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ERRATA

Notice: In Lieu of a star print, errata are printed to indicate corrections to the original report.

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JOINT INQUIRY INTO INTELLIGENCE COMMUNITY ACTIVITIES BEFORE AND AFTER THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001

REPORT

OF THE

U.S. SENATE SELECT COMMITTEE ON INTELLIGENCE

AND

U.S. HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE

TOGETHER WITH ADDITIONAL VIEWS

DECEMBER 2002

INTRODUCTION

This is an errata print, which is necessary because the report (H.Rept. No. 107-792 and S. Rept. No. 107-351) inadvertently failed to include these recommendations. To correct this error, these recommendations should be included following: III. Findings and Conclusions.

RECOMMENDATIONS

December 10, 2002

Since the National Security Act's establishment of the Director of Central Intelligence and the Central Intelligence Agency in 1947, numerous independent commissions,[1] experts, and legislative initiatives have examined the growth and performance of the U.S. Intelligence Community. While those efforts generated numerous proposals for reform over the years, some of the most significant proposals have not been implemented, particularly in the areas of organization and structure. These Committees believe that the cataclysmic events of September 11, 2001 provide a unique and compelling mandate for strong leadership and constructive change throughout the Intelligence Community. With that in mind, and based on the work of this Joint Inquiry, the Committees recommend the following:

1. Congress should amend the National Security Act of 1947 to create and sufficiently staff a statutory Director of National Intelligence[2] who shall be the President's principal advisor on intelligence and shall have the full range of management, budgetary and personnel responsibilities needed to make the entire U.S. Intelligence Community operate as a coherent whole. These responsibilities should include:

   - establishment and enforcement of consistent priorities for the collection, analysis, and dissemination of intelligence throughout the Intelligence Community;

   - setting of policy and the ability to move personnel between elements of the Intelligence Community;

   - review, approval, modification, and primary management and oversight of the execution of Intelligence Community budgets;

[1] List of previous commissions that addressed intelligence organizational issues, 1990-present (Appendix A).
[2] All references to the Director of National Intelligence in other recommendations assume recommendation #1 is adopted. In the event there is no Director of National Intelligence created, the Director of Central Intelligence should be substituted for the Director of National Intelligence.

- review, approval, modification, and primary management and oversight of the execution of Intelligence Community personnel and resource allocations;

- review, approval, modification, and primary management and oversight of the execution of Intelligence Community research and development efforts;

- review, approval, and coordination of relationships between the Intelligence Community agencies and foreign intelligence and law enforcement services; and

- exercise of statutory authority to insure that Intelligence Community agencies and components fully comply with Community-wide policy, management, spending, and administrative guidance and priorities.

The Director of National Intelligence should be a Cabinet level position, appointed by the President and subject to Senate confirmation. Congress and the President should also work to insure that the Director of National Intelligence effectively exercises these authorities.

To insure focused and consistent Intelligence Community leadership, Congress should require that no person may simultaneously serve as both the Director of National Intelligence and the Director of the Central Intelligence Agency, or as the director of any other specific intelligence agency.

2. Current efforts by the National Security Council to examine and revamp existing intelligence priorities should be expedited, given the immediate need for clear guidance in intelligence and counterterrorism efforts. The President should take action to ensure that clear, consistent, and current priorities are established and enforced throughout the Intelligence Community. Once established, these priorities should be reviewed and updated on at least an annual basis to ensure that the allocation of Intelligence Community resources reflects and effectively addresses the continually evolving threat

environment. Finally, the establishment of Intelligence Community priorities, and the justification for such priorities, should be reported to both the House and Senate Intelligence Committees on an annual basis.

3. The National Security Council, in conjunction with the Director of National Intelligence, and in consultation with the Secretary of the Department of Homeland Security, the Secretary of State and Secretary of Defense, should prepare, for the President's approval, a U.S. government-wide strategy for combating terrorism, both at home and abroad, including the growing terrorism threat posed by the proliferation of weapons of mass destruction and associated technologies. This strategy should identify and fully engage those foreign policy, economic, military, intelligence, and law enforcement elements that are critical to a comprehensive blueprint for success in the war against terrorism.

