it gleans from its criminal investigations often provide important leads in counterterrorism cases, and thus justifies continuing to devote significant analytic resources to on-going criminal investigations.

## Enhanced Personnel Authorities

Both the FY2005 Consolidated Appropriations Act (P.L. 108-447) and the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) provide the FBI with enhanced human resource authorities. These authorities include (1) an exemption from Chapter 51 of Title 5, U.S. Code with respect to the establishment of positions for intelligence analysts, (2) the establishment of an FBI Ready Reserve Service, (3) an increase in the mandatory retirement age from 60 to 65 years of age for no more than 50 exemptions in any fiscal year, and (4) the payment of retention and relocation bonuses to FBI employees with unique qualifications. P.L. 108-447 provided \$30 million above the FBI's FY2005 request to implement these authorities; it was enacted in December 2004.

Research indicates that insofar as the exemptions to Chapter 51 of Title 5 are concerned, the FBI still does not currently have any GS-15 non-supervisory intelligence analysts.<sup>109</sup> While the FBI is in the process of establishing Senior Intelligence Officer (SIO) positions similar to National Intelligence Officers, it appears that only half of the previously announced positions are geared toward regional and/or functional threats. The FBI has requested one SIO position for each of the following geographic areas: (1) East Asia, (2) Europe, (3) Latin America/Africa, (4) Near East/South Asia, and (5) Russia/Eurasia.<sup>110</sup> Additional SIO positions pending Office of Personnel Management approval in August 2005 included the following functional areas: (1) counterterrorism, (2) counterintelligence, (3) global crime, and (4) financial intelligence. Other requested positions are more policy oriented, such as congressional affairs, information technology, and legal issues. Issues may arise as to how the incumbents will interact with the existing Assistant Director for Congressional Affairs, Chief Information Officer, and General Counsel, respectively. In disputes over national security or intelligence policy, for example, how much weight do the Assistant Directors for Counterterrorism and Counterintelligence, the EAD — National Security Service, the SIO Counterterrorism; and SIO Policy have?

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<sup>109</sup> Field interviews at aforementioned FBI Field Offices.

<sup>110</sup> According to the FBI, it has modeled these positions on the National Intelligence Council. The FBI's role in collecting foreign intelligence is outlined in Executive Order 12333 (signed 1981), Section 1.14(c), which states: "... the FBI shall conduct 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 the communications security activities of the United States Government." Section 1.14(d) also states "... the FBI shall produce and disseminate foreign intelligence and counterintelligence." Recently, the FBI and the CIA signed a classified memorandum of understanding covering these matters.

## Issues for Congress

In approving the most sweeping reform of the Intelligence Community (IC) since its establishment in 1947, Congress fundamentally altered the Community's chain of command by establishing the new position of Director of National Intelligence (DNI) as part of the Intelligence Reform and Terrorism Prevention Act of 2004. Among the many issues confronting the DNI, one of the most important is his assessment of the FBI's efforts to reform its intelligence program. Congress could confront a number of issues in measuring FBI performance in this critical area. They include the following:

- The FBI's new focus on centralized headquarters decision-making;
- Implementation challenges, including those in each area of the Intelligence Cycle;
- Congressional oversight; and
- The adequacy of resources to support reforms.

### **The Role of Centralized Decision-Making in Strengthening FBI Intelligence<sup>111</sup>**

Some observers believe a major issue is whether the FBI's new centralized management structure will provide the organization with the requisite formal and informal authority to ensure that its intelligence priorities are implemented effectively and efficiently by FBI field offices. Historically, and particularly with respect to the FBI's law enforcement activities, field offices have had a relatively high degree of autonomy to pursue locally determined priorities. A related issue is whether FBI employees will embrace, or resist, FBI Headquarters' enhanced management role and its new emphasis on intelligence.

**Supporters Contend Centralized Management Will Help Prevent Terrorism by Improving FBI's Intelligence Program.** Supporters argue that a centralized management structure is an essential ingredient of a counterterrorism program, because it will enable the FBI to strengthen its intelligence program, establish intelligence as a priority at FBI field offices and improve headquarters-field coordination.

According to proponents, FBI Director Mueller has centralized authority by making six principal structural changes. He has (1) established a new DI within the FBI that will have "broad and clear authority over intelligence related functions at the

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<sup>111</sup> An organization's structure and business processes influence its performance. Large organizations with dispersed operations continually assess the appropriate balance between decentralized and centralized elements of their operations. Although the mission of National Aeronautics Space Administration (NASA) is unrelated to that of the FBI, it too has dispersed operations. In a review of the causes of the 1986 Columbia shuttle accident, the board investigating the accident found that "The ability to operate in a centralized manner when appropriate, and to operate in a decentralized manner when appropriate, is the hallmark of a high-reliability organization." See *Columbia Accident Investigation Report*, vol. I, Aug. 2003. Available at [<http://www.caib.us/news/report/volume1/default.html>].

Bureau”;<sup>112</sup> (2) established a new position of Executive Assistant Director for Intelligence (EAD-I); (3) created a new Office of Intelligence to exercise control over the FBI’s historically fragmented intelligence program; (4) established a National Joint Terrorism Task Force; (5) established intelligence units in each field office to collect, analyze and disseminate intelligence to FBI Headquarters, and (6) based on the recommendations of the WMD Commission and subsequent White House guidance, created a National Security Branch within the FBI that will integrate “...the FBI’s national security mission with the Director of National Intelligence and the Intelligence Community.”<sup>113</sup>

Supporters contend that by centralizing decision-making, the FBI will be able to address several critical weaknesses which the *JIC Inquiry* attributed to decentralized management. First, a central management structure will enable the FBI to more easily correlate intelligence, and thereby more accurately assess the presence of terrorists in the United States. Second, the FBI will be able to strengthen its analysis capabilities, particularly with regard to strategic analysis, which is intended to provide a broader understanding of terrorist threats and terrorist organization. Third, FBI Headquarters will be able to more effectively fuse and share intelligence internally, and with other IC agencies. Finally, centralized decision-making will provide FBI Headquarters a means to enforce intelligence priorities in the field. Specifically, it provides a means for FBI Headquarters to ensure that field agents spend less time gathering information to support criminal prosecutions — a legacy of the FBI’s law enforcement culture — and more time collecting and analyzing intelligence that will help prevent terrorist acts.

