

## **Book Review**

*Countering Terrorism: Blurred Focus, Halting Steps*

Richard A. Posner

(Rowman & Littlefield, 245 pp., \$22.95)

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More than six years after the September 11, 2001 terrorist attacks, the federal government continues to respond to the *jihād* declared against the United States by the radical Muslim terrorist group al Qaeda. One of the nation's most significant reforms has involved the intelligence community. Responding to concerns that the Central Intelligence Agency (CIA) failed to anticipate the attacks on the World Trade Center and Pentagon, Congress undertook an ambitious reorganization of the community in the Intelligence Reform Act of 2004 to restructure intelligence gathering, analysis, and sharing (National Commission on Terrorist Attacks 2004).

Judge Richard A. Posner's latest book on intelligence community reform, *Countering Terrorism: Blurred Focus, Halting Steps*, addresses what he sees as the principle challenges facing the intelligence community and suggests several appropriate measures for improvement. *Countering Terrorism* is the third installment of Judge Posner's recent work on the reshaping of our intelligence analysis process (Posner 2006a, 2006b, 2005). Author of more than forty books and scores of articles pertaining to public policy, Posner is widely recognized throughout the legal community as a brilliant and prolific scholar. No less noteworthy are his opinions and criticisms regarding the role of both Congress and the Bush Administration in intel-

ligence community reform.

In *Countering Terrorism*, Posner attributes the pre-9/11 intelligence failures to five factors: (1) organizational limitations; (2) the structure of the U.S. intelligence community; (3) the quality of the leadership and staff in the intelligence community; (4) oversight of the community by Congress and the President; and (5) the inherent limitations of military intelligence (Posner 2007, 24). While he recognizes the intrinsic difficulties in mitigating some of these shortcomings (such as the limitations of intelligence), Posner advocates certain reforms of the civilian component of the U.S. intelligence system that will enhance counterterrorism measures. His most significant proposal is the creation of a domestic intelligence agency similar to the United Kingdom's Military Intelligence, Section 5 (MI5). Adoption of an American version of MI5 would mark a dramatic change in domestic intelligence-gathering responsibility. Traditionally, the Federal Bureau of Investigation (FBI or Bureau) is responsible for domestic intelligence gathering and analysis (The public has historically been fearful of allowing the CIA to conduct such intelligence work). Posner, however, believes that the FBI is an inappropriate agency for the job of collecting and analyzing domestic intelligence.

Posner asserts that FBI's "culture" is unsuitable for an intelligence agency. An agency's organizational "culture"—namely the accumulated, settled body of beliefs and principles that defines an agency's mission and that dictates the value system to which an organization demands its employees adhere—shapes and channels how the agency pursues its mission. Unlike the CIA, the FBI is predominantly a law enforcement agency and that focus undergirds every step the Bureau takes.

The FBI primarily conducts investigations after a crime has occurred rather than pursuing suspects beforehand. Its highest priority is gathering legally admissible and ample proof of a suspect's commission of a past crime rather than acquiring the fragile and diaphanous bits and pieces of intelligence that could reveal a larger terrorist network or plot in the making. Additionally, the FBI is inclined to view public adversarial criminal prosecutions as the natural culmination of solid investigative work rather than as a harmful and unfortunate occasion for the disclosure of intelli-

gence whose value hinges on its secrecy.

In contrast, the CIA would rather watch suspected terrorists in order to collect as much information as possible and pursue various covert actions to disrupt terrorist work (such as bribing or turning a participant) instead of seeking the public condemnation and punishment of a suspect at a criminal trial. For these reasons, Posner contends, the FBI continues to display a law enforcement mindset, despite FBI Director Robert S. Mueller's efforts to redirect the Bureau toward counter-terrorism work. What the country needs, Posner argues, is to treat terrorist activities uniquely rather than as large-scale crimes and to dedicate one agency to the sole task of sniffing out domestic terrorists. He concludes that the FBI, after seventy-plus years of focusing on catching felons, cannot hope to reinvent itself for that job.