   As part of that effort, the Director of National Intelligence shall develop the Intelligence Community component of the strategy, identifying specific programs and budgets and including plans to address the threats posed by Usama Bin Ladin and al Qa'ida, Hezbollah, Hamas, and other significant terrorist groups. Consistent with applicable law, the strategy should effectively employ and integrate all capabilities available to the Intelligence Community against those threats and should encompass specific efforts to:

   - develop human sources to penetrate terrorist organizations and networks both overseas and within the United States;

   - fully utilize existing and future technologies to better exploit terrorist communications; to improve and expand the use of data mining and other cutting edge analytical tools; and to develop a multi-level security capability to facilitate the timely and complete sharing of relevant intelligence information both within the Intelligence Community and with other appropriate federal, state, and local authorities;

- enhance the depth and quality of domestic intelligence collection and analysis by, for example, modernizing current intelligence reporting formats through the use of existing information technology to emphasize the existence and the significance of links between new and previously acquired information;

- maximize the effective use of covert action in counterterrorist efforts;

- develop programs to deal with financial support for international terrorism; and

- facilitate the ability of CIA paramilitary units and military special operations forces to conduct joint operations against terrorist targets.

4. The position of National Intelligence Officer for Terrorism should be created on the National Intelligence Council and a highly qualified individual appointed to prepare intelligence estimates on terrorism for the use of Congress and policymakers in the Executive Branch and to assist the Intelligence Community in developing a program for strategic analysis and assessments.

5. Congress and the Administration should ensure the full development within the Department of Homeland Security of an effective all-source terrorism information fusion center that will dramatically improve the focus and quality of counterterrorism analysis and facilitate the timely dissemination of relevant intelligence information, both within and beyond the boundaries of the Intelligence Community. Congress and the Administration should ensure that this fusion center has all the authority and the resources needed to:

    - have full and timely access to all counterterrorism-related intelligence information, including "raw" supporting data as needed;

- have the ability to participate fully in the existing requirements process for tasking the Intelligence Community to gather information on foreign individuals, entities and threats;

- integrate such information in order to identify and assess the nature and scope of terrorist threats to the United States in light of actual and potential vulnerabilities;

- implement and fully utilize data mining and other advanced analytical tools, consistent with applicable law;

- retain a permanent staff of experienced and highly skilled analysts, supplemented on a regular basis by personnel on "joint tours" from the various Intelligence Community agencies;

- institute a reporting mechanism that enables analysts at all the intelligence and law enforcement agencies to post lead information for use by analysts at other agencies without waiting for dissemination of a formal report;

- maintain excellence and creativity in staff analytic skills through regular use of analysis and language training programs; and

- establish and sustain effective channels for the exchange of counterterrorism-related information with federal agencies outside the Intelligence Community as well as with state and local authorities.

6. Given the FBI's history of repeated shortcomings within its current responsibility for domestic intelligence, and in the face of grave and immediate threats to our homeland, the FBI should strengthen and improve its domestic capability as fully and expeditiously as possible by immediately instituting measures to:

- strengthen counterterrorism as a national FBI program by clearly designating national counterterrorism priorities and enforcing field office adherence to those priorities;

- establish and sustain independent career tracks within the FBI that recognize and provide incentives for demonstrated skills and performance of counterterrorism agents and analysts;

- significantly improve strategic analytical capabilities by assuring the qualification, training, and independence of analysts, coupled with sufficient access to necessary information and resources;

- establish a strong reports officer cadre at FBI Headquarters and field offices to facilitate timely dissemination of intelligence from agents to analysts within the FBI and other agencies within the Intelligence Community;

- implement training for agents in the effective use of analysts and analysis in their work;

- expand and sustain the recruitment of agents and analysts with the linguistic skills needed in counterterrorism efforts;

- increase substantially efforts to penetrate terrorist organizations operating in the United States through all available means of collection;

- improve the national security law training of FBI personnel;

- implement mechanisms to maximize the exchange of counterterrorism- related information between the FBI and other federal, state and local agencies; and

- finally solve the FBI's persistent and incapacitating information technology problems.

