

U.S. INTELLIGENCE IN THE WAKE OF SEPTEMBER 11: THE RISE OF THE SPY COMMANDO AND REORGANIZED OPERATIONAL CAPABILITIES

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As the nation witnesses the tenth anniversary of the attacks on the World Trade Center and the Pentagon, it might be worthwhile to assess the steps the United States has taken since the passage of the Authorization for Use of Military Force¹ and the USA PATRIOT Act²—to combat future acts of terrorism against the United States. Ten years ago I wrote an Essay for this *Journal* calling for the federal government to unleash one of its under-used resources, the CIA.³ In the years since that Essay, the CIA has experienced some astonishing successes—spy commandos and drone warfare—and some troubling failures—extraordinary rendition and enhanced interrogation—on an operational level. Bureaucratically the intelligence community has been shuffled and reshuffled, adding new layers of management but not necessarily making the intelligence community more effective. The joint CIA and Navy SEAL operation of May 2, 2011, which resulted in the killing of Osama bin Laden,⁴ offers an opportunity to examine U.S. intelligence efforts to combat terrorism in the Middle East and Afghanistan.

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1. Authorization for Use of Military Force, Pub. L. No. 107–40, 115 Stat. 244 (2001).

2. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 (2001).

3. Frederick P. Hitz, *Unleashing the Rogue Elephant: September 11 and Letting the CIA be the CIA*, 25 HARV. J.L. & PUB. POL'Y 765 (2002).

4. Scott Wilson & Craig Whitlock, *Team attacked compound in Pakistan where he was hiding*, WASH. POST, May 2, 2011, at A1.

Ten years after September 11, there has not been an attack in the United States on a similar scale since that horrific day. We have experienced near misses, such as the failures of both the underwear bomber on Christmas Day, 2009⁵ and the Times Square bomber in May 2010.⁶ We experienced the shootings of twelve soldiers by an Arab-American military psychiatrist at Fort Hood Army base in November 2009,⁷ although it is not clear that attack was terrorist-inspired. Nonetheless, there have not been any recurrences of terrorist killing in the United States on a mass scale. Why? A simple answer is that we are no longer the unaware, unprotected country we were in early September 2001. Airport security procedures are more elaborate, and the notion of “if you see something, say something”⁸ has become widespread. Nonetheless, it is important to ask if we have just been fortunate or if we are demonstrably better at international counterterrorism.

Ten years after September 11, there are many new players in the world of U.S. counterterrorism. In addition to calling for the creation of a Director of National Intelligence⁹ and a National Counterterrorism Center,¹⁰ the 2004 9/11 Commission Report encouraged information sharing among government departments with access to intelligence on terrorism.¹¹ Indeed, the 9/11 Commission noted that the September 11 attacks were the product of a plot dreamed up in Hamburg, Afghanistan, and Madrid, within the operational jurisdiction of the CIA and the U.S. Department of State, but the action was destined to take place in the United States, where responsibility for stopping it fell largely to the FBI and local law enforcement.¹² In an age of instant communications, the CIA and FBI ought to be in constant contact about matters that relate to national security. But do the

5. Dana Milbank, *Apparently Underwear was Only Thing Smoking*, WASH. POST, Jan. 8, 2010, at A2.

6. Joby Warrick & Spencer S. Hsu, *Times Square bomb's ordinary ingredients posed deadly threat*, WASH. POST, May 3, 2010, at A1.

7. Peter Slevin, *Rampage kills 12, wounds 31*, WASH. POST, Nov. 6, 2009, at A1.

8. See “If You See Something Say Something” Campaign, DHS.GOV, www.dhs.gov/files/reportincidents/see-something-say-something.shtm (last visited Nov. 8, 2011).

9. NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT 411 (2004), [hereinafter 9/11 COMMISSION], available at <http://www.9-11commission.gov/report/911Report.pdf>.

10. *Id.* at 403.