Posner highlights cultural differences by describing federal actions toward a terrorist cell based in Lackawanna, New York, in 2002. The Justice Department decided to identify and arrest the cell's known members and quickly thereafter seek criminal prosecutions instead of learning more about the terrorist ring, its activities, and how it operated. These decisions stemmed from the Department's preference for law enforcement over intelligence-gathering. Had the CIA instead managed the investigation, Posner argues, the government would likely have allowed the cell to remain free while attempting to infiltrate the group in order to learn more about its role in al Qaeda's global network.

Posner attributes the difference to the FBI's focus on the short-term pursuit of an identifiable but small-sized benefit (e.g., disruption of one cell and prevention of its crimes) as opposed to the CIA's focus on the long-term pursuit of information regarding an unknown large-scale threat to national security (e.g., al Qaeda's acquisition of nuclear or biological weapons). The FBI's strategy, Posner believes, is appropriate for ordinary crimes but not for al Qaeda's intentions, which include the murder of thousands of civilians, the destruction of the American way of life, and the toppling of the federal government (Posner 2006c).

Throughout *Countering Terrorism*, Posner attributes the pre-9/11 intelligence failure to the rift between the FBI and the CIA. In addition to

the clash in organizational cultures, there was also a lack of information sharing. Although the USA PATRIOT Act contributed to dismantling “the wall” that hindered information sharing between law enforcement and intelligence entities, Posner advocates for greater collaboration with state and local entities (PL 107-56, Sec. 218). In the absence of federal leadership in coordinating intelligence with state and local entities, local police departments have begun creating their own intelligence units. For example, the New York City Police Department (NYPD) was the first local police department in the country to establish its own domestic intelligence unit—an act Posner identifies as “a striking vote of no confidence in the FBI...” (149). The growth of such local intelligence units is valuable but uncoordinated actions by various federal, state, and local agencies not only wastes valuable resources but also undermines the federal government’s effort to manage intelligence work. According to Posner, cooperation is essential if antiterrorism work is to be successful.

Recognizing that civil libertarians may be wary of his proposals, Posner attempts throughout his book to assuage their concerns. He argues that if a domestic intelligence service were created, upholding civil liberties—particularly those of Muslims living in the United States—would be paramount. While Posner’s statements add to his credibility in presenting a balanced argument, his efforts are unlikely to convince civil libertarians. Posner himself concedes that civil libertarians are not so much concerned with the number of agencies collecting domestic intelligence as they are with the fact that government entities do it at all. It is likely that the tradeoffs between security and civil liberties will ultimately be refereed by the courts (Posner 2006b).

Posner’s intelligence reform proposals are commendable, but his review is self-admittedly incomplete because it lacks an analysis of the present state of intelligence activity. In the introduction he confesses, “...no doubt my lack of insider knowledge limits my ability to address issues such as the insertion and control of undercover agents abroad and the strengths and limits of technical intelligence” (Posner 2007, ix). This omission, while unavoidable due to the highly sensitive nature of these issues, is significant. The reader cannot discern whether Posner’s recommendations would en-

hance national security because his book neglects to describe the extent to which pre-9/11 intelligence failures were attributable not to organizational deficiencies but to operational mistakes, a shortage of foreign language-speaking analysts, the inability to penetrate al Qaeda cells, or simply to the fact that no defense is perfect. Trying to decide whether to endorse his recommendations for the reorganization of the intelligence community without knowing how well U.S. field personnel are acquiring pertinent data about al Qaeda is like trying to decide whether to hire a new general manager for a baseball team without knowing whether the pitching staff is worth keeping.

Nonetheless, Posner's book is a timely contribution to the debate over the proper organization of the intelligence community. Posner makes a powerful case, especially in his recommendation that the United States use MI5 as a paradigm for successful domestic intelligence units. Regardless of political perspective, the reader will leave *Countering Terrorism* recognizing that the status quo is ineffective. Posner makes it quite clear that in its present state, the intelligence system is plagued with design problems, clashes in organizational cultures, and bureaucratic hurdles. *Countering Terrorism* effectively raises awareness of these challenges within the intelligence community and government at large and suggests thoughtful reforms on this all-important issue.

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*The author would like to thank associate editor Paul Larkin for his assistance and expertise in the editorial process. The views expressed in this review are attributable only to the author and not to DHS.*