

Prefatory Note

The magnitude of the terrorist threat to the United States, coupled with the lack of coordination among our domestic intelligence agencies and the continuing failure of the lead agency, the Federal Bureau of Investigation, to develop an adequate domestic intelligence capability, argues compellingly for reform. This monograph by Richard A. Posner, a federal circuit judge and a senior lecturer at the University of Chicago Law School, and the author of *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11* (2005), develops the case for reform and makes concrete proposals.

Because the FBI's failure is systemic, being rooted in the incompatibility of criminal law enforcement (the FBI's principal mission) with national security intelligence, the reform must have a structural dimension. Under pressure from the White House, the FBI has now reluctantly agreed to create a unit to be called the "National Security Service," by fusing the Bureau's three divisions that at present share intelligence responsibility. This reorganization may or may not be a good idea; but clearly it is not enough. The Director of National Intelligence should take the coordination and command of domestic intelligence firmly into his hands by appointing a deputy for domestic intelligence. Even more important, a true domestic intelligence agency—which is to say an agency that like England's MI5 or the Canadian Security Intelligence Service would have no law enforcement functions—should be created and lodged in the Department of Homeland Security. Intelligence fits better into an agency con-

viii | Remaking Domestic Intelligence

cerned with preventing attacks than into one concerned with prosecuting the attackers. The reorganization of DHS announced by Secretary Michael Chertoff on July 13, 2005, is potentially a first step toward the creation of a U.S. Security Intelligence Service.

This monograph borrows some material from chapter 6 of *Preventing Surprise Attacks* but is mainly new. The author thanks Lindsey Briggs, Paul Clark, Raina Kim, and Meghan Maloney for exemplary research assistance, and Stewart Baker, Scott Hemphill, Grace Mastalli, Ted Price, Laurence Silberman, George Spix, Thomas Twetten, and James Q. Wilson for valuable advice and stimulating comments. The extensive comments of Baker, Spix, and Twetten on successive drafts deserve a special acknowledgment. Remaining errors are the author's own.

July 20, 2005