Supporters contend that employees are embracing centralized management and the FBI’s new intelligence priorities, but caution it is premature to pronounce centralized management a success. Rather, they suggest that, “with careful planning, the commitment of adequate resources and personnel, and hard work, progress should be well along in three or four years,”<sup>114</sup> but concede that, “we’re a long way from getting there.”<sup>115</sup>

**Skeptics Agree Strong Intelligence Essential, But Question Whether Centralized Decision-Making Will Improve Program.** Skeptics agree that if the FBI is to prevent terrorism, it must strengthen its intelligence program, establish intelligence as a priority at FBI field offices, and improve headquarters-field coordination. But they question whether centralizing decision

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<sup>112</sup> See Testimony by Director Mueller before the House Appropriations Subcommittee on Commerce, Justice, State, June 3, 2004.

<sup>113</sup> See Aug. 12, 2005 FBI press release available at [<http://www.fbi.gov/pressrel/pressrel05/nsbleadership081205.htm>]. According to this document, the FBI will consolidate the positions of EAD for Counterterrorism and Counterintelligence and EAD for Intelligence into a single EAD for National Security.

<sup>114</sup> See statement of Richard Thornburgh, Chairman, Academy Panel on FBI Reorganization, NAPA, U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, State, Justice, the Judiciary and Related Agencies, June 18, 2003, p. 3.

<sup>115</sup> Interview with an FBI official, Jan. 6, 2004.

making at FBI Headquarters will enable the FBI to accomplish these goals, and they cite two principal factors in which they suggest will undermine the impact of centralized decision making. They question whether any structural management changes can (1) change a vested and ingrained law enforcement culture, and (2) overcome the FBI's lack of intelligence experience and integration with the IC.

**Skeptics Believe FBI's Law Enforcement Culture Will Prove Impervious to Centralized Decision-Making.** Skeptics assert that the FBI's entrenched law enforcement culture will undermine its effort to establish an effective and efficient intelligence program by centralizing decision-making at FBI Headquarters. They point to the historical importance that the FBI has placed on convicting criminals — including terrorists. But those convictions have come after the fact, and skeptics argue that the FBI will continue to encounter opposition within its ranks to adopting more subtle and somewhat unfamiliar intelligence methods designed to prevent terrorism. Former Attorney General Janet Reno, for example, reportedly “leaned toward closing down surveillance under the Foreign Intelligence Surveillance Act (FISA) if they hindered criminal cases.”<sup>116</sup> One observer said, “law enforcement and intelligence don't fit ... law enforcement always wins.”<sup>117</sup>

Some observers speculate that one reason law enforcement priorities prevail over those of intelligence is because convictions that can disrupt terrorist planning in advance of an attack often are based on lesser charges, such as immigration violations. FBI field personnel therefore may conclude that they should focus more effort on prosecuting criminal cases that result in longer jail terms.<sup>118</sup> Observers also suggest that because of the importance attached to successful criminal prosecutions, to the extent intelligence is used, it will be used to support criminal investigations, rather than to learn more about potential counterterrorism targets.<sup>119</sup>

Skeptics are convinced that the FBI's law enforcement culture is too entrenched, and resistant to change, to be easily influenced by FBI Headquarters directives emphasizing the importance of intelligence in preventing terrorism. They cite the Gilmore Commission, which concluded

... the Bureau's long-standing traditional organizational culture persuades us that, even with the best of intentions, the FBI cannot soon be made over into an organization dedicated to detecting and preventing attacks rather than one dedicated to punishing them.<sup>120</sup>

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<sup>116</sup> See *JIC Inquiry*, p. 224.

<sup>117</sup> Interview with a former senior intelligence official, Oct. 15, 2003.

<sup>118</sup> See *JIC Inquiry*, p. 224.

<sup>119</sup> See Testimony of John MacGaffin, III, before the National Commission on Terrorist Attacks Upon the United States, Dec. 8, 2003, p. 4.

<sup>120</sup> See, *Implementing the National Strategy: Fourth Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (Gilmore Commission), pp. 43-44.

**Skeptics Also Question Whether Centralized Decision Making Can Overcome FBI's Lack of Intelligence Experience.** Skeptics assert that the FBI's inexperience in the intelligence area has caused it to misunderstand the role intelligence can play in preventing terrorism, and they question whether centralized decision-making can correct this deficiency.

Specifically, they contend the FBI does not understand how to collect intelligence about potential counterterrorism targets, and properly analyze it. Instead, skeptics argue that notwithstanding the FBI's current efforts to develop detailed collection requirements, FBI agents will likely continue to "gather" evidence to support criminal cases. Moreover, skeptics argue, the FBI will "run faster, and jump higher," in gathering even more information at the urging of FBI Headquarters to "improve" intelligence.<sup>121</sup> Missing, however, according to critics, is the ability to implement successfully a system in which intelligence is collected according to a strategically determined set of collection requirements that specifically target operational clandestine activity. These collection requirements in turn must be informed by strategic analysis that integrates a broader understanding of terrorist threats and known and (conceptually) unknown gaps in the FBI's intelligence base. Critics fear that FBI analysts, instead, will continue to spend the bulk of their time providing tactical analytic support to FBI operational units pursuing cases, rather than systematically and strategically analyzing all-source intelligence and FBI intelligence gaps.

## Implementation Challenges

The FBI is likely to confront significant challenges in implementing its reforms. Its most fundamental challenge, some assert, will be to transform the FBI's deeply entrenched law enforcement culture, and its emphasis on criminal convictions, into a culture that emphasizes the importance that intelligence plays in counterterrorism and counterintelligence. Although observers believe that FBI Director Mueller is identifying and communicating his counterterrorism and intelligence priorities, they caution that effective reform implementation will be the ultimate determinant of success. The FBI, they say, must implement programs to recruit intelligence professionals with operational and analytical expertise; structure formal career development paths, including defined paths to promotion; and continue to improve information management and technology. These changes, they say, should be implemented in a timely fashion, as several years have passed since the attacks of September 11, 2001. They also contend the FBI must improve intelligence sharing within the FBI and with other IC agencies, and with federal, state and local agencies.