11. *Id.* at 414, 416–17.

12. See *id.* at 241–46.

relevant elements of the U.S. Government regularly communicate with one another as the 9/11 Commission envisioned, or have bureaucratic setbacks like Wikileaks driven the intelligence community back to old information stovepiping habits?

Thus, the events of September 11 led directly to the creation of the Department of Homeland Security, a gigantic agglomeration of domestic law enforcement, immigration, customs, and coastal protection authorities that *did not* include a domestic intelligence gathering entity separate from the FBI, like the UK's MI5.¹³ In addition, the United States has committed \$75 billion annually to counterterrorism,¹⁴ including the hiring of hosts of contractors holding an estimated 265,000 top secret clearances.¹⁵ What have we to show for this extraordinary expenditure of resources?

With this background in mind, I turn to the role of the intelligence community, particularly the CIA. The CIA rebounded quickly after the September 11 debacle by inserting a team of civilian special operations case officers into northern Afghanistan three weeks later.¹⁶ Led by Gary Schroen, this six-man team helicoptered over the Hindu Kush Mountains from Uzbekistan to the Panjshir Valley¹⁷ where they linked up with members of the Northern Alliance to fight the Taliban who had been shielding Osama bin Laden.¹⁸ Schroen told this fascinating story in *First In*;¹⁹ Gary Berntsen continued it in his book *Jawbreaker*.²⁰ Moving quickly, both Schroen's and Berntsen's teams used relationships built during the CIA-managed covert war against the Soviets from 1979–89²¹ and knowledge of regional

13. See *History: Who Became Part of the Department?*, DHS.GOV, http://www.dhs.gov/about/history/editorial_0133.shtm (last visited Nov. 6, 2011).

14. See Dana Priest & William M. Arkin, *A hidden world, growing beyond control*, WASH. POST, July 19, 2010, at A1; see also Walter Pincus, *Intelligence spending at record \$80.1 billion overall*, WASH. POST, Oct. 29, 2010, at A2.

15. Dana Priest & William M. Arkin, *National Security Inc.*, WASH. POST, July 20, 2010, at A1.

16. GARY C. SCHROEN, *FIRST IN: AN INSIDER'S ACCOUNT OF HOW THE CIA SPEARHEADED THE WAR ON TERROR IN AFGHANISTAN* 71 (2005).

17. *Id.* at 74.

18. *Id.* at 74–75, 90, 125, 311.

19. See *id.*

20. See GARY BERNTSEN & RALPH PEZZULLO, *JAWBREAKER: THE ATTACK ON BIN LADEN AND AL-QAEDA: A PERSONAL ACCOUNT BY THE CIA'S KEY FIELD COMMANDER* 100 (2005).

21. SCHROEN, *supra* note 16, at 44, 71.

languages²² to direct a second covert war, this time against the Taliban. Using SOFLAM²³ laser targeting mechanisms, the teams guided U.S. bombers against enemy troop concentrations.²⁴ The CIA exploited a vulnerability that helped drive the Taliban out of Kabul and Osama bin Laden to Tora Bora, where he might have been vulnerable to U.S. troops if they had been deployed on such a mission.²⁵

Although the CIA did not effectively warn President George W. Bush and his top policymakers before the September 11 attacks,²⁶ it picked itself up afterward by exploiting a long-standing CIA special operations capability—"spy commandos." By using these highly trained agents, the CIA was able to get "sneakers" on the ground in Afghanistan weeks before the U.S. military was able to do so.²⁷ It has continued to use spy commandos in Afghanistan since and recently enjoyed further success when they were teamed with U.S. Navy SEALs to bring down Osama bin Laden.²⁸ The CIA built a cadre of spy commandos consisting largely of experienced retired or detailed U.S. Special Forces personnel to work against the terrorist target in the Middle East.²⁹ These former soldiers receive CIA operations and reports training, while retaining their special forces operating skills which allow them to function in the outback where terrorists are active.³⁰ Because CIA officers will not encounter terrorists in official government offices or embassy cocktail parties but must confront them where they are attacking civilians,³¹

22. BERNTSEN & PEZZULLO, *supra* note 20, at 73–74.

23. Special Operations Forces Laser Marker.

24. SCHROEN, *supra* note 16, at 169, 219.

25. See BERNTSEN & PEZZULLO, *supra* note 20, at 299–300, 305–07, for an account of the U.S. failure to capture Osama bin Laden.

