

Domestic Intelligence Today: More Security but Less Liberty?

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One of the most important questions about intelligence reform after the 9/11 attacks was whether the United States should establish a new domestic intelligence agency – an American equivalent of the British MI-5, some suggested. Supporters of the idea argued that only a completely new organization would be able to provide the fresh thinking and strength of focus that was needed, and they pointed out that the US was the only Western country without such an organization. Critics said the Federal Bureau of Investigation (FBI) was already well on its way to reinventing itself as just the sort of intelligence-driven agency the country needed and that establishing a new domestic intelligence agency would require the creation of a costly new bureaucracy to duplicate capabilities that already existed.

That debate was eventually settled in the negative. Although a number of major reforms were made to American intelligence – including, most notably, the establishment of the position of the Director of National Intelligence (DNI) – no central domestic intelligence agency has been created. Instead, the intelligence functions of the FBI have been beefed up and several new organizations have been created, including the National Counterterrorism Center (NCTC). Although occasionally the argument is still heard that the US needs a domestic intelligence service,¹ in general most intelligence professionals and outside observers appear to agree that no new domestic intelligence organization is necessary.

But this essay argues that even though we as a nation decided not to establish a domestic intelligence organization, we have in recent years done just that: we have created a vast domestic intelligence establishment, one which few Americans understand and which does not receive the oversight and scrutiny it deserves. There is good news here: this domestic intelligence system appears to have been successful in increasing security within the US, as demonstrated by numerous foiled terrorist

plots and the lack of another major successful attack on American soil since 9/11. But there is also bad news: these gains are coming at the cost of increasing domestic surveillance and at the risk of civil liberties.

This essay begins by reviewing the debate over whether a domestic intelligence agency was needed after 9/11. It then describes the current system of homeland security intelligence within the US, including the growth of new intelligence organizations at the state and local level, and argues that this constitutes a de facto domestic intelligence organization. Next it demonstrates that the development of this domestic intelligence structure has moved the balance between security and liberty quite firmly in the direction of more security, but less liberty. The essay concludes by arguing that even though these developments might very well be acceptable to the American people, we cannot know whether they are acceptable or not without a better-informed national discussion about domestic intelligence.²

THE DEBATE OVER A DOMESTIC INTELLIGENCE AGENCY

One aspect of the debate over intelligence reform following the 9/11 attacks was the question of whether the United States should establish a new domestic intelligence agency. Although the question was often framed in terms of whether the US should create an organization modeled on the British MI-5, several options were widely discussed.

The change supported by many experts was to form an independent intelligence service within the FBI. The FBI already had the lead on most domestic intelligence issues and since 9/11 had been increasing its focus on intelligence, so forming such an organization within the FBI appeared to be the simplest option, involving few changes to the rest of the intelligence community. A group of six experienced intelligence and national security experts, writing in *The*

Economist, argued for this approach.³ The *WMD Commission Report* also supported such a change, proposing that the counter-terrorism, counter-intelligence, and intelligence services of the FBI be combined to create a new National Security Service.⁴

Critics, however, argued either that such a change was unnecessary because the FBI was already transforming itself into an intelligence-driven agency, or that it would be a dangerous move because the FBI was likely to remain primarily a law enforcement organization, unsuited to the intelligence mission and inclined to use its increasing intelligence and surveillance powers at the risk of civil liberties.

Another idea was to create a new intelligence agency under the newly created Department of Homeland Security (DHS). Federal Judge Richard Posner, for example, argued for such an organization, to be called the Security Intelligence Service, with the head of this agency to be dual-hatted as the DNI's deputy for domestic intelligence.⁵

The idea that was most often talked about was to create a wholly new, independent organization, possibly modeled on the British MI-5 (which is officially known as the Security Service). Supporters of the idea noted that most Western countries have some sort of domestic intelligence agency. In Britain MI-5 collects and analyzes domestic intelligence, but it has no police power or arrest authority; foreign intelligence in the British system is handled by MI-6, the Secret Intelligence Service.⁶ Critics argued that the MI-5 model was unlikely to be applicable to the US because Britain is a much smaller, more centralized country with fewer local police forces and a powerful Home Office, while the US is much larger and decentralized, with thousands of independent local police and sheriff's departments.

