

2. The “Agency within an Agency” Solution

The WMD Commission recommended that the FBI combine its three divisions that have intelligence responsibilities into a single entity. The FBI accepted the recommendation “under pressure from the White House . . . after a series of scathing reports that have criticized [the Bureau] for intelligence lapses.”¹ “The plan represents a particularly sharp rebuke to the historically independent FBI, which has struggled to remake itself into a counterterrorism agency since the Sept. 11, 2001, attacks and has been the target of withering reviews from both inside and outside the government.”²

The President’s memorandum³ announcing the reorganization gives few details; presumably much remains to be negotiated between the FBI and the Director of National Intelligence. But we know that the three divisions are to be consolidated into a “National Security Service” whose chief will have to be approved by the DNI but will report to the FBI director as well as to the DNI;⁴ that its budget will be part of the National Intelligence

1. David Johnston, “Antiterror Head Will Help Choose an F.B.I. Official,” *New York Times* (final national ed.), June 12, 2005, § 1, p. 1.

2. Dan Eggen and Walter Pincus, “Spy Chief Gets More Authority over FBI: Negroponte Will Control Bureau’s Intelligence Side,” *Washington Post*, June 30, 2005, p. A1.

3. See note 9, chapter 1.

4. According to Jay Solomon and Anne Marie Squeo, “Bush Team Takes Steps to Address U.S. Security Gaps,” *Wall Street Journal*, June 30, 2005, pp. A3, A4, the head of the NSS will report to the deputy director of the FBI rather than to the director. The current deputy director, John Pistole (see note 30, chapter 1), like the head of the Bureau’s Counterterrorism Division, is not a career

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Program, which is to say the overall intelligence budget that the DNI submits to the President; and that the FBI is to establish procedures that will enable the DNI to communicate through the chief of the National Security Service with all FBI intelligence personnel in order to ensure that the Bureau's intelligence activities are coordinated with those of the other federal intelligence agencies.

Whether the reorganization will yield net benefits is uncertain. It seems a step in the right direction, but many pitfalls loom—fatal ones, in all likelihood, unless the reorganization is supplemented by the creation of a domestic intelligence agency separate from the FBI.⁵ Every one of the following pitfalls points to the need for such an agency:

1. By subordinating the Bureau's intelligence function to the authority of the Director of National Intelligence, the President's order may precipitate the mother of all turf battles. The FBI is fiercely independent, popular with the general public, politically influential, and a past master of public relations; in contrast, the public is suspicious of intelligence ("spying"). Should the Bureau succeed in fending off the DNI's efforts to change its approach, all that the reorganization may amount to is somewhat better coordination between the Bureau's Directorate of Intelligence and its Counterterrorism and Counterintelligence Divisions—a modest success. And fierce turf battles will impose, at the least, high transition costs.

2. Even if the reorganization is spared debilitating turf wars, it will not be spared transition costs, because complex, time-consuming adjustments will be necessary to unite the three divisions into a single, effective, stand-alone unit. Remember that

intelligence officer. He had little or no intelligence experience before he became the deputy director of that division in 2002.

5. As I explain in chapter 3, the reorganization of the FBI can coexist with the proposals discussed in that chapter, including the creation of a true domestic intelligence agency.

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the Directorate of Intelligence is responsible for ordinary-crimes intelligence as well as for national security intelligence and that the Counterterrorism and Counterintelligence Divisions have law enforcement as well as intelligence responsibilities. A simple fusion will not produce an intelligence agency, but a hybrid. It would be comparable to merging MI5 with the Special Branch of Scotland Yard. But extracting law enforcement activities directed against terrorists and spies from the Counterterrorism and Counterintelligence Divisions, so as to make the National Security Service a real intelligence agency rather than an MI5–Special Branch hybrid, is a daunting prospect.

Remember too that the intelligence analysts are poorly selected and deployed and that the intelligence officers are recycled special agents often hoping to cycle back to the criminal investigation career track. What is required is not merely a combining of the three units under a single leader but a complete shakeup of organization, personnel, training, and practices, lest the reorganization end up being nothing more than the interposition of a manager between the heads of the three units and the Bureau’s director.

3. The plan of reorganization, at least as announced, says nothing about establishing a separate unit for information technology in the National Security Service. The service may be dependent on the Bureau’s unpromising, overly ambitious, protracted follow-on to the failed Virtual Case File project.