26. See 9/11 COMMISSION, *supra* note 9, at 254–77.

27. See SCHROEN, *supra* note 16, 71–73, 169.

28. Wilson & Whitlock, *supra* note 4.

29. See, e.g., BERNTSEN & PEZZULLO, *supra* note 20, at 73–74.

30. See *id.*

31. Frederick P. Hitz, *The Future of American Espionage*, 13 INT'L J. INTELLIGENCE & COUNTERINTELLIGENCE 1, 9 (2000). It is logical to assume that General David Petraeus, who recently replaced Leon Panetta as the Director of Central Intelligence Agency, will continue building up the spy commando cadre. Matt Spetalnick & Alister Bull, *Petraeus sworn in as new CIA chief*, REUTERS, Sept. 6, 2011, <http://mobile.reuters.com/article/idUSTRE7850VU20110906?irpc=932>. Many of his ideas about counterinsurgency, discussed in the counterinsurgency manual he spearheaded for the military, are compatible with the deployment of intelligence officers trained in special operations.

it seems to me that training and using spy commandos is an appropriate mission for our nation's clandestine service.

The CIA also has experienced success in the decade since September 11 by combining accurate intelligence and American technology. The emergence of the Predator drone, initially deployed as a reconnaissance vehicle but now fitted with Hellfire missiles, helped coalition efforts immeasurably in finding, chasing down, and eliminating Taliban insurgents in the difficult terrain of Afghanistan and Pakistan.³² By some estimates, the CIA drone fleet has killed more than 1,500 suspected militants in Pakistan alone.³³ Not that the Predator has been an unmitigated success. Because of its futuristic and relentless non-humanity, the Predator drone has aroused strong opposition among ordinary citizens of Afghanistan and Pakistan, who deplore the collateral casualties that come with the drone's terrorist-killing accomplishments.³⁴

But not all changes in the intelligence community's approach to counterterrorism have been for the better. For example, in addition to the positive aspects of intelligence community and CIA performance in the post-September 11 period, CIA officers have performed "enhanced interrogations" at secret locations around the globe. Prior to the events of September 11, the CIA had not been in the interrogation business since its unfortunate experiences with the Phoenix program during the Vietnam War.³⁵ Fol-

See generally GEN. DAVID H. PETRAEUS, *Foreword* to U.S. DEP'T OF THE ARMY & U.S. MARINE CORPS, *THE COUNTERINSURGENCY FIELD MANUAL* (2007).

32. See Jane Mayer, *The Predator War: What Are the Risks of the CIA's Covert Drone Program*, *NEW YORKER*, Oct. 26, 2009, at 36.

33. See Adam Entous et al., *U.S. Tightens Drone Rules*, *WALL ST. J.*, Nov. 4, 2011, at A1.

34. See *id.* Afghanistan's history of being periodically overrun by foreign conquerors, taught the Afghan people long ago the brutal lesson that whatever the U.S.-led coalition might promise in terms of support and protection in the here and now, the coalition will not be around indefinitely to protect them from their enemies. The NATO coalition is in Afghanistan and Pakistan as a sojourner, not a permanent ally, as President Obama's recent decision to withdraw 10,000 troops by the end of the year confirms. Scott Wilson, *Obama strikes compromise on Afghan pullout*, *WASH. POST*, June 22, 2011, at A1. This is, of course, no mystery to coalition military commanders. What circumstances have to prevail before the coalition can feel safe to depart?