**Technology.** It is axiomatic that intelligence collected fails to have utility if it cannot be retrieved, analyzed and shared with appropriate personnel in a timely fashion. While the FBI's experience with the Virtual Case File (VCF) was a resounding and well documented failure, it has made progress in other areas. As the FBI develops its new Sentinel system, Congress is expected to follow its progress to ensure that the well-documented maladies associated with the VCF program are not repeated once again. Moreover, as turnover of senior leadership responsible for

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<sup>121</sup> Interview with a former senior FBI official, Aug. 21, 2003.



information technology at the FBI has been a problem, Congress may explore with the FBI additional means, if necessary, of ensuring executive continuity, particularly for the Chief Information Officer position.

**Smart Growth and Human Resources.** While technical tools have been and continue to be instrumental in the collection of intelligence, human capabilities are essential.<sup>122</sup> Since September 11, 2001, the FBI has been under tremendous pressure to hire, train, and retain intelligence professionals. As indicated above, the FBI has nearly doubled the size of its analytical cadre, while substantially increasing the number of special agents dedicated to national security. However, with such rapid hiring and reallocation comes increasing infrastructure demands that the FBI was not, arguably, prepared for. As mentioned above, limited CRS research suggests newly hired analysts in the field continue to wait for training opportunities for periods longer than they were initially told by their supervisors. Notwithstanding new human resource authorities provided to the FBI by IRTPA (P.L. 108-458) and FY2005 Consolidated Appropriations Act (P.L. 108-447), efforts to provide expert, senior level positions and promotion opportunities for FBI intelligence analysts do not currently exist. The reinvented performance appraisal systems for both special agents dedicated to the FBI's two top priorities and intelligence analysts have yet to be formally implemented. The FBI maintains that it "fundamentally changed the criteria for hiring special agents and intelligence analysts (in the wake of 9/11) ..." <sup>123</sup> Historically speaking, the FBI has placed a premium on interchangeable generalists who could be transferred from program to program.

**Intelligence Community Integration Bridging the Foreign/Domestic Divide.** In the wake of the 9/11 terrorist attacks, the distinction between U.S. domestic and foreign intelligence collection activities has blurred as authorities grapple with the possibilities raised by terrorists crossing U.S. borders.

Although the FBI and CIA historically have shared responsibilities for foreign intelligence collection in the United States and, since 9/11, have been recognized in some quarters for improving coordination, skeptics contend that both agencies still spend an inordinate amount of time fighting over turf, particularly when it comes to gathering intelligence in the United States.<sup>124</sup> According to the WMD Commission,

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<sup>122</sup> This was one of many important themes mentioned in the report issued by the House Permanent Select Committee on Intelligence's *Intelligence Authorization Act for Fiscal Year 2006* (H.Rept. 109-101), June 2, 2005.

<sup>123</sup> See John Solomon, "FBI Failed to Hire MidEast Experts," *Guardian Unlimited*, Jun 19, 2005.

<sup>124</sup> This issue involves more than the FBI and CIA. Some experts have maintained that with the proliferation of entities engaged in domestic intelligence or counterterrorism intelligence in the wake of 9/11, there has been a diffusion of accountability for counterterrorism functions that may undermine the U.S. government's collective counterterrorism efforts. In the words of John Gannon, former National Intelligence Council Chairman, "... in an effort to converge accountability, we've actually created divided accountability..." Which agencies/entities have which responsibilities, and are the functional expectations reasonable for any one entity? Moreover, according to Gannon, in an era of steady demand for  
(continued...)

for example, “clashes have become all too common ..., particularly in the context of intelligence gathered in the United States. Both agencies agree that lack of coordination has jeopardized on-going intelligence activities.”<sup>125</sup>

The FBI and CIA reportedly have agreed to a memorandum of understanding (MOU) that outlines ways to better coordinate each agency’s respective intelligence activities. The MOU reportedly represents the first such agreement between the two agencies in nearly two decades. The MOU is classified and is not expected to be made public. According to press accounts, however, it stipulates the procedures both agencies would follow, particularly when targets of interest travel to the United States from overseas.

**FBI Field Leadership.** An important issue is whether the FBI’s field leadership is able and willing to support Director Mueller’s reforms. Critics argue that the lack of national security experience among the existing cadre of Special Agents-in-Charge (SACs) of the FBI’s field offices represents a significant impediment to change. According to one former senior FBI official, “... over 90% of the SACs have very little national security experience...”<sup>126</sup> He suggested that lack of understanding and experience would result in continued field emphasis on law enforcement rather than an intelligence approach to terrorism cases. According to the WMD Commission, “... even now, only nine of the heads of the FBI’s 56 field offices come from divisions other than the Criminal Division.”<sup>127</sup> While it is arguable how much national security expertise a senior level executive should have,<sup>128</sup> in today’s complex threat environment, leaders with an expertise in national security matters may prove the most useful.

Supporters counter that Director Mueller has made it clear that his priorities are intelligence and terrorism prevention. Some SACs who have been uncomfortable with the new priorities have chosen to retire. But critics contend that it will require a number of years of voluntary attrition before field leadership more attuned to the importance of intelligence is in place.

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<sup>124</sup> (...continued)

decentralized analysis to support operations, the perception or expectation that one stop shopping “intelligence centers” will be a panacea may be problematic. See transcript of the first public panel of the Public Discourse Project, “The Unfinished Agenda: CIA and FBI Reform,” June 6, 2005, available at [[http://www.9-11pdp.org/ua/2005-06-06\\_transcript.pdf](http://www.9-11pdp.org/ua/2005-06-06_transcript.pdf)].

<sup>125</sup> See WMD Report, p. 469.

<sup>126</sup> Interview with a former senior FBI official, Oct. 2, 2003.

<sup>127</sup> See WMD Report, p. 453.

<sup>128</sup> According to a recent press article, Gary M. Bald, recently appointed as the EAD for National Security, when asked about his knowledge of Middle East culture and history, reportedly stated, “I wish I had it, it would be nice.” According to this same article, Director Muller reportedly stated that knowledge of international terrorism, Middle East history and dealing with foreign governments was “helpful, not essential,” for senior level FBI counterterrorism positions. See John Solomon, *FBI Chief Won’t Mandate Terror Expertise*, Associated Press, June 21, 2005.