Experts also examined domestic intelligence models from other countries, including Australia, India, France, and Germany.⁷ Other than MI-5, the model most often pointed to as appropriate for the US was the Canadian Security Intelligence Service (CSIS). The CSIS was established relatively recently (1984), after the Canadian national police force (the Royal Canadian Mounted Police) was found to have broken the law and violated civil liberties in dealing

with Quebec separatist groups and other internal threats.⁸

Support for a new domestic intelligence agency was never as strong as it had been for other major reforms such as the establishment of a Director of National Intelligence. The 9/11 Commission recommended against creating such a new agency, and although discussion continues about whether or not the nation's domestic intelligence structure is adequately organized, there seems to be little impetus for setting up a US version of MI-5.⁹

The most extensive study of the question was conducted by RAND, at the request of the Department of Homeland Security, and resulted in three volumes of reports.¹⁰ RAND was specifically not asked by DHS to offer recommendations, but these reports can hardly be seen as ringing endorsements for the idea of a new domestic agency. When the RAND researchers surveyed a group of experts, most expressed the view that the current organization for domestic intelligence wasn't very good; but they also said they did not think that any reorganization was likely to improve the situation.¹¹ Gregory Treverton summed up the study this way: "Caution and deliberations are the watchwords for this study's conclusions."¹²

CURRENT DOMESTIC INTELLIGENCE ORGANIZATION

In its analysis for DHS, RAND outlined what it called the "domestic intelligence enterprise."¹³ This enterprise encompasses a complex system that includes counterterrorism organizations led by the NCTC; other federal-level organizations and efforts, including those within the FBI, DHS, and Department of Defense; and state, local, and private sector activities. Some of the experts consulted by RAND saw this domestic intelligence enterprise as problematic because it was uncoordinated and thus potentially ineffective; one described domestic intelligence as "a pickup ballgame without a real structure, leadership, management, or output."¹⁴ But even though our domestic intelligence system may not have a centralized structure, it is more coordinated and also more effective than

most Americans realize, and constitutes a de facto – but little understood – domestic intelligence system.

It is difficult, if not impossible, for the American public to accurately gauge the size of the country's domestic intelligence effort. Much of that effort is deservedly kept secret, as is the overall scope of America's intelligence activities at home and abroad. The size of the national intelligence community is not precisely known, but in 2009 then-Director of National Intelligence Dennis Blair described it as a 200,000-person, \$75 billion per year enterprise.¹⁵ By the next year the intelligence budget had grown to \$80.1 billion. That number is believed to be twice what it was in 2001, and it is considerably more than the \$53 billion spent on the Department of Homeland Security in 2010.¹⁶

An investigation into the country's intelligence and counterterrorism structure by *The Washington Post* described what it called “a Top Secret America hidden from public view and lacking in thorough oversight.”¹⁷ The *Post* found that some 854,000 people hold top secret security clearances, and that at least 263 government agencies and organizations had been created or reorganized as a response to 9/11.

The office of the DNI is itself a large entity, with some 1,800 employees as of 2010, and has come to be considered one of the seventeen top-level agencies of the intelligence community.¹⁸ Within the Department of Homeland Security there are at least nine separate intelligence elements, including the Office of Intelligence and Analysis and intelligence organizations of six separate DHS components: Customs and Border Protection, Immigration and Customs Enforcement, Citizenship and Immigration Services, Transportation Security Administration, the Coast Guard, and the Secret Service.¹⁹

Since 9/11 the FBI has greatly increased the priority it gives to intelligence and counter-terrorism, setting up a new National Security Branch, increasing the number and status of its intelligence analysts, and establishing Field Intelligence Groups in each of its fifty-six field offices. The FBI has also been busy developing new networks of informants within the United States: its 2008

budget request said that it “recruits new CHS [confidential human sources] every day,” and needed more money to do it, with apparently 15,000 sources needing to be validated.²⁰

Some elements of national and military intelligence have become more involved in domestic surveillance since 9/11. The National Security Agency (NSA), for example, which was revealed in 2005 to have been involved in what was called the Terrorist Surveillance Program, reportedly continues to conduct a significant amount of domestic intelligence collection.²¹ As an indication of the growth in the NSA's business – although presumably much of the growth is in foreign intelligence – the agency is building a new data storage center in Utah that will reportedly cost \$1.7 billion and occupy as much as one million square feet of space, larger than the US Capitol building.

