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INTELLIGENCE REFORM IN THE WAKE OF THE  
9/11 COMMISSION REPORT

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## **PROCEEDINGS**

MR. STEINBERG: Good morning and welcome to Brookings. This morning, we're going to talk about one of the issues of the hour that doesn't involve photo ops, but does involve the questions of policy of the long-term security of the country, which is the debate over intelligence reform.

It's obviously a critical time in that debate right now as the political forces gather and the Congress begins to grapple with a variety of proposals that have been put forward, beginning with the 9/11 Commission's proposals; a variety of different views coming out of Congress; we're now beginning to see the Administration's own proposals; and a debate going forward not only on the specific contours of what should be in any legislation on intelligence, but, perhaps a question before that, which is: Is this the right time to do it? Are we rushing into something that requires more time?

I think we're seeing a real framing of the debate now, between the 9/11 Commission, which has become very active in pushing its own proposals and arguing that this is a critical moment, that we need to act and act quickly. And, as we saw earlier this week, a number of former senior officials who are arguing that this is a tricky, dangerous set of propositions that require careful study.

And, so, we're going to have a chance this morning to examine the contours of this debate, both in terms of what the proposals are; what needs to be done; what the risk are; what the choices are and how they would affect not only the intelligence community itself, but the broader question of American foreign policy and national security policy decision making.

To discuss these issues, we have, as always, a very distinguished group of analysts here. We're going to begin with Mr. Falkenrath, former Deputy Homeland

Security Advisor to President Bush, who has been deeply involved throughout the Administration in dealing with the full range of homeland security questions.

He's going to look at where we've come over the last several years and his perspective on what should or shouldn't be done, going forward.

Then we're going to turn to Ivo Daalder, Senior Fellow here at Brookings, who's going to look at a part of the question, which I think has not gotten the attention it deserves, which is: The relationship between this debate about intelligence community reform and the actual policy making process. Because, after all, the whole point of intelligence reform is not reform for its own sake, but whether it leads to better, sounder national security decision making.

And, finally, Zoë Baird, the President of The Markle Foundation and also Chairman of the Markle Task Force on National Security in the Information Age, who has been leading a--what I say modestly, but in a way with conflict-of-interest, since I've been part of this project--a remarkable task force of former senior national security officials; some of the leading innovators in the IT community; and civil liberties and other organizations throughout the country--looking at the broad question about how we should think about the role of information and intelligence in dealing with new threats. Has authored several reports which have been an important part of the debate and cited frequently by the 9/11 Commission.

And Zoë's going to talk about the approach the Commission has recommended for looking at new strategies for sharing information and how the various proposals that we've seen--both for the Administration in its Executive Orders and for the members of Congress--might or might not meet the principles that the task force has enunciated as being central to the new approach.

And then, finally, I'm going to conclude with some remarks about the debate over the role about how we think about both the foreign and domestic parts of intelligence in dealing with counterterrorists and whether we need a new approach to that question of separating foreign and domestic approaches.

So, without further adieu, Rich.

MR. FALKENRATH: Thanks, Jim. I think the 9/11 Report was a really good starting place for this policy debate we're having now about intelligence reform. It's a first-rate history of what happened prior to 9/11.

We, in the Executive Branch, after this happened, didn't ever do anything like the 9/11 Report. There was never a really in-depth look at exactly what had happened; what were the precise miscues; what did we know; when did we know it; who knew it; who shared it with whom; who took what action or did not take what action.

There were sort of basic understandings of certain failures: we knew we weren't collecting enough information at home; we knew we weren't sharing it properly; we knew aviation was inadequately secured; we knew we weren't aggressive enough on the offense. And, so, very large policy initiatives were taken to correct those. But there was no fine-grain understanding. And the 9/11 Report provides that fine-grain understanding.