An additional issue raised by some observers is the relatively brief tenure of FBI senior executives, both in the field and at Headquarters. Former Attorney General Richard Thornburgh recently stated that the “... median tenure of a special agent in charge is 15 months ... and the average tenure of an senior executive service (SES) at headquarters is 13 months....”<sup>129</sup> One could argue that given the long-term nature of implementing such significant cultural change at the FBI there is a need for leaders to remain in place for periods longer than 15 months.

**Intelligence Cycle Implementation in the Field.** The essence of the intelligence cycle is that intelligence collectors, analysts, consumers and those setting intelligence collection requirements are all part of an integrated and holistic system. The output of the cycle is only as strong as its constituent elements. Moreover, each stage of the cycle is accountable to the others in a non-linear fashion. That is, for example, the consumers are accountable to those drafting collection requirements because their feedback and view of global threats feed directly into the establishment of additional, or refinement of existing, intelligence requirements. Intelligence collectors are accountable to analysts, as analysts represent institutional, global, and strategic knowledge about particular threats, and gaps in the IC’s intelligence base about these threats.

While the FBI has made some progress in certain elements of the intelligence cycle, arguably, it does not as yet have a well developed system. As outlined above, CRS research indicates that the FIGs do not as yet have the *institutional* power to task intelligence collection. One supervisory special agent told CRS, the “Intelligence cycle remains an event (for us), not a process.” Impediments to implementing an effective and efficient intelligence cycle include, among other factors, the culture of the FBI, wherein intelligence analysts, particularly in the field, may not be treated as equals. Observers differ as to whether they believe the FBI is capable of making these changes. The optimists/”synergists” cite the FBI’s history of changing to meet the demands of the time and believe, over time, it will make the necessary changes to become a proactive domestic intelligence and investigative agency. Skeptics believe that intelligence and law enforcement are different disciplines and should be separated into different organizations, albeit with linkages built for analysis and relatively rare criminal prosecutions.

**Continued Information Sharing with State and Local Law Enforcement.** One of the primary means by which the FBI shares information with state and local law enforcement agencies and officers are the FBI — led Joint Terrorism Task Forces (JTTFs). Started in 1980 in New York City, the JTTFs have expanded to 103 JTTFs in operation today. A recent Department of Justice, Office of Inspector General report states that “... the Department’s terrorism task forces and advisory councils generally function as intended, without significant duplication of effort, and they contribute to the department’s goal to prevent terrorism and promote national security.”<sup>130</sup> Partly as a result of ambiguous federal and state roles in

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<sup>129</sup> See transcript of the first public panel of the Public Discourse Project, “The Unfinished Agenda: CIA and FBI Reform,” June 6, 2005.

<sup>130</sup> See U.S. Department of Justice, Office of the Inspector General, Evaluations and (continued...)

counterterrorism matters, and partly as a result of unrealistic perceptions of inherent intelligence limitations, there have historically been occasional and mutual recriminations between some state and local law enforcement agencies and the FBI with respect to intelligence sharing.

## Options for Congress

Numerous policy and budgetary options are available to Congress with respect to the FBI's intelligence program. These options range from the far-reaching — creating a new domestic intelligence agency — to more narrowly tailored adjustments to the FBI's budget to encourage more rapid implementation of the existing FBI vision for intelligence reform. The White House approval of the WMD Commission's recommendation to establish a National Security Service within the FBI leads to additional questions about the FBI's organization for intelligence. First and foremost, will the creation of a new structure tangibly affect the cultural changes that, arguably, need to be made at the FBI?<sup>131</sup> For example, will the FIGs now become empowered and more capable of managing and directing intelligence activities in the field because they now have at least an indirect reporting chain to the DNI? Second, as the National Security Service will be led by an EAD, or other senior FBI official, what will be the status of the FBI's existing EAD positions for Counterterrorism/Counterintelligence and Intelligence? Third, what exactly is the relationship between the DNI and the leader of the National Security Service? For example, to what extent, if at all, will the DNI be able to re-direct FBI counterterrorism and counterintelligence operational and analytical resources at headquarters and in the field? How will any disputes between the FBI Director and the DNI over resources within the National Security Service be resolved? Finally, how will the National Security Service relate to and interact with the FBI's Criminal and Cyber Divisions?

The legislative options depend, to some extent, on which school of thought one finds most compelling. Not surprisingly, skeptics will advocate more far-reaching options, and optimists will favor more narrowly targeted changes focused on implementation. Adherents to the skeptics school of thought find problematic the argument that there is strong synergy between the intelligence and law enforcement disciplines. Moreover, they believe the civil liberties argument for the FBI maintaining the domestic intelligence mission may have been weakened by P.L. 108-

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<sup>130</sup> (...continued)

Inspections Division, *The Department of Justice's Terrorism Task Forces*, June 2005. It should be noted that the FBI-led JTTFs are only one of the Department's task forces oriented toward counterterrorism.

<sup>131</sup> For an assessment of why the IC resists change, see Amy Zegart, "September 11<sup>th</sup> and the Adaptation Failure of U.S. Intelligence Agencies," in *International Security*, vol. 29, no. 4 (Spring 2005).

458, as it provided the DNI with substantially enhanced authority over domestic intelligence through personnel and budgetary means.<sup>132</sup>

If one is in the optimist/“synergist” camp, one of the greatest threats to the FBI’s intelligence program may be undue turnover in leadership at the senior most levels of the FBI, which could undermine the institutionalization of change. A close second in terms of threats to the reform efforts is attrition rates among intelligence professionals, and the potential to lose substantial numbers of newly hired analysts. The sheer magnitude of intelligence analyst hiring, from 1,023 on-board in FY2001, to a requested level of 2,700 in FY2006 is of considerable concern given certain attrition factors and the apparent lack of well-developed internal training infrastructure to support such an increase. While Congress has passed human resource retention measures to retain senior leadership and intelligence professionals, it is not certain how successfully the FBI is implementing these measures. Possible legislative options fall into at least two broad categories — structural/organizational and budgetary.