Some domestic counterintelligence activities of the Department of Defense have drawn criticism since 9/11, in particular the now-defunct Counterintelligence Field Activity (CIFA). But in general, military and other national security intelligence capabilities have not been utilized domestically to any great degree, because of civil liberties concerns as well as Posse Comitatus restrictions on the use of military personnel for law enforcement. For example, an effort to establish a National Applications Office (NAO) to coordinate the domestic use of reconnaissance satellites failed after members of Congress opposed it.²² And the US Northern Command, established after the 9/11 attacks to coordinate US military support for homeland defense and security, has been careful to focus most of its intelligence efforts toward homeland defense – focusing on threats from outside the US – and takes a very limited role in domestic intelligence and surveillance (such as helping to coordinate reconnaissance assets when needed to support state and federal authorities following emergencies such as the Gulf oil spill and Hurricane Katrina).

Another area where military capabilities have not seen widespread domestic use is with unmanned aerial vehicles, or UAV. Although UAV have become a mainstay of US military operations overseas, they are little used within the US, even by civilian authorities. United States Customs and

Border Protection does operate small numbers of UAV along the country's northern and southern borders, and a few local law enforcement agencies have experimented with the technology, but they remain an underutilized capability.²³

A growth area for intelligence since 9/11 has been in the development of national intelligence centers, combining and coordinating efforts of a wide variety of organizations on specific problems. In some cases these centers are new, such as the National Counterterrorism Center and the National Counterproliferation Center. In other cases already existing intelligence organizations have been redesignated as national centers, such as the National Maritime Intelligence Center at Suitland, Maryland, and the National Center for Medical Intelligence at Fort Detrick, Maryland.

There are a number of other new or growing federal intelligence agencies and organizations, including the El Paso Intelligence Center (EPIC), a multi-agency counter drug center run jointly by the DEA and DHS, and the interagency National Gang Intelligence Center. There are also operational organizations that are significant users of intelligence, including the 106 FBI-led Joint Terrorism Task Forces that are critical tools in combating domestic terrorism, and High Intensity Drug Trafficking Area (HIDTA) Intelligence and Investigative Support Centers, which are counter-drug efforts sponsored by the Office of National Drug Control Policy.²⁴ There are also two Joint Interagency Task Forces (JIATFs), one in Hawaii and the other in Key West, Florida, which are interagency counter-drug organizations nominally under Department of Defense control.

At the next level down from the federal level of intelligence is a network of seventy-two state and local intelligence fusion centers. These centers receive DHS funding and support, and many of them have a DHS intelligence liaison officer assigned to them full time, providing analytical support and reach-back capability to DHS headquarters. These fusion centers are not widely known, but they have had some notable successes in helping to prevent terrorist attacks and assisting law enforcement agencies in

capturing criminals.²⁵

These fusion centers, however, have also generated controversy.²⁶ The American Civil Liberties Union argues that:

The federal government's increasing efforts to formalize, standardize, and network these state, local, and regional intelligence centers – and plug them directly into the intelligence community's Information Sharing Environment – are the functional equivalent of creating a new national domestic intelligence agency that deputizes a broad range of personnel from all levels of government, the private sector, and the military to spy on their fellow Americans.²⁷

Bruce Fein, a lawyer and former federal official who is a frequent government critic, testified before the House Homeland Security Committee that the US “should abandon fusion centers that engage 800,000 state and local law enforcement officers in the business of gathering and sharing allegedly domestic or international terrorism intelligence.”²⁸

The best known of these state and local organizations is actually not part of the national fusion center network: the New York Police Department's intelligence division.²⁹ The NYPD intelligence effort includes liaison officers in some eleven countries overseas, analysts who reportedly speak more languages than can be found in the New York office of the FBI, and even a program that takes police recruits out of the police academy and places them in undercover positions, in some cases conducting investigations inside mosques in the New York City area.³⁰

BALANCING SECURITY AND LIBERTY

The 9/11 Commission argued that we should not have to trade security for liberty, calling the choice between the two a “false choice.”³¹ But it seems that the balance and the tradeoff are very real today. There is nothing new in this: as a RAND study notes, “Throughout US history, in times of national security crisis, civil liberties have been curtailed in exchange for perceived greater security, the balance between liberties and security generally being restored after each crisis.”³² What is new today, ten years after the 9/11 attacks, is that

the balance has not yet been restored, and in some ways the balance continues to shift toward greater governmental power.