4. The FBI has repeatedly reorganized its intelligence operation with little to show for its efforts. Furthermore, the history of government reorganizations teaches that most fail, *especially* those imposed on an agency from the outside.⁶ The FBI announced reorganizations of its intelligence operation in 1998, 1999, 2001, and 2002. A further reorganization was decreed by

6. Richard A. Posner, *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* 158–159 (2005).

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the Intelligence Reform Act in 2004, with no apparent effect.⁷ Can still *another* reorganization be what the doctor ordered, especially one again imposed from the outside over strong resistance by the agency to be reorganized?

5. The head of the National Security Service will have too many bosses—the FBI’s director and deputy director,⁸ the Attorney General, and the DNI—complicating the command structure and undermining his authority. As the joint appointee of the FBI director and the DNI, he will know he has multiple masters whom he will have to try to satisfy despite their divergent interests and perspectives. Unlike the director of the CIA, he will not be a Presidential appointee. He will be the third-ranked subordinate of an official, the FBI director (the deputy director is the number two man in the Bureau), who, though a Presidential appointee, is himself subordinate to a department head, the Attorney General.

6. The FBI director may favor criminal investigation over intelligence even more than at present because he will be in full charge of criminal investigation but only half in charge of intelligence. He will be reluctant to designate any job position as “intelligence” because he will want to minimize oversight by the Office of the DNI.

7. When a vacancy occurs in the directorship of the FBI, there will be a cat fight over whether to fill it with an intelligence officer or with a criminal law enforcer.⁹

8. Often it is easier to create a new organization than to

7. For a comprehensive discussion of the FBI’s efforts at intelligence reform, see Alfred Cumming and Todd Masse, *CRS Report for Congress: RL32336-FBI Intelligence Reform since September 11, 2001: Issues and Options for Congress* (Congressional Research Service, Apr. 6, 2004), www.au.af.mil/au/awc/awcgate/crs/rl32336.htm.

8. The head of the new service will report to the deputy director, not the director.

9. In time of war or acute national emergency, the former would seem clearly the better choice, with his principal deputy a criminal law enforcer.

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reorganize an existing one. There is a long and on the whole successful history of starting new intelligence agencies, beginning with the Office of Strategic Services (OSS) in 1942. A reorganization threatens existing staff, and so is resisted and often in the process deformed, especially if agency staff has cultivated alliances with members and staff of Congress, as FBI officials have long done. Besides having to overcome passive and not so passive resistance by employees whose tenure or status the reorganization threatens, a reorganization disrupts work routines and scrambles lines of command, sowing confusion and disaffection that may take years to overcome.¹⁰ Because creating a new agency would be easier than reorganizing the FBI, it would be an insurance policy against the possible failure of the reorganization.

9. Carving a domestic intelligence service out of an existing criminal investigation agency does nothing, at least in the short term, to change organizational culture. As Representative Jane Harman, the ranking Democrat on the House intelligence committee, has observed, successful reorganization of the FBI “will require a massive cultural change within the F.B.I., because the guns and badges and the mind-set of the F.B.I. don’t totally fit with the challenges of countering terrorism.”¹¹ The staff of the new entity will be the same staff that, imbued as it is with the Bureau’s law enforcement culture, has conducted national security intelligence inadequately.

10. Creating a new organization offers the best opportunity for a genuinely fresh start that will enable us to learn whether the steady state that the established intelligence bureaucracies have attained is what the nation needs. A new agency will have no commitments; it can experiment with up-to-date ideas of “best

10. Posner, note 6 above, at 128–129; also reference in *id.* at 132 n. 11.

11. Douglas Jehl, “Bush to Create New Unit in F.B.I. for Intelligence,” *New York Times*, June 30, 2005, p. A1. “Totally” understates the problem.

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practices” whether or not they are accepted by the established agencies.

11. Unless the National Security Service is thoroughly encapsulated—impacted—within the FBI, it will be unable to disentangle itself from some of the worst features of the Bureau’s present domestic intelligence operation, such as the computer imbroglio. Will the new agency have to wait three and a half to four years to obtain a computer system optimized for domestic intelligence, which as we know is the FBI’s current schedule? If to be effective the National Security Service will have to be self-sufficient and cut most of its ties to the rest of the Bureau, what is the advantage of having it in the Bureau?