**Structural/Organizational.** There are two broad options in this area:

**(1) Establish a Domestic Intelligence Agency.** The pro and con arguments for this option have been outlined in numerous reports and testimony before congressional committees and national commissions.<sup>133</sup> This option was rejected by both the 9/11 Commission and the WMD Commission. However, the WMD Commission stated that “we recommend that policymakers re-evaluate the wisdom of creating a separate agency — an equivalent to the British MI-5 — dedicated to intelligence collection in the United States should there be a continued

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<sup>132</sup> See P.L. 108-458 §1014 (50 U.S.C. §403-406), *Role of Director of National Intelligence in Appointment of Certain Officials for Intelligence-Related Activities*. One of these positions for which the head of an agency shall obtain the concurrence of the DNI is the FBI’s EAD-I, “...or any successor to that position,” which would likely cover the leader of the National Security Service. Moreover, the DNI’s budget authorities with respect to the NIP, under which the FBI’s intelligence program falls, are outlined in P.L. 108-458 §102A(c).

<sup>133</sup> A few of these studies listed above include *The Final Report of the National Commission on Terrorist Attacks Upon the United States*; William E. Odom, *Fixing Intelligence for a More Secure America* (New Haven, CT: Yale University Press, 2003); and *The Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction: Report to the President of the United States*, Mar. 31, 2005 (WMD Report). Chapter Ten of this WMD Report, “Intelligence at Home: The FBI, Justice, and Homeland Security,” is the most germane with respect to FBI intelligence reform. See also Senate Select Committee on Intelligence, *Report on the U.S. Intelligence Community’s Pre-War Intelligence Assessments on Iraq*, July 7, 2004. See also the National Academy of Public Administration, *Transforming the FBI: Progress and Challenges*, Jan, 2005. Chapter three on Intelligence is most pertinent to the topic of this CRS report. See also Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* (Hoover Institution: Stanford University, 2005). See also 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*, Nov. 2004, recently released in redacted form. See also Mark Sherman, “Panel Weighs Creating New Intel Agency,” *Washington Post*, June 17, 2005.

failure to institute reforms necessary to transform the FBI into the intelligence organization it must become.”<sup>134</sup> Supporters argue that the establishment of a separate agency could provide a focus on the intelligence mission that a “hybrid” agency such as the FBI, with its dual law enforcement and intelligence missions cannot. However, according to skeptics, establishing a new agency would present organizational challenges and unwisely de-couple what they see as mutually reinforcing disciplines of law enforcement and intelligence.

**(2) Establish an Integrated National Security Service<sup>135</sup> within the FBI.** While the White House has approved a key recommendation of the WMD Commission to establish such a service, this acceptance was achieved through the issuance of a White House memorandum. The June 29, 2005 White House Fact Sheet accompanying the memorandum of the same date stated that the White House: “... will work with Congress on recommendations that require legislation.”<sup>136</sup> It then states that one of the issues that requires legislation is the creation of a new assistant attorney general for national security at the Department of Justice. It does not state that it would be working with Congress on legislation requiring the creation of the National Security Service within the FBI. As a result of being created via a presidential memorandum, the new service and its functions are not codified in law and, therefore, are subject to unilateral change in the future. Congress may consider codification of the new organization within the FBI to ensure its functions, relationships, and activities, are explicitly specified in law. Because the FBI’s Directorate of Intelligence has now become part of the National Security Service under the new White House plan, if Congress agrees with the executive branch memorandum, Section 2002, of Title II, of P.L. 108-458<sup>137</sup> may need to be amended to update its functions and reporting relationships within the National Security Service.

Important factors in determining the breadth and efficacy of the position of Director of the National Security Service include what the specific authorities of the EAD for National Security and his deputy are; the relationships of the EAD for National Security and his deputy to the DNI, Director, FBI and Attorney General; and the extent to which the EAD for National Security and his deputy can engage constructively the 56 Special Agents in Charge and empower the 56 FIGs.

**Potential Areas for Functional Oversight.** Three areas of potential interest to Congress are FBI-CIA cooperation, terrorist funding and financial analysts, and Special Agents in Charge and FIGs, as described below.

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<sup>134</sup> See WMD Commission, p. 468.

<sup>135</sup> For further discussion see CRS Report RL32336, *FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress*, by Alfred Cumming and Todd Masse.

<sup>136</sup> See “Fact Sheet: Bush Administration Implements WMD Commission Recommendations,” White House Fact Sheet, June 29, 2005.

<sup>137</sup> Among other initiatives, this Section of the law redesignated the FBI’s Office of Intelligence as the Directorate of Intelligence.

**(1) FBI-CIA Cooperation.** With regard to reported continuing turf battles between the FBI and CIA, one approach would be to conduct aggressive oversight to ensure that the FBI and CIA are cooperating in collecting intelligence overseas and domestically. Specially, Congress could review whether the memorandum of understanding reportedly negotiated between the FBI and CIA includes effective “rules of the road” that clearly outline each agency’s intelligence collection responsibilities. If Congress determined the MOU to be appropriate, it might then monitor its implementation through the use of various oversight mechanisms including hearings and audits.

**(2) Terrorist Funding and Financial Analysts.** At a time when increasing attention arguably should be focused on terrorist financing, Congress could assess whether the FBI is focusing adequate intelligence resources in this area. Among other issues, it might review whether the FBI’s FIGs possess an appropriate level of terrorist financial analytic capability. Financial analysts interviewed by CRS at various field offices raised concerns about perceived career path inequities between the FBI’s financial analysts and intelligence analysts.

**(3) Special Agents in Charge and FIGs.** Congress, through its various oversight mechanisms, could consider whether the special agents in charge of FBI’s field offices are devoting an appropriate level of management attention to the FIGs. It might also inquire whether the FBI has provided an appropriate level of management attention at the assistant agent in charge level, and consider whether the FBI should appoint an Assistant Special Agent in Charge (ASACs) in each field office whose sole responsibility is intelligence activities within each field office.

**Budget — Strategic Issues and Options.** With respect to the budget, there are both strategic and tactical options. The *strategic* options center on the harmonization of the National Intelligence Program budget with the internal budgetary authorities of the DI. The *tactical* options concern budgetary tradeoffs within the existing FBI intelligence program. Some options are:

**(1) Consolidate All FBI Intelligence Spending Under the National Intelligence Program.** According to the WMD Commission, the EAD-I controlled only 4% of FBI’s spending on intelligence. The WMD Commission also concluded that if the FBI’s EAD-I does not directly control the National Intelligence Program resources within the FBI, then the DNI’s influence over the FBI’s National Intelligence Program is tenuous, which may be inconsistent with his stated budgetary authorities outlined in P.L. 108-458.<sup>138</sup> The bulk of the Bureau’s spending on intelligence lies outside the EAD-I’s control, residing principally in the Counterterrorism and Counterintelligence Divisions. The June 29, 2005 White

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<sup>138</sup> The budgetary authorities of the DNI are strongest with respect to the NIP element of the IC budget. The DNI only “participates” in the development “... by the Secretary of Defense ...” of the annual budgets for the Joint Military Intelligence Program (JMIP) and the Tactical Intelligence and Related Activities (TIARA). It is possible that the Administration could request of Congress, that the FBI’s budget for domestic intelligence be treated more in a manner like that of the JMIP and TIARA programs, with the Attorney General, for purposes of the FBI’s intelligence budget, serving a role similar to that of the Secretary of Defense with respect to JMIP and TIARA.