My own judgment is that there were really three categories of problems in counterterrorism intelligence revealed by the 9/11 episode:

The first was, inadequate collection of information against the threat as it emerged, particularly against transnational threats--ones that crossed from abroad in through our borders. The 9/11 Report never comes out and says this, but when they catalogued all the information that was actually known about al Qaeda and about the

specific conspiracy that led to the attack, I'm left with the conclusion that this really wasn't very much.

We really did not know very much. We didn't know enough, certainly, to judge the significance of what little we did know.

Abroad, our collection against this threat relied primarily upon unilateral human sources and liaison reporting, that is, reporting from foreign government intelligence services. And, in both cases, it was far less than what we wanted to see.

We did find, with signals intelligence--as long as we knew what signal to look at--that it was a pretty aggressive effort once there was a known terrorist communication intercepted and translated. And that part worked okay. But we were very weak in the foreign collection with liaison services where foreign governments simply weren't volunteering the information they had or weren't aggressively trying to correct it or our own unilateral human collection.

But the problems were even worse at home in our collection of information here within the United States. The lead, of course, was the FBI, it was a very small service. A relatively small percentage of it was dedicated to counterterrorism collection. They operated under rather restrictive authorities, in terms of how they could collect information; when they could collect it; and who they could share it with.

They had, as the 9/11 Report really shows, a very decentralized internal information flow, so that the director of the FBI, often, would not know what the field office knew. And they had an aversion to sharing information externally. So, our collection at home was a major deficiency, pre-9/11, no question about that.

In addition, we had no organized effort--what we now would call sort of nontraditional collection. All the other places where we could get some information

relevant to this sort of plot. The most glaring example would be our immigration information sources where there was a completely inadequate information database that really is--could have been quite useful in a couple specific episodes.

Second, main category of problem was inadequate information sharing and analysis, as has been well documented, to use the connect-the-dots metaphor. We weren't very good at taking the information that we had and looking at it collectively and in an organized way.

My first point, however, I think is, in some ways, more important, which is that we just didn't have very many dots. So we both weren't connecting the ones that we had, but we also didn't have enough dots.

And then the third, also pointed out in the 9/11 Report is we were not very good at what I would call the tactical response to the information that we had. There are specific things that the federal government could have done at the tactical level to respond to the information and this is as simple as putting a name on a watch list or issuing a warning to federal officers in the field or state and local officers or issuing a regulation to improve, for instance, the security of aircraft or cockpit doors or whatever.

Under all those areas, we found that there were major problems in how we were responding tactically to what little information we did have. Thirty-five months have now elapsed since 9/11 and major steps have been taken to correct all of these deficiencies. I'm not going to suggest that any of them are completely solved, but the Administration has not been inactive on any of these fronts.

And just to sort of mention a few of the things in the three categories I mentioned: On collection, immediately after 9/11, there was a massive surge of resources, both with the existing resources of the intelligence agencies and newly

appropriated resources, too, a foreign intelligence collection against the terrorist threat. Every intelligence agency in the entire Executive Branch doubled or tripled--in some cases, quadrupled--the number of staff dedicated to collecting, sifting through, analyzing counterterrorism intelligence. So, this was your basic surge.

In our liaison relationships, which are very important for this, not surprisingly, post-9/11 suddenly countries were a lot more prepared to provide us sensitive information about their citizens or activities going on within their borders related to global al Qaeda conspiracies. Again, not 100 percent, there are many countries that still withhold information, that don't provide enough, or that they're not aggressive enough about collecting it, in our judgment. But 9/11 was the sea change in their attitudes about their willingness to provide us information. And where they've declined to do so, they heard from us in no uncertain terms that they needed to provide that information. This issue rose to the top of our diplomatic agenda with these countries. Certainly in the first months after 9/11, but I believe it remains toward the top in almost every case today.

On unilateral human intelligence capabilities, major investments have been made in that area post-9/11. They take a long time to show benefits. That's well known, you don't immediately get benefits out of human intelligence investments, but they will--some are beginning to show and they will show more in the future.