35. See generally Col. Andrew R. Finlayson, *A Retrospective on Counterinsurgency Operations: The Tay Ninh Provincial Reconnaissance Unit and Its Role in the Phoenix Program, 1969-70*, 51 *STUD. IN INTELLIGENCE*, No. 2, 2007, at 59, available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/> (describing the Phoenix Program).

lowing the Phoenix program, the CIA disbanded its interrogation capability and forbade its officers from involvement in hostile interrogations in Latin America and elsewhere.³⁶

To combat terrorism, however, the CIA took up the practice of “extraordinary rendition” in which it, or intelligence services with which it was associated, “snatched” presumed terrorists in international waters or in foreign territory and “rendered” them to third countries, such as Syria, Jordan, or Egypt, where they could be interrogated using local techniques.³⁷ These efforts have been less reassuring than accounts of the spy commando and predator programs. For example, in 2002, Maher Arar, a Canadian citizen of Syrian birth, was misidentified as an al Qaeda operative, leading to a gross injustice.³⁸ Based on erroneous information supplied by Canadian intelligence, Arar was improperly placed on a U.S. watch list and, as a result, was deplaned in New York’s Kennedy airport and rendered to Damascus.³⁹ In Syria, Arar was incarcerated in a nasty below-ground enclosure for nearly a year and subjected to beatings with an electric cable by the Syrian secret police until it was determined that he was innocent.⁴⁰ In addition, there have been several other notorious “snatchings” and “extraordinary renditions” in Italy and Afghanistan that are still being adjudicated.⁴¹ The theory behind these extraordinary renditions is that the states to which the prisoners are being sent are not bound by the U.S. Constitution insofar as the techniques being used to interrogate them are concerned. The United States has generally given pro forma statements that torturous methods of interrogation will not be used,⁴²

36. See JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* 144 (2008).

37. The U.S. usually seeks a commitment from the interrogating government that the methods used will not involve torture. See MICHAEL JOHN GARCIA, CONG. RES. SERV., RL 32890, *RENDITIONS: CONSTRAINTS IMPOSED BY LAWS ON TORTURE* 5–6 (2009).

38. COMM’N OF INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR, REPORT OF THE EVENTS RELATING TO MAHER ARAR: ANALYSIS AND RECOMMENDATIONS 9 (2006).

39. See *id.* at 13–14.

40. See *id.* at 54–57.

41. See Rachel Donadio, *Italy Convicts 23 Americans, Most Working for C.I.A., of Abducting Muslim Cleric*, N.Y. TIMES, Nov. 5, 2009, at A15; see also Joan Biskupic, *Cases challenge use of ‘state secrets’ shield; Justices get rare chance to address exemption*, USA TODAY, Jan. 17, 2011, at 6A (describing developments in a Supreme Court case related to rendition operations).

42. See GARCIA, *supra* note 37, at 5–6.

but these assertions have been extensively criticized.⁴³ The Obama Administration has taken steps toward ending the practice of extraordinary rendition.⁴⁴

The CIA also interrogated high value detainees in secret prisons using methods beyond those contained in the U.S. Army field manual during the administration of President George W. Bush.⁴⁵ The difficulty was the CIA had no recent experience in hostile or enhanced interrogations so it had to hire someone external to teach its operatives.⁴⁶ The instructors were former military personnel who had had some experience with the military's escape and evasion program known as Survival, Evasion, Resistance and Escape. This program, however, which dated back to the Korean War, was not designed and had never been used as a positive course for interrogation.⁴⁷ It had been devised as a defense to interrogation for pilots shot down in enemy territory to teach them how to survive without revealing sensitive information.⁴⁸ In any event, with little experience and only the guidance flowing from John Yoo's Office of Legal Counsel opinion on permissible interrogation techniques, CIA interrogators with only several weeks of training interrogated suspected terrorists.⁴⁹ The result was a disaster according to a critical CIA Inspector General report that has not yet been made fully public⁵⁰ and a long investigation for the U.S. Attorney General conducted by an assistant U.S. Attorney from Connecticut named John H. Durham who has yet to report his findings.⁵¹ The enhanced interrogation episodes represented a sharp departure from the more successful CIA counterterrorist efforts exemplified by the spy commandos and the Predator.