7. Congress and the Administration should carefully consider how best to structure and manage U.S. domestic intelligence responsibilities. Congress should review the scope of domestic intelligence authorities to determine their adequacy in pursuing counterterrorism at home and ensuring the protection of privacy and other rights guaranteed under the Constitution. This review should include, for example, such questions as whether the range of persons subject to searches and surveillances authorized under the Foreign Intelligence Surveillance Act (FISA) should be expanded.

   Based on their oversight responsibilities, the Intelligence and Judiciary Committees of the Congress, as appropriate, should consider promptly, in consultation with the Administration, whether the FBI should continue to perform the domestic intelligence functions of the United States Government or whether legislation is necessary to remedy this problem, including the possibility of creating a new agency to perform those functions.

   Congress should require that the new Director of National Intelligence, the Attorney General, and the Secretary of the Department of Homeland Security report to the President and the Congress on a date certain concerning:

   - the FBI's progress since September 11, 2001 in implementing the reforms required to conduct an effective domestic intelligence program, including the measures recommended above;

   - the experience of other democratic nations in organizing the conduct of domestic intelligence;

- the specific manner in which a new domestic intelligence service could be established in the United States, recognizing the need to enhance national security while fully protecting civil liberties; and

- their recommendations on how to best fulfill the nation's need for an effective domestic intelligence capability, including necessary legislation.

8. The Attorney General and the Director of the FBI should take action necessary to ensure that:

    - the Office of Intelligence Policy and Review and other Department of Justice components provide in-depth training to the FBI and other members of the Intelligence Community regarding the use of the Foreign Intelligence Surveillance Act (FISA) to address terrorist threats to the United States;

    - the FBI disseminates results of searches and surveillances authorized under FISA to appropriate personnel within the FBI and the Intelligence Community on a timely basis so they may be used for analysis and operations that address terrorist threats to the United States; and

    - the FBI develops and implements a plan to use authorities provided by FISA to assess the threat of international terrorist groups within the United States fully, including the extent to which such groups are funded or otherwise supported by foreign governments.

9. The House and Senate Intelligence and Judiciary Committees should continue to examine the Foreign Intelligence Surveillance Act and its implementation thoroughly, particularly with respect to changes made as a result of the USA PATRIOT Act and the subsequent decision of the United States Foreign Intelligence Court of Review, to determine whether its provisions adequately address present and emerging terrorist threats to the United

States. Legislation should be proposed by those Committees to remedy any deficiencies identified as a result of that review.

10. The Director of the National Security Agency should present to the Director of National Intelligence and the Secretary of Defense by June 30, 2003, and report to the House and Senate Intelligence Committees, a detailed plan that:

    - describes solutions for the technological challenges for signals intelligence;

    - requires a review, on a quarterly basis, of the goals, products to be delivered, funding levels and schedules for every technology development program;

    - ensures strict accounting for program expenditures;

    - within their jurisdiction as established by current law, makes NSA a full collaborating partner with the Central Intelligence Agency and the Federal Bureau of Investigation in the war on terrorism, including fully integrating the collection and analytic capabilities of NSA, CIA, and the FBI; and

    - makes recommendations for legislation needed to facilitate these goals.

    In evaluating the plan, the Committees should also consider issues pertaining to whether civilians should be appointed to the position of Director of the National Security Agency and whether the term of service for the position should be longer than it has been in the recent past.

