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## AMERICANS DO NOT NEED A NEW DOMESTIC SPY AGENCY TO IMPROVE INTELLIGENCE AND HOMELAND SECURITY

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The events of September 11 have been blamed in large part on the territorial hoarding of information by intelligence and law enforcement agencies. The fact that the intelligence community was unable to identify the terrorists before they struck and allowed a significant number of the terrorists to live in the United States has led many policymakers to recommend the creation of a domestic intelligence agency to gather and analyze intelligence on people and threats generated from within the United States. This approach has not been particularly effective in Canada, although it has worked for England; however, such an agency would seriously intrude on the civil liberties of Americans. Rather than create more government agencies, the President and Congress should make the FBI and the CIA work together and do their jobs effectively.

The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction recently called for the establishment of a stand-alone National Counter Terrorism Center. The NCTC would be made up of analysts transferred from the FBI and CIA as well as other members of the intelligence community and representatives of the Department of Homeland Security (DHS). This proposal places much-needed emphasis on domestic intelligence-gathering capabilities, but it also could undermine the structure and capa-

bilities of the FBI and CIA and create more compartmentalization in an already overly bureaucratic system of information sharing without producing any unique benefit. A better approach would be to create a “fusion center” within the DHS while bolstering the capabilities of the FBI to make it the primary source of domestic intelligence collection and allowing both the FBI and CIA to do their jobs in accordance with their established missions.

For the intelligence gathered by the CIA, FBI, and other agencies to be used effectively, a fusion center of information must be created. Creating a new agency in the NCTC, with its domestic intelligence gathering mission, limited investigatory and prosecutorial authority, and make-up of former agents, will not accomplish this purpose. Instead, it would increase the “stove-piping” of information within the intelligence com-

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munity and hamper counterterrorism efforts.

**NCTC Would Not Facilitate Information Sharing or Promote Information Fusion.** Adding another layer and another agency will only make it harder to surmount the wall that exists between intelligence collection and law enforcement—a wall that the courts have only recently begun to tear down. While the proposal to create the NCTC intends for it to function as a fusion center, it offers no description of how to achieve this. Proper fusion of intelligence information must include a cross-section of analysts from the intelligence and law enforcement community, as the NCTC proposal rightly recognizes. A key component of this fusion is the analysts' ability to query all existing government databases for a potential threat. The proposal for NCTC makes no such requirement.

**NCTC Would Have No Independent Law Enforcement Authority.** At some point, the NCTC would have to hand over its files on an investigation to a law enforcement agency like the FBI for action or possible arrests. It is unclear at what point the investigation would be transferred from an intelligence collection effort to a law enforcement investigation. The ultimate reluctance of the NCTC to turn over information would inhibit the enforcement agencies' ability to take action that could prevent another terrorist attack. There is very little detail in the Advisory Panel's recommendation regarding on whose initiative such a transfer of authority would occur.

It is also unclear what would happen if this new intelligence agency were indeed to discover a terrorist plot within the United States. Since its agents would not have the authority to apprehend terrorists, the NCTC would be dependent on law enforcement agencies, especially the FBI, for domestic investigations. All domestic activity must follow both the requirements of the Foreign Intelligence Surveillance Act (FISA) and the Attorney General's Guidelines on domestic investigations. The proposed NCTC would ultimately retain a degree of law enforcement mentality and be subject to the Attorney General's authority but would not have the full benefits of Title III (wiretap) authority or the ability to act on gathered information. Terrorist plots and activity would not be any easier to

intercept with the addition of the new agency, but there would be more people involved in an already complex process.

**A Better Approach to Intelligence Fusion.** Clearly, the threat of future terrorist attacks on the homeland requires that the current process of information sharing within the entire intelligence community be changed. What the federal government should *not* do is further "stovepipe" and compartmentalize intelligence in an additional agency; duplicate functions already performed by the FBI and CIA; or make information sharing more complicated and difficult by encouraging intelligence and law enforcement agencies not to cooperate. Analyzing intelligence does not require the ability to gather additional intelligence, but rather the ability to analyze the information from multiple existing sources of intelligence against each other's. The new DHS would be the appropriate place to house such an intelligence fusion center.

What the federal government *should* do is:

- **Promote** information sharing and dissemination among all levels of government by creating an intelligence fusion center within the Department of Homeland Security;
- **Bolster** the FBI's counterterrorism and analytical capabilities to enable it to be the primary source of domestic intelligence collection; and
- **Ensure** that both the FBI and CIA continue doing their jobs in accordance with their missions.

**Conclusion.** The Advisory Panel's proposal to create a National Counter Terrorism Center places important emphasis on the need for better domestic intelligence collection and sharing. However, this process can and should be improved within the existing intelligence structure. Protecting the American people against terrorism is too important a federal function to be hindered by further compartmentalization of information, which is exactly what an additional intelligence agency would create.

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