43. See generally Jane Mayer, *Outsourcing Torture*, NEW YORKER, Feb. 14, 2005, at 106.

44. See *id.* at 23–25.

45. See MAYER, *supra* note 36, at 143–46.

46. See *id.* at 144–45.

47. See Jane Mayer, *The Experiment: The Military Trains People To Withstand Interrogation: Are These Methods Being Misused at Guantánamo?*, NEW YORKER, July 11, 2005, at 60.

48. See CIA INSPECTOR GEN., SPECIAL REPORT: COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001–OCTOBER 2003) 13, 13 n.13, available at www.gmu.edu/~nsarchiv/torturingdemocracy/documents/20040507.pdf.

49. See *id.* at 16–23, 31–32.

50. See *id.* at 31.

51. See Eric Lichtblau & Eric Schmitt, *U.S. Widens Inquiries into 2 Jail Deaths*, N.Y. TIMES, June 30, 2011, at A1.

In addition to these operational changes, the intelligence community experienced significant bureaucratic changes since September 11. Here we must go back to the criticisms that were leveled at the intelligence community—but principally the CIA—in the reporting leading up to the U.S. invasion of Iraq in March 2003. In October 2002, the CIA produced a National Intelligence Estimate on Iraqi weapons of mass destruction stating with a “high degree of confidence” that Saddam Hussein possessed stores of chemical and biological weapons for which he had not accounted.⁵² The report was completed in a mere six weeks and released without waiting for the UN weapons inspectors to complete their ongoing survey.⁵³ In February 2003, Secretary of State Colin Powell testified to the UN Security Council about the accuracy of the judgments contained in the national intelligence estimate and added additional intelligence community information about aluminum tubes or sheaths that he described as nuclear weapons technology, but which were likely replacement parts for some aged Iraqi rockets.⁵⁴ Secretary Powell also talked about the existence of Iraqi mobile weapons labs based on spurious information from a German source aptly named “Curveball” to support the United States’ assertion that Iraq had weapons of mass destruction and was prepared to use them.⁵⁵ Eventually, all of this intelligence information was shown to be false. In a devastating official report commissioned by the President, Judge Laurence Silberman and former Senator and Virginia Governor Charles Robb took the intelligence community, and particularly the CIA, to task for poor analytical tradecraft and insufficient skepticism about what appeared to be conventional intelligence operating assumptions.⁵⁶ The Silberman-Robb Commission called for greater “imagination” in the fashioning of intelligence reports

52. See CIA, NIE 2002-16HC, IRAQ'S CONTINUING PROGRAMS FOR WEAPONS OF MASS DESTRUCTION (October 2002).

53. *Id.*

54. Colin Powell, U.S. Sec'y of State, Remarks Before the United Nations Security Council Regarding Iraq and Weapons of Mass Destruction (Feb. 5, 2003).

55. *Id.*

56. See COMMISSION ON THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES REGARDING WEAPONS OF MASS DESTRUCTION, REPORT TO THE PRESIDENT OF THE UNITED STATES 12–13 (March 3, 2005), available at http://www.gpoaccess.gov/wmd/pdf/full_wmd_report.pdf.

in the future.⁵⁷ By that, I think the Commission meant a willingness to think beyond the convenient and conventional explanations for events about which the intelligence community did not have perfect knowledge.