House memorandum stipulates that the Attorney General shall "... Ensure that the FBI's National Security Service's intelligence activities, both at headquarters and in the field, are funded through the National Intelligence Program...."<sup>139</sup> This appears to be consistent with the more specific language outlined in Title I, Section 102A(2)(c) of P.L. 108-458 which provides the DNI's authority to "provide ... guidance," "develop and determine," and "present" a National Intelligence Program budget.

In a related matter, the internal structure of the FBI's budget might also be more clearly delineated to specify the sum total of its intelligence spending. Currently, the bottom line figure in the FBI budget's "intelligence decision unit" does not represent the total of FBI spending on intelligence related matters.

**(2) Congressional Jurisdiction.** Another possible *strategic* issue for the Congress may be whether the FBI's portion of the NIP continues to be appropriated through existing subcommittees or, in a manner more consistent with the other elements of the IC budget,<sup>140</sup> which are funded by the Defense Appropriations Subcommittees. The Bureau's intelligence program is authorized by the House and Senate intelligence committees. Its intelligence budget, however, is appropriated by the House Appropriations Subcommittee on Science, Department of State, Justice, and Commerce, and Related Agencies and the Senate Appropriations Subcommittee on Commerce, Justice and Science. An estimated one-third of the FBI's FY2006 budget request of \$5.7 billion is for intelligence-related activities. Consistency in congressional procedures for funding elements of the Intelligence Community, however, may not necessarily be a compelling argument for change, particularly if congressional oversight and support of the FBI's intelligence program is determined to be best served by existing arrangements.

**Budget — Tactical Issues and Options.** Given the substantial increases in the FBI budget outlined above, one central question that may be asked of experts is the extent to which additional resources are essential to the implementation of the FBI's vision. It may be universally true that any executive agency can do more with more resources. However, it is also true that there are competing uses for existing resources. Given the steady FBI increases allocated to intelligence, some may question whether an additional 500 intelligence analysts are truly necessary. Certain tradeoffs, between more analytical staff and infrastructure, such as training and information technology to support those bodies, may be debated. Since not all observers fit neatly into the two "schools of thought" discussed above, CRS explores a number of options:

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<sup>139</sup> See White House Memorandum, "Strengthening the Ability of the Department of Justice to Meet Challenges to the Security of the Nation," June 29, 2005.

<sup>140</sup> There are three elements of the Intelligence Community's budget: (1) the NIP, (2) the Joint Military Intelligence Program (JMIP), and (3) the Tactical Intelligence and Related Activities (TIARA). While the NIP funds activities within and external to the Department of Defense (DOD), JMIP and TIARA only fund DOD activities. See CRS Report RS21945, *The U.S. Intelligence Budget: A Basic Overview*, by Stephen Daggett.



**(1) Fully Fund the Administration's FY2006 Request for the FBI.** At \$5.7 billion, this request represents an 11% increase over FY2005 and would support 2,945 counterterrorism agents and 2,746 intelligence analysts (an increase of 500 intelligence analysts to assist in the war on terrorism). In order to allow the FBI maximum flexibility in allocating these resources to areas of greatest threat, the appropriation would not be conditioned or tied to any intelligence reform milestones.

**(2) Encourage Staff Retention: Option 1.** Condition additional funding to measurable and concrete personnel achievements in intelligence reform, particularly those measures dedicated to implementation of career paths, intelligence professional performance appraisals, and staff retention. For example, one could fully fund salaries and expenses for additional special agents working, yet tie the appropriation for 500 intelligence analysts to one or more of the following: (1) ensuring that all analysts hired during the last three years at HQ and in the field, have taken the Analytical Cadre Education Strategy-1 course; (2) the development of regional training programs modeled on those provided to other intelligence analysts in the intelligence community; (3) the provision of all intelligence analysts with Internet terminals on their desks; (4) the demonstrated implementation of the expanded human resource authorities (including exemptions from Title 5), including the implementation of a Senior Analytic Service or Senior Intelligence Service within the DI for regional and functional intelligence and/or terrorism threats, (yet not policy advisers); (5) the implementation of new performance evaluation systems for special agents and intelligence analysts that focus on qualitative versus quantitative output, and (6) the development of formal mechanisms to ensure that field intelligence collectors are responsive to filling intelligence gaps assigned to them by the FIGs. If it chose conditional appropriation of funds, the subcommittee might establish reporting requirements for the FBI in whichever areas it adopted.

**(3) Encourage Staff Retention: Option 2.** Appropriate some funding level under the requested 500 intelligence analysts and require the remainder of the resources be dedicated to new personnel who would serve as (1) administrative assistants responsible for the non-analytical functions many field intelligence analysts are asked to perform periodically, and (2) qualified, full-time instructors who would be dedicated to providing both new and experienced intelligence analysts with access to enhanced in-house training, as well as continued exposure to intelligence community and academic training programs. While there may be an existing human resources formula for how many "support" personnel are necessary to support each newly hired special agent, this formula likely preceded the current intelligence reform efforts. In short, Congress could require that analysts not be diverted to non-analytical tasks.

## Appendix 1. Definitions of Intelligence

There are three formal categories of intelligence defined under statute or regulation. They are

- **Foreign Intelligence.** Information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons.<sup>141</sup>
- **Counterintelligence.** Information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.<sup>142</sup>
- **Criminal Intelligence.** 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. [Certain criminal activities including but not limited to loan sharking, drug trafficking, trafficking in stolen property, gambling, extortion, smuggling, bribery, and corruption of public officials often involve some degree of regular coordination and permanent organization involving a large number of participants over a broad geographical area].<sup>143</sup>

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<sup>141</sup> See National Security Act of 1947, as amended (50 U.S. Code, Chapter 15, 401(a)) and E.O. 12333, 3.4.