At home, also, very significant changes. the FBI is undertaking a profound reform which the 9/11 Commission acknowledges and, essentially, endorses from being an agency dedicated to the after-the-fact investigation of crimes for the purpose of prosecution, to one dedicated to, or at least giving very high priority, to preventive action against terrorist conspiracies before they occur.

It was a difficult transition for the FBI or for any law enforcement agency. Director Mueller is very committed to it, but he heads a big bureaucracy and that some members of which are certainly not all that supportive of that effort. And, so, he has a reform task to carry through. We think he's on the right direction. The 9/11 Commission thinks he's on the right direction, including the creation of a special sort of intelligence service within the Bureau to handle the information collection and flow.

Also in domestic collection, the law has been changed on how we can collect information at home with domestic wiretaps using foreign intelligence. A very important change in our standards of what sort of information is a legally valid predicate for beginning a wiretap on a person who happens to be inside the United States.

We still go to a judge in a special court called the FISA Court, but the Patriot Act and changes in the Attorney General Guidelines and the ruling that the FISA Court of Appeal have totally changed our legal regime for getting information at home through domestic wiretaps against suspected terrorists and their affiliates.

This is immensely important. It's something that is not widely appreciated outside of the small community of people who are working this in the federal government, but the amount of flow of information to senior national security officials today that has been collected domestically under FISA authorities is dramatically beyond what it was when Jim was in the White House, pre--dramatically what it was when Condoleezza Rice was in the White House on September 10.

Today, if you work in the White House in the FBI or CIA, you will see very large quantities of information come into your desk that are stamped FISA-derived. And what that means is they've been collected against a U.S. person based on a foreign intelligence predicate. And also in a way that doesn't necessarily prejudice subsequent

criminal prosecution. It's an extremely important change in how we go about domestic collection.

The Attorney General Guidelines that govern that have been changed. And we have much greater, by no means perfect, but much greater nontraditional collection of information through the Customs Service and the Coast Guard and INS and liaison relationships with state and local authorities that the Department of Homeland Security is in charge of pulling together.

My second main problem, I think, revealed the 9/11 sharing and analysis. I think enormous strides have been made here, frankly. Some, in the beginning right after 9/11 were sort of brute force. Basically the first thing that was done is the President called the director of the FBI and the director of the CIA into his office and forced them to brief him at the same time so at the minimum there would be fusion in the Oval Office--fusion of domestic intelligence and foreign intelligence in the Oval Office.

But that wasn't the only thing that was done. That was followed up by a formal series of interagency meetings, shared by White House staff. And it was followed up by changes in law and Executive Order and Attorney General Guidelines with respect to the sharing of information and when information could be provided that was domestically derived to foreign intelligence analysts.

The law was changed with the passage of The Homeland Security Act of 2002, which has a very, I think, unprecedented affirmative obligation on everyone else in the Federal Executive Branch to provide any information related to terrorism to the Secretary of Homeland Security. I am aware of no other such affirmative obligation in

the law or an Executive Order. Mostly, those authorities are cast in terms of access to, not shall provide to. And it's an important difference.

Then, fourth, the first step that it was, in many sense a precursor to the National Counterterrorism Center proposed by the Commission was, what we called the Terrorist Threat Integration Center, which is a DCI center that takes the domestically collected information and the foreign collected information and analyzes it together to provide a single counterterrorism analytic product called the, in one case, the pinnacle product, it's called the President's Threat Report PTR, which he now gets every morning at the same time that he gets the PDV. And it's one product, one analytic product that uses the information collected at home and abroad and is generated to analytic standards of the PDV.

These are, in my judgment, pretty significant changes that have happened in the Executive Branch. And they're complicated, not, really, widely understood, not the end of the story, by any means, but a lot of progress has been made.

A lot of progress has also been made in just how we respond tactically to information. And in, some cases, this borders on the ridiculous. So, when Cat Stevens gets arrested and taken off a plane in Bangor, Maine, that is, in some respects a by-product of the very aggressive tactical response of the Executive Branch today to information that might be related to terrorism. And so, if anything, we are now committing sins of commission, like, you know, taking Cat Stevens off a plane; rather than sins of omission, which is not watch-listing anyone in the first place.