In some cases, this increased government authority is obvious: more intrusive screening at airports, for example, continues the tilt toward greater security at the expense of liberty (and occasionally, dignity). In other cases, the greater powers of government are less evident. As an example, there is a great deal of attention paid today to the previously little-known Foreign Intelligence Surveillance Court (FISC), which is empowered to issue warrants for domestic searches and surveillance under the Foreign Intelligence and Surveillance Act (FISA). But while fewer than fifty FISA orders were issued in 2006, during that same year the FBI issued more than 28,000 of what are called National Security Letters (NSLs), which can authorize search or surveillance of US persons but do not require review by a court or judge.³³ In 2010 the FBI made 24,287 NSL requests pertaining to US persons, but only 1,579 applications to the FISC for surveillance and search authority.³⁴

The FBI is expanding its domestic intelligence and surveillance operations in other ways, as well. It is changing its own internal rules to give its agents more leeway to conduct investigations and surveillance, such as by searching databases or sorting through a person's trash.³⁵ And it appears to be making greater use of undercover informants in intelligence investigations, leading in some cases to successful arrests and prosecutions, but in others to controversy.³⁶

One of the most controversial aspects of domestic intelligence after 9/11 was the Patriot Act, which significantly expanded the ability of government authorities to collect information within the US and lowered the "wall" separating criminal investigation from foreign intelligence gathering. In the years since it was first passed several of the Patriot Act's provisions have been renewed, adding tighter controls of government activity. But in general the government has retained its increased authorities. Several of these provisions, which had been scheduled to "sunset," or expire, were renewed in May 2011, with the renewal receiving as much attention for the way it happened – President

Obama, who was in Europe, authorized the use of an autopen machine to sign the bill into law – as for the fact that it occurred at all.³⁷

Because so much of intelligence work – including domestic intelligence – needs to be hidden from view, a considerable amount of secrecy might be acceptable as long as the American public could be confident that its legislators or others were watching out for the public. As Gregory Treverton writes, "The public doesn't need to know the details of what is being done in its name. It does need to know that some body independent of an administration does know and does approve."³⁸ The problem is that Congressional oversight of intelligence matters is widely regarded as weak, and much of the day-to-day supervision of intelligence agencies is conducted by organizations such as the National Security Council, the Office of Management and Budget, and agency inspectors general. Such oversight is often useful, but it still means the Executive Branch is supervising itself.

Concerns over oversight of the national intelligence community are heightened when the focus shifts to state and local intelligence efforts. Although most local fusion centers receive federal funds and receive operating guidelines from DHS and the Department of Justice, they are under state or local control and as such are not subject to any strong, centralized oversight. And programs such as the Nationwide Suspicious Activity Reporting Initiative, which is being implemented in cities and states around the country, show great potential for helping to prevent terrorist attacks and detect other criminal activity, but they also raise questions about civil liberties.³⁹

Critics argue that in the past ten years the balance between security and liberty has shifted far too much toward security, leading to a great increase in government power. In the words of Laura Murphy of the ACLU, "It feels as though scissors have cut out whole portions of our liberties in the name of fighting the war on terrorism."⁴⁰ This may be an overstatement, but it does seem clear that the development of a vast domestic intelligence structure since 9/11 has moved the balance quite firmly in the direction of more security, and less liberty.

CONCLUSION: WHERE TO FROM HERE?

By its very nature, domestic and homeland security intelligence is intrusive and risks infringing on civil liberties. As then-Secretary of Homeland Security Michael Chertoff put it:

Intelligence, as you know, is not only about spies and satellites. Intelligence is about the thousands and thousands of routine, everyday observations and activities. Surveillances, interactions – each of which may be taken in isolation as not a particularly meaningful piece of information, but when fused together, gives us a sense of the patterns and the flow that really is at the core of what intelligence analysis is really about.⁴¹

These thousands and thousands of observations are largely observations about people and events in America, and in the years since 9/11 America has created a domestic intelligence system to collect them. In some cases the people are terrorists or other types of criminals, and the intelligence collected has helped to prevent bad events from happening. But in many cases these observations, this intelligence, is about routine activities undertaken by ordinary Americans and others who do not intend to cause harm.

Unless the threat situation changes dramatically, we are not likely to see a new American domestic intelligence agency anytime soon. In the place of an “American MI-5,” however, a huge and expensive domestic intelligence system has been constructed. This system has thus far succeeded in keeping America safer than most experts would have predicted ten years ago, but it has also reduced civil liberties in ways that many Americans fail to understand. Precisely because it was unplanned and is decentralized, this domestic intelligence system has not received the oversight it deserves. In the long run, American liberty as well as security will gain from a fuller discussion of the benefits and risks of homeland security intelligence.