12. The reorganization may require legislation to implement. The Intelligence Reform Act creates the job title “Executive Assistant Director [of the FBI] for Intelligence”; places this official in charge of the Directorate of Intelligence; and assigns the Directorate responsibility for “supervision of all national intelligence programs, projects, and activities of the Bureau.”¹² To place the directorate under a different official of the Bureau—the head of the National Security Service—will displace the statutory authority of the Executive Assistant Director for Intelligence. Nor, under the reorganization, will the Directorate of Intelligence occupy the role assigned it by the Act of supervising the intelligence operations of the Counterterrorism and Counterintelligence Divisions. It is possible, as I’ll note in chapter 3, that Congress does not have the constitutional authority to micromanage the organization of national security agencies to the degree the Act attempts. But that is an open question at best, and uncertainty about the correct answer will cast a shadow over efforts to effectuate the reorganization purely by executive decree.

A particular concern is the provision of the Intelligence Re-

12. Intelligence Reform and Terrorism Prevention Act of 2004, Title II, §§ 2002(b), (c)(1).

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form Act that requires FBI special agents to be trained as intelligence officers and to serve stints in both criminal investigation and intelligence rather than being allowed to specialize full time in intelligence. Unless repealed or ignored, this provision will prevent the National Security Service from achieving sufficient autonomy to be able to function effectively as an intelligence agency. Special agents will be shuttling back and forth between the NSS and the criminal investigation side of the Bureau.

13. The only way to discover whether the FBI is correct in thinking that national security intelligence should be centered in the Bureau is to create a competing entity that is not part of a criminal investigation agency and has no law enforcement powers. The FBI should welcome the opportunity to prove that its intelligence model is superior. But that is asking too much of human nature. No one likes having a competitor.

For all these reasons, it would be a mistake to count on the success of the reorganization to obviate the need for a separate domestic intelligence agency.

The following counterarguments have limited force:

1. The most seductive is that we should wait to see how the reorganization works; if we discover it has failed, we can lift the National Security Service out of the Bureau (cutting on the dotted line, as it were, drawn by the reorganization) and make it a separate agency. The possibility of that happening, coupled with strong pressure from the President, is a big motivation for the Bureau's taking the need for change seriously.

But the nation cannot afford the time that it would take to evaluate the results of a wait-and-see approach. The reorganization will take months or even years to implement fully, and during this period no one will be able to determine whether an effective domestic intelligence agency has been or is being created. If two years from now it is decided that the Bureau has had its chance and has blown it (the likeliest outcome), we will have lost two years in dealing with the terrorist menace.

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Moreover, to lift the National Security Service out of the FBI would not be the correct response to the failure of the reorganization.¹³ This is not only because the required surgery would be painful, but also because the service would take with it its police culture (the reason, no doubt, *why* the reorganization will have failed). The Canadian domestic intelligence agency was formed from the security service of the Royal Canadian Mounted Police. The service carried with it into its new home much of the culture of the RCMP, a police culture, which reduced the effectiveness of the new agency.

2. It might be thought that the FBI's prestige, and its continued popularity with the general public despite its intelligence failures, would make recruitment for the National Security Service easier than recruitment for a new domestic intelligence agency. But this is unlikely. People who want to be intelligence officers don't want to be part of a police force, and that is the perception that will prevail even if the National Security Service is placed in a watertight capsule. Moreover, being feared and disliked by major elements of a segment of the American public that is critical to domestic intelligence—namely the Arab American and (overlapping) Muslim American communities—the Bureau is having difficulty recruiting people with language skills essential to counterterrorist intelligence. Ever since the 9/11 attacks, the Bureau has treated those communities with a heavy hand,¹⁴ as in the incident involving the arrest of the two teenage would-be suicide bombers. Animosity toward the Bureau has frustrated efforts even to hire translators and has left it with a

13. This represents a change of view for me. In chapter 6 of *Preventing Surprise Attacks*, note 6 above, I urged consideration of creating a domestic intelligence agency out of the intelligence-related units of the FBI. That now seems to me a mistake, for the reasons explained in the text.

14. See, for example, Juliette Kayyem, "Changing the Color of Intelligence," *Boston Globe* (third ed.), Aug. 3, 2004, p. A13.