And that general attitude, I think, cascades across all the federal agencies at this point where they will--and when they commit errors, they're usually errors of doing too much, rather than too little. There certainly will be cases of them doing too

little, but when information comes in--tactical information comes in that has anything to do with terrorism, typically, some federal agency will take it and figure it's their job to react and there's a White House staff who sits back and watches. And if they don't, pushes them to do so.

Now, I think the 9/11 Commission Report contains a quite good history of what happened prior to 9/11. But, I will note that, in its historical sections, which I read very closely and I wish had been available to me and others in the White House right after 9/11 that they never argue that the failures that occurred prior to 9/11 were the result of the bureaucratic structure of the Executive Branch.

They never actually argue in the historical sections that these failures were the result of the organization of the Executive Branch. Rather, they're failures of performance, of management, and of the habits and legal regimes in which the agencies operated.

And this is an important point, because when we come to their recommendation, they, of course, have a major re-organizational recommendation. But their analysis never says that organization was the main problem or even, a problem. It's quite remarkable, you read those ten chapters of history and you look for any sentence which suggests that the problem, the failures that preceded 9/11 were organizational in character, there is none in the 9/11 Report.

And, furthermore, they have no analysis or assessment of the post-9/11 that have occurred in the Executive Branch. There's everything that happened in the federal government in the 34 months that went between 9/11 and the publication of their report this July. They have a few, what I would call, summary judgments, based on anecdotes taken from the field interviews. But there's no comprehensive assessment.

There's no, really, rigorous analysis that goes into what has been happening in the last 35 months in the Executive Branch. And that's an important point and, for me, speaks volumes to the appropriateness of their recommendations.

Nonetheless, they made a major reorganizational proposal. In my judgment, it's flawed in many respects, but it has been a seminal event in our political debate and it's triggered legislative action that looks quite likely to produce legislation, at least in both chambers and, possibly, on the desk of the President. And they're hard at work on it.

I don't think that the recommendations of the Commission which motivated this legislative effort follow from their historical analysis. To put it bluntly in a real case, the failure in January of 2000 for the CIA to watch-list Halidal Mindar [ph] has nothing to do with who controls the NRO budget. It was just a failure of a specific guy in a specific job at CIA to not tell the State Department this name of a person they should have. The organization didn't prevent him to it, it's just a failure.

And, furthermore, I think the Commission's limited understanding and assessment of the present organization of performance of the Executive Branch raises doubts in my mind about whether they really know what problem they're trying to solve, today. And whether the proposed solutions that they have are appropriate today. Maybe they were, 35 months ago, but are they, today? And I think the Commission really doesn't know in this respect.

I then, put myself in the camp of skeptics about rushing to complete this legislation this year. I think there's a real potential to do more harm than good in this legislation.

Now, I do happen to believe that there are problems in our counterterrorism intelligence that still exist and that could benefit from legislative action. I'm not, here, saying we have no problems, but I don't think they've been correctly identified by the 9/11 Commission. And I think far more important than who controls the budget of the National Geospatial Imagery Agency is really what is our authority and our capability to collect information against transnational terrorist threats. And once we collect that information, who can see it and what actions can be taken based upon it.

These are much more difficult and complicated questions than what does the org chart look like. But, in my judgment, they are far more important for our ability to prosecute the War on Terror successfully.

And here, just one example, which the 9/11 Commission completely glosses over and is not the focus of any of the debate today, are the FISA provisions that I talked about in the Patriot Act, which are set to expire at the end of 2005. And there are 16 key provisions of the Patriot Act-- not all of them are equally important--but some of the most important ones are going to go away unless Congress takes action, which means that certain things that the FBI can do today, that, actually inform actions which we take in the counterterrorism field will no longer be possible at that point.