In the wake of publication of the 9/11 Commission Report and issuance of the Silberman-Robb criticisms, the Congress passed the Intelligence Reform and Anti-Terrorism Act of 2004,⁵⁸ with minimal deliberation and in the midst of a presidential election.⁵⁹ The results, among other changes, were creation of the Director of National Intelligence, replacing the Director of Central Intelligence,⁶⁰ and reducing the role of the CIA to one agency among sixteen.⁶¹ The Act also created the National Counterterrorism Center, beefing up what was originally the Central Intelligence director's counterterrorist center and making it a freestanding entity comprehending all the agencies with information bearing on counterterrorism at the federal level and reporting to the Director of National Intelligence and the U.S. Congress.⁶²

How have these new bureaucratic entities performed in addressing the challenges of the continuing war on terror and the changes taking place in the Middle East? In the first instance, it is fair to say that the Director of National Intelligence has *not* performed the function envisioned for it in the 9/11 Commission Report. The director is not "the physician in charge of the specialists" ministering to the intelligence needs of the United States.⁶³ He does not have operational or managerial control over the sixteen intelligence agencies ostensibly reporting to his office.⁶⁴ The Director of Central Intelligence might have disappeared but the Secretary of Defense has not, and the so-called defense intelligence entities (Defense Intelligence Agency, Na-

57. *Id.*

58. Pub. L. No. 108-458, 118 Stat. 3638.

59. See John D. Negroponte & Edward M. Wittenstein, *Urgency, Opportunity, and Frustration: Implementing the Intelligence Reform and Terrorism Prevention Act of 2004*, 28 YALE L. & POL'Y REV. 379, 387-88 (2010).

60. See Intelligence Reform and Terrorism Prevention Act of 2004, §§ 1011, 1071, 1077, 1081, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

61. *Id.* at § 1073.

62. *Id.* at § 1021.

63. See 9/11 COMMISSION, *supra* note 9, at 353.

64. See generally Intelligence Reform and Terrorism Prevention Act of 2004, *supra* note 60.

tional Geospatial-Intelligence Agency, National Security Agency, National Reconnaissance Office, and so on) all have reporting and operational responsibilities to the Secretary.⁶⁵ Even Robert Gates, a defense secretary sympathetic to the needs of the President and the director of the Central Intelligence Agency, chose to exercise these authorities over the defense intelligence agencies.⁶⁶ Even so, the Director of National Intelligence has begun to build a large staff to discharge his statutory responsibilities, and he might already have created an additional layer of bureaucracy in the intelligence community instead of streamlining its chain of command.⁶⁷ The Director is accused of cherry-picking responsibilities from his charges, and it is hard to see that there is much value added in the director's current view of his mission.⁶⁸ That is perhaps why General James Clapper is the fourth incumbent in the director position in a little over six years.⁶⁹

The National Counterterrorism Center, like the Director of National Intelligence, is experiencing growing pains in adapting to life in one of those gigantic buildings near Tyson's Corner, Virginia described by Priest and Arkin in their "Top Secret America" articles.⁷⁰ Indeed, the Center's first director, the highly regarded Michael Leiter, has recently resigned.⁷¹ In his final statement, Mr. Leiter profoundly observed, "We'll do more to defeat the enemy by not overreacting to the inevitable act of terrorism."⁷²

Although the 9/11 Commission took the FBI and CIA to task for a lack of coordination and communication, it did not go so far as to call for a separate American domestic intelligence ser-

65. See *Organization*, U.S. DEP'T OF DEF., www.defense.gov/orgchart/#21 (last visited Nov. 8, 2011).

66. See Priest & Arkin, *supra* note 14, at A1.

67. See Negroponce & Wittenstein, *supra* note 59, at 407–08.

68. See, e.g., David Ignatius, *Dennis Blair erred—but he had an impossible job*, POST PARTISAN (May 20, 2010, 7:31 PM), voices.washingtonpost.com/postpartisan/2010/05/dennis_blair_erred_-_but_he_h.html.