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mass of untranslated telephone intercepts that may contain undiscovered clues to (serious, adult) terrorist plans.¹⁵

It would be easier to recruit from these communities for an agency unconnected with the FBI. Since the aim would be to create a dominant intelligence culture in the new agency, its experienced officers would, with few exceptions, not come from the FBI. But there are plenty of other sources. Many able CIA officers with relevant skills who had retired before September 11, 2001, have been brought back to work in the intelligence community on contract, and some of them are ready for a new challenge. Others have left the CIA recently because they didn't like the beating the agency has been taking or could not manage careers overseas with spouses who have better-paying jobs in the United States; those ex-officers too are potential recruits. And recruiting and training new operations officers should not be as difficult or protracted as in the CIA, because operating within the United States is less demanding than adjusting to a foreign, often hostile environment.

3. Criminal investigations are a vital tool of national security.¹⁶ In holding that warrants issued under the authority of the

15. Eric Lichtblau, “F.B.I. Said to Lag on Translations of Terror Tapes,” *New York Times* (late ed.), Sept. 29, 2004, p. A1; Richard B. Schmitt, “Translation Capacity Still Spotty after 9/11,” *Los Angeles Times* (home ed.), May 1, 2005, p. 24, summarizing U.S. Dept. of Justice, Office of the Inspector General, Audit Division, “The Federal Bureau of Investigation’s Foreign Language Program—Translation of Counterterrorism and Counterintelligence Foreign Language Material” (Audit Report 04-25 July 2004), states that “three years after the Sept. 11 attacks, more than 120,000 hours of potentially valuable terrorism-related recordings have not yet been translated by linguists at the Federal Bureau of Investigation, and computer problems may have led the bureau to systematically erase some Qaeda recordings.” See also Eric Lichtblau, “Inspector General Rebukes F.B.I. over Espionage Case and Firing of Whistle-Blower,” *New York Times* (late ed.), Jan. 15, 2005, p. A8. The whistleblower, an FBI translator of Middle Eastern languages, had complained among other things about the Bureau’s shoddy translation practices.

16. Jeff Breinholt, “Seeking Synchronicity: Thoughts on the Role of Domestic

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Foreign Intelligence Surveillance Act for electronic or other surveillance may lawfully be used to gather evidence of criminal activity, the FISA review court said that

arresting and prosecuting terrorist agents of, or spies for, a foreign power may well be the best technique to prevent them from successfully continuing their terrorist or espionage activity. The government might wish to surveil the agent for some period of time to discover other participants in a conspiracy or to uncover a foreign power's plans, but typically at some point the government would wish to apprehend the agent and it might be that only a prosecution would provide sufficient incentives for the agent to cooperate with the government. Indeed, the threat of prosecution might be sufficient to "turn the agent."¹⁷

The court added, however, that "punishment of the terrorist or espionage agent is really a secondary objective."¹⁸ That is wormwood to the FBI.

Cooperation between intelligence officers and criminal investigators is unlikely to be greater within an agency torn between two mutually suspicious services than between two agencies with carefully demarcated jurisdictions (though there is nothing wrong with some overlap to provide redundancy and competition): an agency that has domestic intelligence responsibilities but no law enforcement responsibilities, and a law enforcement agency that conducts intelligence operations mainly in support of criminal investigations. Although the FBI is a part of the Justice Department, it takes an average of 46 days for the lawyers in the De-

Law Enforcement in Counterterrorism" (forthcoming in *American University International Law Review*).

17. In re *Sealed Case*, 310 F.3d 717, 724 (U.S. Foreign Intelligence Surveillance Court of Review 2002). Though cast in terms of state-sponsored terrorism or espionage, the court's analysis also has application to nonstate actors, such as al Qaeda, though perhaps with diminished force, as suggested by the statistics and references in Dan Eggen and Julie Tate, "U.S. Campaign Produces Few Convictions on Terrorism Charges," *Washington Post*, June 12, 2005, p. A1.

18. 310 F.3d at 744–745.

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partment to present an application for a FISA warrant to the FISA court.¹⁹ That is a sign of poor internal cooperation.

Scotland Yard’s Special Branch specializes in the arrest and prosecution of terrorists; this may turn out to be the character of the FBI’s new National Security Service. The NSS is unlikely to escape the gravitational pull of criminal investigation. Not only because of the Bureau’s traditions and organizational culture—the stubborn culture to which Representative Harman and countless others have attested—but also because ordinary crime fighting will always (one hopes) require greater resources than domestic intelligence. There is more crime than there is terrorism, and it is costly to prepare a criminal prosecution.