<sup>142</sup> Ibid.

<sup>143</sup> See *Code of Federal Regulations*, Part 23.

## Appendix 2. The FBI's Traditional Role in Intelligence<sup>144</sup>

According to Executive Order 12333, United States Intelligence Activities, signed December 4, 1981, and the National Security Act of 1947 (50 U.S. Code §401), the FBI is a statutory member of the U.S. Intelligence Community. Specifically, and in accordance with Section 1.14 of Executive Order 12333, United States Intelligence Activities, the intelligence roles of the FBI are outlined as follows:

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall

- (a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the IC. When a counterintelligence activity of the military involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;
- (b) Conduct counterintelligence activities outside the United States in coordination with the Central Intelligence Agency as required by procedures agreed upon by the Director of Central Intelligence<sup>145</sup> and the Attorney General;
- (c) Conduct within the United States, when requested by officials of the IC designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the IC, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States government;
- (d) Produce and disseminate foreign intelligence and counterintelligence; and
- (e) Carry out or contract for research, development, and procurement of technical systems and devices relating to the functions authorized above.

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<sup>144</sup> According to press reports, the FBI and CIA recently signed a classified memorandum of understanding concerning the collection of foreign intelligence within the United States.

<sup>145</sup> Under P.L. 108-458, Subtitle A (50 USC 401 note), the position of the Director of Central Intelligence has been replaced by the Direction of National Intelligence. This change has not yet been reflected in Executive Order 12333.

## Appendix 3. The FBI's Intelligence Programs — A Brief History

The FBI is responsible for deterring, detecting and preventing domestic activities that may threaten the national security, and, at the same time, respecting constitutional safeguards.<sup>146</sup> The FBI, a statutory member of the IC, is able to collect foreign intelligence within the United States when authorized by IC officials.

The FBI and its predecessor, the Bureau of Intelligence, have collected intelligence — foreign intelligence, counterintelligence and criminal intelligence — in the United States since 1908,<sup>147</sup> and, at times, effectively.<sup>148</sup> During the Cold War, the FBI successfully penetrated the Soviet leadership through a recruited U.S. Communist Party asset. The FBI also battled the Kremlin on the counterintelligence front.<sup>149</sup> In 1985 — dubbed the Year of the Spy, the FBI arrested 11 U.S. citizens for espionage — including former United States warrant officer John Walker, who provided the Soviets highly classified cryptography codes during a spying career that began in the 1960s. The FBI also arrested Larry Wu-Tai Chin, a CIA employee, a spy for the People's Republic of China; Jonathan Pollard, a Naval Investigative Service intelligence analyst who stole secrets for Israel; and Ronald Pelton, a former National Security Agency communications specialist who provided the Soviet Union classified material.<sup>150</sup> More recently convicted spies include FBI Special Agent Robert P. Hanssen, who spied on behalf of Soviet Union and, subsequently, Russia, and pleaded guilty to 15 espionage-related charges in 2001; and former Defense Intelligence Agency analyst Ana Belen Montes, arrested in 2001 and subsequently convicted for spying for Cuba.

### FBI Excesses

The FBI has been applauded for its historical successes, but also criticized for overstepping constitutional bounds by targeting U.S. citizens who were found to be exercising their constitutional rights.<sup>151</sup> For example, during the 1919-1920 “Palmer

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<sup>146</sup> For a more detailed description of the FBI's traditional intelligence role, see **Appendix 2**.

<sup>147</sup> For an official history of the FBI, see [<http://www.fbi.gov/fbihistory.htm>]. See also CRS Report RL32095, *The FBI: Past, Present and Future*, by William Krouse and Todd Masse.

<sup>148</sup> Interview with a former senior FBI official, Oct. 3, 2003.

<sup>149</sup> The successful prosecution of an espionage case can be viewed as both a counterintelligence success, and failure. It is a success insofar as the activity is stopped, but is a failure insofar as the activity escaped the attention of appropriate authorities for any period of time.

<sup>150</sup> See CRS Report 93-531, *Individuals Arrested on Charges of Espionage Against the United States Government: 1966-1993*, by Suzanne Cavanagh (out of print; available from the authors of this report). For a compilation of espionage cases through 1999, see [<http://www.dss.mil/training/espionage>].

<sup>151</sup> See Tony Poveda, *Lawlessness and Reform: The FBI in Transition* (Brooks/Cole (continued...))

Raids,” the FBI’s so-called Radical Division (later renamed the General Intelligence Division) arrested individuals allegedly working to overthrow the U.S. government, but who were later judged to be innocent.<sup>152</sup>

Between 1956 and 1970, the FBI investigated individuals it believed were engaging in “subversive” activities as part of the FBI’s so-called COINTELPRO Program.<sup>153</sup> In the mid-1960s, the FBI surveilled such prominent Americans as Martin Luther King, Jr., collecting “racial intelligence.”<sup>154</sup> And in the 1980s, the FBI was found to have violated the constitutional rights of members of the Committee in Solidarity with the People of El Salvador (CISPES) who the FBI believed violated the Foreign Agent Registration Act.<sup>155</sup> Although congressional investigators concluded that the FBI’s investigation did not reflect “significant FBI political or ideological bias ...,” its activities “resulted in the investigation of domestic political activities protected by the First Amendment that should not have come under governmental scrutiny.”<sup>156</sup>

## Oversight and Regulation: The Pendulum Swings

In response to these FBI abuses, the Department of Justice imposed domestic intelligence collection standards on the IC, including the FBI. For example, in 1976, Attorney General Edward H. Levi issued specific guidelines governing FBI domestic security investigations. Congress also established House and Senate intelligence oversight committees to monitor the IC. And President Carter signed into law the Foreign Intelligence Surveillance Act of 1978, which established legal procedures and standards governing the use of electronic surveillance<sup>157</sup> within the United States.

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<sup>151</sup> (...continued)  
Publishing, 1990).

<sup>152</sup> See Edwin Hoyt Palmer, *The Palmer Raids, 1919-1921: An Attempt to Suppress Dissent*, Seabury Press, 1969.

<sup>153</sup> For further information on the history of COINTELPRO, see 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, Apr. 23, 1976); (Hereafter cited as the Church Committee Report).