11. Recognizing that the Intelligence Community's employees remain its greatest resource, the Director of National Intelligence should require that measures be implemented to greatly enhance the recruitment and development of a workforce with the intelligence skills and expertise needed for success in counterterrorist efforts, including:

- the agencies of the Intelligence Community should act promptly to expand and improve counterterrorism training programs within the Community, insuring coverage of such critical areas as information sharing among law enforcement and intelligence personnel; language capabilities; the use of the Foreign Intelligence Surveillance Act; and watchlisting;

- the Intelligence Community should build on the provisions of the Intelligence Authorization Act for Fiscal Year 2003 regarding the development of language capabilities, including the Act's requirement for a report on the feasibility of establishing a Civilian Linguist Reserve Corps, and implement expeditiously measures to identify and recruit linguists outside the Community whose abilities are relevant to the needs of counterterrorism;

- the existing Intelligence Community Reserve Corps should be expanded to ensure the use of relevant personnel and expertise from outside the Community as special needs arise;

- Congress should consider enacting legislation, modeled on the Goldwater-Nichols Act of 1986, to instill the concept of "jointness" throughout the Intelligence Community. By emphasizing such things as joint education, a joint career specialty, increased authority for regional commanders, and joint exercises, that Act greatly enhanced the joint warfighting capabilities of the individual military services. Legislation to instill similar concepts throughout the Intelligence Community could help improve management of Community resources and priorities and insure a far more effective "team" effort by all the intelligence agencies. The Director of National Intelligence should require more extensive use of "joint tours" for intelligence and appropriate law enforcement personnel to broaden their experience and help bridge existing organizational and cultural divides through service in other agencies. These joint tours should include not only service at Intelligence Community agencies, but also service in those

agencies that are users or consumers of intelligence products. Serious incentives for joint service should be established throughout the Intelligence Community and personnel should be rewarded for joint service with career advancement credit at individual agencies. The Director of National Intelligence should also require Intelligence Community agencies to participate in joint exercises;

- Congress should expand and improve existing educational grant programs focused on intelligence-related fields, similar to military scholarship programs and others that provide financial assistance in return for a commitment to serve in the Intelligence Community; and

- the Intelligence Community should enhance recruitment of a more ethnically and culturally diverse workforce and devise a strategy to capitalize upon the unique cultural and linguistic capabilities of first-generation Americans, a strategy designed to utilize their skills to the greatest practical effect while recognizing the potential counterintelligence challenges such hiring decisions might pose.

12. Steps should be taken to increase and ensure the greatest return on this nation's substantial investment in intelligence, including:

    - the President should submit budget recommendations, and Congress should enact budget authority, for sustained, long-term investment in counterterrorism capabilities that avoid dependence on repeated stop-gap supplemental appropriations;

    - in making such budget recommendations, the President should provide for the consideration of a separate classified Intelligence Community budget;

- long-term counterterrorism investment should be accompanied by sufficient flexibility, subject to congressional oversight, to enable the Intelligence Community to rapidly respond to altered or unanticipated needs;

- the Director of National Intelligence should insure that Intelligence Community budgeting practices and procedures are revised to better identify the levels and nature of counterterrorism funding within the Community;

- counterterrorism funding should be allocated in accordance with the program requirements of the national counterterrorism strategy; and

- due consideration should be given to directing an outside agency or entity to conduct a thorough and rigorous cost-benefit analysis of the resources spent on intelligence.

13. The State Department, in consultation with the Department of Justice, should review and report to the President and the Congress by June 30, 2003 on the extent to which revisions in bilateral and multilateral agreements, including extradition and mutual assistance treaties, would strengthen U.S. counterterrorism efforts. The review should address the degree to which current categories of extraditable offenses should be expanded to cover offenses, such as visa and immigration fraud, which may be particularly useful against terrorists and those who support them.

14. Recognizing the importance of intelligence in this nation's struggle against terrorism, Congress should maintain vigorous, informed, and constructive oversight of the Intelligence Community. To best achieve that goal, the National Commission on Terrorist Attacks Upon the United States should study and make recommendations concerning how Congress may improve its oversight of the Intelligence Community, including consideration of such areas as:

- changes in the budgetary process;

- changes in the rules regarding membership on the oversight committees;

- whether oversight responsibility should be vested in a joint House-Senate Committee or, as currently exists, in separate Committees in each house;

– the extent to which classification decisions impair congressional oversight; and

-- how Congressional oversight can best contribute to the continuing need of the Intelligence Community to evolve and adapt to changes in the subject matter of intelligence and the needs of policy makers.