And while a person wanting a career in intelligence will not be attracted to working in a police department, it is different with someone wanting a career in the criminal investigation of terrorists—a prestigious and exciting field of police work. Just as Scotland Yard’s Special Branch cooperates with MI5,²⁰ so a prosecution-oriented NSS could be expected to cooperate with a U.S. domestic intelligence agency because it would no longer be in direct competition with it. The NSS would have a strong incentive to cooperate because the domestic intelligence agency would refer matters to it for prosecution.

There is another reason why such an agency would not step on the FBI’s toes more than occasionally. The agency’s remit would be limited to national security intelligence, which is to say intelligence concerning the gravest possible threats to the nation, rather than garden-variety criminal acts. The FBI, reflecting its law enforcement culture, classifies as “terrorism” virtually any

19. Eric Lichtblau, “Audit Finds Logjam in Efforts to Spy on Terror Suspects,” *New York Times* (late ed.), Apr. 28, 2005, p. A20.

20. Not perfectly, of course, Center for Democracy and Technology, “Domestic Intelligence Agencies: The Mixed Record of the UK’s MI5” 3 (Jan. 27, 2003); any interagency relationship is fraught.

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politically motivated crime, a great deal of which, however, such as the attacks by the Animal Liberation Front on laboratories in which medical experiments are performed on animals, does not threaten national security. Minor terrorists are easier to catch and prosecute than major ones. And recall that the FBI, being reactive rather than proactive in its criminal investigatory work, is not accustomed to setting priorities.

The agency would be required to notify the Justice Department of serious criminal activity discovered in its investigations even if it opposed prosecution. The head of the agency would negotiate the disposition of the matter with the Attorney General.

4. The FBI works with the nation's police forces in investigating drug offenses, bank robberies, and other ordinary federal crimes; and local police forces, along with customs, visa, border-patrol, and other federal officers, should be the "ears and eyes" of a nationwide intelligence network. Yet the Bureau neither has nor should have a monopoly position in regard to such a network. Despite the formation of the Joint Terrorism Task Forces, the FBI has not succeeded in creating such a network, and many of the "ears and eyes" doubt that it has really tried. (More on this shortly.)

5. Criminal investigators have well-established criteria for determining what constitutes proof rather than mere grounds for suspicion, and familiarity with these criteria may prevent intelligence operatives from going off on wild goose chases. But this is just to say that a background in criminal investigation would be something a domestic intelligence service would want some of its employees to have. That is different from lodging the service in a criminal investigation agency.

Moreover, the rules of evidence that law enforcers are required to study and master are not just rules about separating proof from conjecture. Many of them are evidence-suppressing privileges, such as the privilege against self-incrimination, or are

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concerned with keeping from jurors evidence they’re believed incapable of evaluating correctly. These blinders placed on the pursuit of truth in litigation don’t belong in intelligence, which is not concerned with building a case and may be able to make fruitful use of conjectures, of hints far short of probable cause, of imaginative projections of unlikely horrors. A vivid imagination is not part of the normal equipment of police officers.

6. The FBI has investigative tools that a domestic intelligence agency would sometimes want to use as well, including access to the unit in the Justice Department that applies for warrants to conduct electronic surveillance under the Foreign Intelligence Surveillance Act and the power to obtain on demand access to phone bills (and other records of communications whether by wire or by electronic means), banking records, and credit reports.²¹ With regard to applications for FISA warrants, however, statutory authority is lodged in the Attorney General rather than the Bureau,²² and he could appoint the general counsel of a domestic intelligence agency as a special assistant to him to exercise his authority to apply for such warrants on behalf of the agency. Regarding banking and credit records, but not phone and other communications records, agencies other than the FBI can obtain these records if the agency is investigating “international terrorism,”²³ but investigations of purely homegrown terrorism are excluded.

So there is some power gap, and the FBI may be reluctant to cooperate with a competitor. This underscores the need for the Director of National Intelligence to assert control over domestic intelligence, as I discuss in chapter 3. If the FBI should not have a monopoly of domestic intelligence, neither should it

21. 18 U.S.C. § 2709; 12 U.S.C. § 3414(a)(5); 15 U.S.C. § 1681u.

22. 50 U.S.C. § 1804(a).

23. 12 U.S.C. § 3414(a)(1)(C); 15 U.S.C. § 1681v.