69. Helene Cooper, *Obama Urges Clapper's Confirmation*, N.Y. TIMES, June 5, 2010, at A20.

70. See Priest & Arkin, *supra* note 14.

71. Greg Miller, *National Counterterrorism Center Chief to Resign*, WASH. POST, June 10, 2011, at A2.

72. Eric Schmitt, *Director of National Counterterrorism Center is Resigning*, N.Y. TIMES, June 10, 2011, at A15.

vice.⁷³ Instead, the Commission pointed out that by developing a more rigorous national security component within the FBI and by establishing Director of National Intelligence-level fusion centers, the United States could simultaneously strengthen its domestic intelligence capabilities and foster law enforcement intelligence cooperation within the intelligence community.⁷⁴ The Commission went on to recommend that “a specialized and integrated national security workforce should be established.”⁷⁵

It remains unclear however whether the FBI has truly transformed into an American MI5, or whether the cultural disconnect between these two national security entities has been truly resolved. Simply deputizing FBI and other law enforcement officers as intelligence professionals will not enable the intelligence community to overcome the bureaucratic stovepipes that have hindered interagency cooperation in the past. FBI personnel detailed to intelligence assignments would require tradecraft and analytical training, resources, and access or they will never be able to function as a domestic intelligence enterprise.

It is hard to imagine that the longstanding turf battle between these two national security elements has been truly resolved. The FBI distanced itself from the interrogation methods used by military and CIA personnel in Iraq, Afghanistan, and Guantanamo Bay.⁷⁶ The CIA has complained that the FBI is encroaching on its territory when it comes to running foreign spies.⁷⁷ The FBI is still primarily in the anti-crime business, its personnel focuses on gathering evidence, building cases, and sending people to jail. The FBI’s ascendency to the intelligence collection arena has surely ruffled more than a few feathers at the CIA.⁷⁸ Moreover, the FBI has had the same director, Robert Mueller, carefully protecting the organization’s bureaucratic interests for nearly a decade,⁷⁹ whereas the CIA has fallen victim to the

73. See 9/11 COMMISSION, *supra* note 9, at 423.

74. See *id.* at 423–24.

75. *Id.* at 425–26.

76. See Bobby Ghosh, *Terror Interrogations: Can the CIA and FBI Work Together?*, TIME, July 26, 2009, <http://www.time.com/time/nation/article/0,8599,1912775,00.html/>.

77. See David Johnston & Douglas Jehl, *F.B.I.’s Recruiting of Spies Causes Rift with C.I.A.*, N.Y. TIMES, Feb. 11, 2005, at A19.

78. *Id.*

79. See FBI, *Executives*, <http://www.fbi.gov/about-us/executives> (last visited Nov. 8, 2011).

changing winds of Washington politics, and is now operating under the agency's fifth CIA director since September 11.⁸⁰

The CIA, however, has been moving steadily along under the leadership of CIA Director Leon Panetta, who recently became Secretary of Defense.⁸¹ He will be replaced at the CIA by General David Petraeus who, as noted above, personifies the spy commando.⁸² Can he do for the CIA's intelligence collection and analysis function what he did for the surge in Iraq when he was the U.S. Army General in charge in 2008? Once again, the primary answer to this question lies in the mastery of the information technology that we already possess. Increasingly, the intelligence community's charge will be to mine and digest the reams of open source communication and information that is created every day around the world.

To do that, the intelligence community and CIA will have to prove that they have come of age in collecting and analyzing intelligence in this new era of transnational Islamist terrorism and diminished nation states. It has been a long transition from the end of the Cold War and dissolution of the Soviet Union in 1991. The CIA lost a good many of its up-and-coming intelligence officers in the 1990s to a combination of early retirement and competition from the civilian sector. There were good jobs assessing "risk" for companies embarking upon a globalization strategy and a belief that the new intelligence targets required a different set of skills. The consequence has been dramatic. The CIA was thirty percent smaller in 2000 than it was in 1990 in terms of onboard case officers. New hiring has added to the rolls since September 11, but the experience quotient has suffered. At the present time, fifty percent of the CIA's current onboard strength has been hired since September 11.⁸³ Foreign language competence remains an issue. A recent study by the CIA confirmed that only thirty percent of clandestine service

80. Jason Ukman, *Senate Confirms Petraeus as CIA Director*, WASH. POST BLOG (June 30, 2011, 2:57 PM), http://www.washingtonpost.com/blogs/checkpoint-washington/post/senate-confirms-petraeus-as-cia-director/2011/06/30/AGMHTPsH_blog.html/.