15. The President should review and consider amendments to the Executive Orders, policies and procedures that govern the national security classification of intelligence information, in an effort to expand access to relevant information for federal agencies outside the Intelligence Community, for state and local authorities, which are critical to the fight against terrorism, and for the American public. In addition, the President and the heads of federal agencies should ensure that the policies and procedures to protect against the unauthorized disclosure of classified intelligence information are well understood, fully implemented and vigorously enforced.

    Congress should also review the statutes, policies and procedures that govern the national security classification of intelligence information and its protection from unauthorized disclosure. Among other matters, Congress should consider the degree to which excessive classification has been used in the past and the extent to which the emerging threat environment has greatly increased the need for real-time sharing of sensitive information. The Director of National Intelligence, in consultation with the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, and the Attorney General, should review and report to the House and Senate Intelligence Committees on

proposals for a new and more realistic approach to the processes and structures that have governed the designation of sensitive and classified information. The report should include proposals to protect against the use of the classification process as a shield to protect agency self-interest.

16. Assured standards of accountability are critical to developing the personal responsibility, urgency, and diligence which our counterterrorism responsibility requires. Given the absence of any substantial efforts within the Intelligence Community to impose accountability in relation to the events of September 11, 2001, the Director of Central Intelligence and the heads of Intelligence Community agencies should require that measures designed to ensure accountability are implemented throughout the Community. To underscore the need for accountability:

- The Director of Central Intelligence should report to the House and Senate Intelligence Committees no later than June 30, 2003 as to the steps taken to implement a system of accountability throughout the Intelligence Community, to include processes for identifying poor performance and affixing responsibility for it, and for recognizing and rewarding excellence in performance;

- as part of the confirmation process for Intelligence Community officials, Congress should require from those officials an affirmative commitment to the implementation and use of strong accountability mechanisms throughout the Intelligence Community; and

- the Inspectors General at the Central Intelligence Agency, the Department of Defense, the Department of Justice, and the Department of State should review the factual findings and the record of this Inquiry and conduct investigations and reviews as necessary to determine whether and to what extent personnel at all levels should be held accountable for any omission, commission, or failure to meet professional standards in regard to the identification, prevention, or disruption of terrorist attacks,

including the events of September 11, 2001. These reviews should also address those individuals who performed in a stellar or exceptional manner, and the degree to which the quality of their performance was rewarded or otherwise impacted their careers. Based on those investigations and reviews, agency heads should take appropriate disciplinary and other action and the President and the House and Senate Intelligence Committees should be advised of such action.

17. The Administration should review and report to the House and Senate Intelligence Committees by June 30, 2003 regarding what progress has been made in reducing the inappropriate and obsolete barriers among intelligence and law enforcement agencies engaged in counterterrorism, what remains to be done to reduce those barriers, and what legislative actions may be advisable in that regard. In particular, this report should address what steps are being taken to insure that perceptions within the Intelligence Community about the scope and limits of current law and policy with respect to restrictions on collection and information sharing are, in fact, accurate and well-founded.

18. Congress and the Administration should ensure the full development of a national watchlist center that will be responsible for coordinating and integrating all terrorist-related watchlist systems; promoting awareness and use of the center by all relevant government agencies and elements of the private sector; and ensuring a consistent and comprehensive flow of terrorist names into the center from all relevant points of collection.

19. The Intelligence Community, and particularly the FBI and the CIA, should aggressively address the possibility that foreign governments are providing support to or are involved in terrorist activity targeting the United States and U.S. interests. State-sponsored terrorism substantially increases the likelihood of successful and

more lethal attacks within the United States. This issue must be addressed from a national standpoint and should not be limited in focus by the geographical and factual boundaries of individual cases. The FBI and CIA should aggressively and thoroughly pursue related matters developed through this Joint Inquiry that have been referred to them for further investigation by these Committees.

The Intelligence Community should fully inform the House and Senate Intelligence Committees of significant developments in these efforts, through regular reports and additional communications as necessary, and the Committees should, in turn, exercise vigorous and continuing oversight of the Community's work in this critically important area.