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have a monopoly of the tools that a domestic intelligence agency would need for maximum effectiveness.

7. Domestic intelligence is a bugbear of civil libertarians, who argue that it is safer kept in the FBI because the Bureau is under the supervision of the Attorney General, the nation's chief legal officer. The argument is unsound—at its most basic level, because the Attorney General is a prosecutor rather than a judge, a defense lawyer, or a professional civil libertarian. To the Justice Department, civil liberties are a constraint, often an irksome one, not a mission. Civil libertarians did not like Attorney General John Ashcroft; they do not like his successor, Alberto Gonzales; and they continue to complain about what they consider to be the FBI's insensitivity regarding civil liberties.²⁴ There is more to be said on this sensitive issue, however, and I return to it in chapter 3.

8. Arguably, if given sufficient autonomy the National Security Service will be able to escape the surrounding police culture of the Bureau. But the argument points to a fundamental dilemma: If to change the culture the National Security Service is truly encapsulated, the potential benefits from combining intelligence and criminal investigation in one agency will evaporate. There would be no greater obstacles to cooperation between two formally separate agencies than there would be between two agencies that, though nominally joined, were separated by a Chinese wall. Yet without such separation, all that will have been accomplished by the reorganization is a tighter integration of the Bureau's intelligence, counterterrorism, and counterintelligence units, and that is a "solution" unresponsive to the concerns behind the reorganization. Intelligence will continue to be subordinated to and intermixed with criminal investigation, even

24. See, for example, Michael Dobbs, "FBI Monitored Web Sites for 2004 Protests," *Washington Post*, July 18, 2005, p. A3.

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though that subordination and that intermixture are the underlying problems.

A recent editorial in the *Washington Post* expresses a common reaction to the reorganization. I quote the heart of the editorial writer’s argument:

Whether this transformation [of the FBI “into a credible intelligence organization”] is ultimately possible, however, remains an open question. The bureau has made more headway in developing intelligence capability than its fiercer critics acknowledge, but it remains, in its heart and soul, a police force. This culture may simply be too deeply rooted to be changed. At present, however, creating a domestic intelligence service is politically dicey; the step would have significant civil liberties implications and could create gaps in effectiveness that terrorists could exploit. Consequently, there is little choice but to proceed as the administration is proceeding—that is, reform the bureau with an ongoing eye to whether the project is, at the end of the day, a fool’s errand. . . . The president’s memorandum requires the government to “develop procedures” by which the director of national intelligence can “communicate with the FBI’s field offices” through the new head of the National Security Service. Whether this presents a problem depends entirely on what these procedures turn out to be. It is essential that FBI agents collecting intelligence domestically are not directed by the White House or top administration officials but, rather, by the FBI director overseen by the attorney general. In implementing the president’s order, the administration must remember that whatever agency is responsible for domestic intelligence must be kept independent of politics.²⁵

The editorial expresses a sensible pessimism about the prospects for transformative change in the FBI. But it veers off the track when it suggests that politics, civil liberties concerns, and possible gaps in effectiveness preclude establishing a domestic in-

25. “Intelligence Shuffle,” *Washington Post*, July 4, 2005, p. A16.

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telligence agency and therefore leave us with no alternative but to embrace the reorganization and hope forlornly for the best. That there might be political opposition (mainly from the FBI itself) to creating such an agency is not a reason for not trying to create it but a prediction that the effort may fail. The effort might still be worthwhile in order to lay the groundwork for future reform. The civil liberties concerns are specious, as we shall see; and why creating another agency should open rather than close gaps is implausible and unexplained. Mindful that the reorganization may fail, the editorial wisely recommends that an “ongoing eye” be kept on the project but ignores the critical question of determining when “the end of the day” has come at which to pronounce the experiment a success or a failure. The longer that day of reckoning is postponed, the greater will be the gap between the need for domestic intelligence and the intelligence system’s ability to meet that need.

Fearing infringements of civil liberties, the editorial writer urges that the collection of domestic intelligence be directed not by the President or “top administration officials” but by the FBI director “overseen by the attorney general.” But the Attorney General is a “top administration official”; the FBI director is a police and security official rather than a civil libertarian; and if the National Security Service is directed by the FBI director rather than by the Director of National Intelligence, the goal of the reorganization—to create within the FBI a component of the overall intelligence system directed by the DNI—will be that much more difficult to reach.