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¹ See for example James Burch, “Intelligence and Homeland Security,” in *Intelligence: The Secret World of Spies, An Anthology*, 3rd ed., Loch K. Johnson and James J. Wirtz, eds. (NY: Oxford University Press, 2011), 499-516.

² Although this essay focuses on domestic intelligence, the debate over the balance between security and liberty touches on many other issues including the proper handling and treatment of terrorism suspects, enhanced interrogation and torture, and overseas military operations such as targeted killings. For discussion of some of these broader issues, see the hearing on “Civil Liberties and National Security” before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Civil Liberties, December 9, 2010, http://judiciary.house.gov/hearings/hear_101209.html.

³ “America Needs More Spies,” *The Economist*, July 12, 2003.

⁴ Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (the Silberman-Robb Commission), *Report to the President of the United States* (March 31, 2005), 465, http://www.fas.org/irp/offdocs/wmd_chapter10.pdf.

⁵ Posner is a prolific writer on intelligence (and other topics). See for example his “Remaking Domestic Intelligence,” American Enterprise Institute working paper #111, June 20, 2005, http://www.aei.org/docLib/20050621_DomesticIntelligence3.pdf.

⁶ For background on MI-5 see Todd Masse, *Domestic Intelligence in the United Kingdom: Applicability of the MI-5 Model to the United States* (Washington, DC: Congressional Research Service, May 19, 2003).

⁷ Burch, “Intelligence and Homeland Security”; Brian A. Jackson, ed., *Considering the Creation of a Domestic Intelligence Agency in the United States: Lessons from the Experiences of Australia, Canada, France, Germany, and the United Kingdom* (Santa Monica, CA: RAND, 2009).

⁸ Gregory F. Treverton, *Intelligence for an Age of Terror* (NY: Cambridge University Press, 2009), 127. Richard Posner also sees value in the CSIS model; see his “Remaking Domestic Intelligence,” cited above.

⁹ An example of the continuing discussion about domestic intelligence is Eric Rosenbach and Aki Peritz, “Domestic Intelligence,” Belfer Center for Science and International Affairs Memorandum, Harvard Kennedy School, July 2009, at http://belfercenter.ksg.harvard.edu/publication/19152/domestic_intelligence.html.

¹⁰ Brian A. Jackson, ed., *The Challenge of Domestic Intelligence in a Free Society* (Santa Monica, CA: RAND, 2009); Jackson, *Considering the Creation of a Domestic Intelligence Agency in the United States*; and Gregory F. Treverton, *Reorganizing U.S. Domestic Intelligence: Assessing the Options* (Santa Monica, CA: RAND, 2008).

¹¹ Treverton, *Reorganizing U.S. Domestic Intelligence*, chap. 5.

¹² Treverton, *Reorganizing U.S. Domestic Intelligence*, 101.

¹³ Jackson, *The Challenge of Domestic Intelligence*, Figure 3.1, p. 52.

¹⁴ *Ibid.*, note 14, p. 72.

¹⁵ Siobhan Gorman, “Spy Chief Says U.S. Hunting al Qaeda More Effectively,” *The Wall Street Journal*, September 17, 2009.

¹⁶ Ken Dilanian, “U.S. Reveals Skyrocketing Cost of Intelligence Gathering Since 9/11 Attacks,” *Los Angeles Times*, October 28, 2010.

¹⁷ Dana Priest and William M. Arkin, “A Hidden World, Growing Beyond Control,” *The Washington Post*, July 19, 2010.

¹⁸ The personnel figures were noted in a speech by David R. Shedd, the Deputy Director of National Intelligence for Policy, Plans, and Requirements, in April 2010: http://www.dni.gov/speeches/20100406_2_speech.pdf. It should be noted that the current DNI, James Clapper, has said he intends to streamline the office.

¹⁹ Mark A. Randol, “The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress,” Congressional Research Service, March 19, 2010.

²⁰ Federal Bureau of Investigation, *FY 2008 Authorization and Budget Request to Congress*, 4-23 and 4-24, at http://www.justice.gov/jmd/2008justification/pdf/33_fbi_se.pdf. See also the Federation of American Scientists Secrecy News Blog, “The FBI as an Intelligence Organization,” August 27, 2007, http://www.fas.org/blog/secrecy/2007/08/the_fbi_as_an_intelligence_org.html.

²¹ Siobhan Gorman, “NSA’s Domestic Spying Grows as Agency Sweeps Up Data,” *Wall Street Journal*, March 10, 2008.

²² Jeffrey T. Richelson, “The Office That Never Was: The Failed Creation of the National Applications Office,” *International Journal of Intelligence and Counterintelligence* 24, no. 1 (2011): 68-118.