81. See Carl Hulse, *100-to-0 Vote Puts Panetta in Top Post*, N.Y. TIMES, June 22, 2011, at A14.

82. See Spetalnick & Bull, *supra* note 31.

83. Walter Pincus, *Hayden Works to Absorb New Hires at CIA*, WASH. POST, April 15, 2007, at A9.

officers speak a foreign language.⁸⁴ Central Intelligence Director George Tenet admitted in 2004 that because of attrition in the work force during the 1990s, it would take the CIA five years to get back in fighting trim.⁸⁵ If Tenet's observation was accurate, the CIA should have been back by the beginning of the Obama Administration. Perhaps the CIA's success in tracking Osama bin Laden in Pakistan suggests that it is making some progress.

Finally, I want to say a word about outside contractors in the intelligence community and CIA. In "Top Secret America," Priest and Arkin concluded that nearly thirty percent of the workforce in the community is made up of private contractors.⁸⁶ In addition, they estimate the cost of these contract employees as forty-nine percent of the community's personnel budgets.⁸⁷ Leaving aside the hard questions of whether contract employees have the same devotion to duty as career employees, and the difficulty of employing higher paid contractor employees to work alongside careerists performing the same tasks, the real question is whether, if a decision were made to scale down or eliminate the contractors, there would be a sufficient stream of qualified candidates for career employment to accomplish the mission of the intelligence community.⁸⁸

The question of the availability of superior candidates for the career clandestine service is a new and difficult one. It parallels similar questions being asked by the military and the Foreign Service. It may be that today's university graduates consider their careers to be more likely made up of five- to ten-year stages with different employers. It could be that the prospect for tandem couple assignments is so poor that it disincentivizes such recruitments. It could be young officers have learned from the Valerie Plame affair and that they are not willing to invest in a covert career path that could be ended at the whim of a

84. Joby Warrick, *CIA Announces Push to Improve Agency's Language Proficiency*, WASH. POST, May 30, 2009, at A5.

85. Ann McFeatters, *Panel wants to overhaul spy network; CIA, FBI Officials Balk at Idea 9/11 Failures Show Need for Intelligence Czar*, POST-GAZETTE (Pittsburgh), Apr. 15, 2004, at A1.

86. Priest & Arkin, *supra* note 14.

87. *Id.*

88. Obviously, I am speaking about professional employees and not the service employees hired on contract to man the dining facilities and custodial services but who require security clearances.

callous White House staffer engaged in a Washington bureaucratic slugfest.⁸⁹ It may be that the notion of a *career* in Foreign Service, armed forces, or clandestine service is obsolete, in which case unless the incentives are made more attractive, the United States may be stuck with a need for large numbers of contractors for the foreseeable future just to get the job done. As a university professor, I do not agree with this somber assessment. I have long felt that the State Department and the CIA have done a desperately poor job at recruiting university students. They shy away from making personal connections, leave too much to Internet communication, and take far too long in clearing and pushing the bureaucracy to make the hiring decisions. That is only the entry portal, but it carries over into career management as well. Perhaps it is true that the State Department, the Defense Department, and the CIA have become too big and impersonal to compete on a career basis with leaner, more people-conscious employers. Time will tell.

89. See Richard Lieby, *Valerie Plame, The Spy Who Got Shoved Out Into the Cold*, WASH. POST, Oct. 29, 2005, at C1.