<sup>154</sup> *Ibid.*, Book II, p. 71.

<sup>155</sup> The Foreign Agent Registration Act requires that persons acting as foreign agents (as defined by the act) register with the U.S. Department of Justice for, among other reasons, transparency. (See 22 U.S.C. Chap. 611)

<sup>156</sup> U.S. Congress, Senate Select Committee on Intelligence, *The FBI and CISPES*, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Rept. 101-46 ( Washington GPO: July 1989).

<sup>157</sup> Subsequent legislation expanded the authority of FISA with respect to physical searches, pen registers, trap and trace devices, and court ordered production of records and other tangible things. See CRS Report RL30465, *The Foreign Intelligence Surveillance Act: An Overview of the Statutory Framework and Recent Judicial Decisions*, by Elizabeth B. Bazan.

Critics argue that until Congress approved the U.S.A. PATRIOT Act granting the FBI additional authority to investigate suspected terrorists, increased oversight and over-regulation had seriously weakened the FBI's intelligence capabilities. Some thought that not only had regulations curtailed the FBI's surveillance authorities, but that they had undermined the risk-taking culture thought to be essential to successful intelligence work.<sup>158</sup> The Levi Guidelines<sup>159</sup> were singled out as being particularly onerous.<sup>160</sup>

Some observers blamed the restrictions for discouraging domestic intelligence collection unless the FBI could clearly show that its collection was tied to a specific alleged crime. They also said the restrictions led the FBI to transfer responsibility for parts of its counterterrorism program from the FBI's former Intelligence Division to its Criminal Division. The result, they contend, was an anemic intelligence program that contributed to the failure to prevent the September 11, 2001 terrorist attacks.<sup>161</sup>

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<sup>158</sup> See Bill Gertz, *Breakdown: How America's Intelligence Failures Led to September 11* (Regnery Publishing, 2002), pp. 83-125.

<sup>159</sup> According to the Levi guidelines, domestic security investigations were to be limited to gathering information on group or individual activities "... which involve or will involve the use of force or violence and which involve or will involve a violation of federal law...."

<sup>160</sup> See Testimony of Francis J. McNamara, former Subversive Activities Control Board Director, before the National Committee to Restore Internal Security, May 20, 1986. Quoted in W. Raymond Wannall, "Undermining Counterintelligence Capability," *International Journal of Intelligence and Counterintelligence*, vol. 15, winter 2002, pp. 321-329.

<sup>161</sup> Interviews with former senior FBI officials.

## Appendix 4. Past Efforts to Reform FBI Intelligence

The FBI's current intelligence reform is not its first. Twice before — in 1998, and then again in 1999 — the FBI embarked on almost identical efforts to establish intelligence as a priority, and to strengthen its intelligence program. Both attempts are considered by some to have been failures.<sup>162</sup>

Both previous attempts were driven by concerns that FBI's intelligence effectiveness was being undercut by the FBI's historically fragmented intelligence program. The FBI's three operational divisions, at the time — criminal, counterterrorism and counterintelligence — each controlled its own intelligence program.<sup>163</sup> As a result, the FBI had trouble integrating its intelligence effort horizontally between its divisions. In intelligence world parlance, the programs were “stove-piped.”

In 1998, the FBI attempted to address the stove pipe problem by consolidating control over intelligence under the authority of a newly established Office of Intelligence. It also took steps to improve the quality of its intelligence analysis, particularly in the criminal area, which was viewed as particularly weak.

Dissatisfied with the results, the FBI launched a second round of reforms the following year aimed at more thoroughly integrating FBI intelligence analysis in support of investigations. A new Investigative Services Division (ISD) was established to replace the Office of Intelligence, and to house in one location all FBI analysts that until then had been “owned” by FBI's operational divisions. Although the ISD was intended to provide each of the divisions “one-stop shopping” for their intelligence needs, it was never accepted by the operational divisions, which wanted to control their own intelligence analysis programs. In the wake of 9/11, the FBI concluded that analysts would be more effective if they were controlled by the operational divisions. ISD was abolished, and analysts were dispersed back to the divisions in which they originally served.

Although observers blame the failure of both prior reform efforts on several complex factors, they put the FBI's deeply-ingrained law enforcement mentality at the top of the list. As one observer described it, efforts to integrate intelligence at the FBI were substantially hampered because resources dedicated to intelligence were gradually siphoned back to the FBI's traditional counter crime programs. Moreover, there was also little sustained senior level support for an intelligence function that was integrated with the IC.<sup>164</sup>

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<sup>162</sup> Interview with a former senior FBI official, Oct. 2, 2003.

<sup>163</sup> A fourth division — cyber crime — was established in Apr. 2002. Until the appointment of the EAD-I, it, too, had its own intelligence component.

<sup>164</sup> Interview with a former senior FBI official, Oct. 2, 2003.

As alluded to above, the 9/11 Commission detected through its staff visits to FBI field offices a gap between policy goals and the implementation of that policy. Reasonable individuals can differ with respect to the status of implementation of particular policies. For example, what is a reasonable expectation for where the FBI ought to be in implementing its stated intelligence reforms given that the nation is now over 3½ (or 2½ years — depending on when one chooses as a start date for FBI reforms) years out from the attacks of September 11, 2001? Numerous analogies of the FBI as an “aircraft carrier ... that takes a long time to stop going in one direction and turn around and go in another ...”<sup>165</sup> have been made, which speak to the difficulties inherent in changing any large organization with a strong and deeply ingrained culture. These challenges notwithstanding, as many have argued and are aware, the national security imperative demands results in a timely manner.

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<sup>165</sup> See comments of former FBI EAD Dale Watson to Richard A. Clarke in Richard A. Clarke, *Against All Enemies: Inside America's War on Terror*, (Free Press, 2004), p. 219. In reference to the power of the 56 FBI field offices, Mr. Watson, a career FBI official, stated that “These Field Offices all have had their own way, little fiefdoms, for years.” Some might argue that notwithstanding the changes the FBI has made that its Field Offices still retain a large measure of their power *vis-a-vis* headquarters and how they allocate investigative and operational funds. Others might argue that the centralization measures Director Mueller has put in place have substantially reduced field office independence, particularly with respect to the top priorities of counterterrorism and counterintelligence.