²³ Chad C. Haddal and Jeremiah Gertler, *Homeland Security: Unmanned Aerial Vehicles and Border Surveillance* (Washington, DC: Congressional Research Service, July 8, 2010); Peter Finn, “Domestic Use of Aerial Drones by Law Enforcement Likely to Prompt Privacy Debate,” *The Washington Post*, January 23, 2011.

²⁴ The HIDTA program is a combined effort of federal, state, and local law enforcement authorities covering at least part of forty-five states. As of 2010, there were thirty-two Intelligence and Investigative Support Centers in the program. See Office of National Drug Control Policy, *High Intensity Drug Trafficking Areas Program Report to Congress* (June 2010), http://www.whitehousedrugpolicy.gov/pdf/hidta_2010.pdf.

²⁵ The Colorado Information and Analysis Center (CIAC), for example, was recognized as the Fusion Center of the Year in February 2010 for its support to the Najibullah Zazi terrorism investigation, and more recently it provided information that helped lead to the arrest of a bombing suspect; see “Fusion Centers: Empowering State and Local Partners to Address Homeland Security Issues,” DHS blog July 18, 2011, <http://blog.dhs.gov/2011/07/fusion-centers-empowering-state-and.html>.

- ²⁶ Ken Dilanian, “Fusion Centers Gather Terrorism Intelligence—and Much More,” *Los Angeles Times*, November 15, 2010.
- ²⁷ Mike German and Jay Stanley, “Fusion Center Update,” American Civil Liberties Union, July 2008, http://www.aclu.org/pdfs/privacy/fusion_update_20080729.pdf.
- ²⁸ Bruce Fein, statement before the Subcommittee on Intelligence Sharing and Terrorism Risk Assessment, House Committee on Homeland Security, hearing on “The Future of Fusion Centers: Potential Promise and Dangers,” April 1, 2009, <http://hsc-democrats.house.gov/hearings/index.asp?ID=186>.
- ²⁹ Alan Feuer, “The Terror Translators,” *New York Times*, September 17, 2010.
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- ³² Genevieve Lester, “Societal Acceptability of Domestic Intelligence,” in *The Challenge of Domestic Intelligence in a Free Society*, Brian A. Jackson, ed., (Santa Monica, CA: RAND, 2009), 90.
- ³³ U.S. Department of Justice Office of the Inspector General, *A Review of the FBI’s Use of National Security Letters: Assessment of Corrective Actions and Examinations of NSL Usage in 2006*, 108, <http://www.justice.gov/oig/special/so803b/final.pdf>. See also Edward C. Liu, *Amendments to the Foreign Intelligence Surveillance Act (FISA) Extended Until June 1, 2015* (Washington, DC; Congressional Research Service, June 16, 2011).
- ³⁴ See “Domestic Intelligence Surveillance Grew in 2010,” entry in the Federation of American Scientists Secrecy News blog, http://www.fas.org/blog/secrecy/2011/05/2010_fisa.html.
- ³⁵ Charlie Savage, “F.B.I. Agents Get Leeway to Push Privacy Bounds,” *New York Times*, June 13, 2011.
- ³⁶ Jerry Markon, “Tension Grows Between Calif. Muslims, FBI after Informant Infiltrates Mosque,” *Washington Post*, December 5, 2010.
- ³⁷ The three provisions were technically amendments to the Foreign Intelligence Surveillance Act (FISA); two had been originally enacted as part of the Patriot Act, and one had been included in the Intelligence Reform and Terrorism Prevention Act of 2004. For background see Liu, *Amendments to the Foreign Intelligence Surveillance Act*.
- ³⁸ Gregory Treverton, “Intelligence Test,” *Democracy* 11 (Winter 2009): 65, <http://www.democracyjournal.org/11/6667.php>.
- ³⁹ John Farmer, Jr., “How to Spot a Terrorist,” *New York Times*, September 28, 2010.
- ⁴⁰ Laura W. Murphy, “Stopping the Flow of Power to the Executive Branch,” testimony before the Subcommittee on the Constitutions, Civil Rights and Civil Liberties, Committee on the Judiciary, U.S. House of Representatives, December 9, 2010.
- ⁴¹ “Remarks by the Secretary of Homeland Security Michael Chertoff,” Bureau of Justice Assistance, March 14, 2006, at http://www.dhs.gov/xnews/speeches/speech_0273.shtm.



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