This, the absence of that power on January 2006, strikes me as far more a greater problem than who controls the budget of the National Security Agency. In other words, who gets to decide which satellite goes where. This is really what the War on Terror is about, it's about can you go and penetrate a potential sleeper cell or a support network for a global transnational terrorist organization? And your ability to do that is

much more about the collection authority for information than it is about who controls budget of great big collection platforms.

Now, a better approach, I think, in this case would actually start with something where the Commission is exactly right. And that is congressional oversight. I think the Commission is exactly right to highlight the problem with congressional oversight here. That Congress has stovepipes and overlapping stovepipes in its oversight structure that are very damaging for a good approach to these problems.

Consider the issues of federal government organization; domestic collection authority; FBI capabilities; and foreign intelligence collection capabilities. Different congressional committees--these are, in my judgment, completely interrelated--and should be looked that together.

They're handled, however, by completely different congressional committees. So, the organizational questions are handled on the Senate side you the Senate Governmental Affairs Committee. The domestic authority questions of what intelligence you can collect are handled by the judiciary committees. What are the capabilities of the domestic security agencies in the FBI, the main judiciary committee is actually not that interested in that question. The committee most interested in it is actually the House Select Homeland Security Committee.

And then the foreign intelligence capabilities are, of course, the two select intelligence committees in both chambers.

This stovepiping on the legislative side, I think, is really undermining our ability to do good legislation in this area to respond to the problems that exist today.

And, so, I think a better approach would be for Congress to consolidate and streamline its oversight authority in both chambers so that the issues of organization

and authority and capability could be looked at comprehensively. And then for a new committee to form in the 109th Congress to carefully go through what's happened in the preceding 36 or 37 months. And then, on the basis of that, come up with a new legislative proposal to deal with all of the issues together and to do so before the deadline for the expiration of The Patriot Act provisions, which is December of 2004.

And I think that is an approach which gives us the potential for landmark intelligence legislation that would really stand the test of time and do more good than harm for sure.

MR. STEINBERG: Thank you. It's certainly a challenging approach to the question and I think gives us the benefit of some actual insight as to what's actually happened. Ivo?

MR. DAALDER: Well, if you think intelligence reform of the Executive Branch is difficult, try reforming the Congress first. But I think the points that Rich put on the table are on the money.

I will talk about one particular element of the reform proposals that now enjoys a consensus across both the Executive and Legislative branches: the proposal to have a new National Intelligence Director.

I think the debate about this has revealed two fundamental issues. One of which has dominated our discourse, but another of which we seem to have ignored and has not been debated, but probably is more important,.

The one issue that we have debated is the power that this person should have in both budgetary and personnel authorities and, most importantly, over what parts of the intelligence community. And this has generated all the different proposals; it's

what has kept reporters up at night to figure out and it is what Washington is about, at least in one aspect.

Washington is really about the relationship of the intelligence reform and, particularly, the national intelligence director, to the policy making process--to those who are responsible and, in some cases, like the President, elected to protect our country. There has been very little debate about how the reform of the intelligence community and, particularly, how the powers of the national intelligence director relate to how the rest of the policy making process maintains its control, in some sense, over this part of the federal government.

And decisions you make on how powerful and how great the authority is of the NID have a fundamental impact on how the rest of the government, and particularly, the President, the National Security Council and the Homeland Security Council, manage the process of generating both priorities and guidance for the NID.

So, let me talk about both of those issues in brief.

Going over the first debate on reform proposals: There are a lot of proposals on the table, and some proposals are not even on the table yet. The House leadership, hopefully today, will come up with its idea of how to reform the intelligence community. And the focus here, again, is on the NID.

On one side of the spectrum you have a proposal by Senator Roberts, supported by two of his predecessors. On the other side, you have the Senate leadership--and, frankly, the Bush Administration, if you look at the details of the proposals, they're not that far apart. And in the middle, you have the 9/11 Commission. The key issue here is how much power should the NID have?

You should have, hopefully, some charts, which gives you the organizational differences between these three proposals.

What does Roberts' proposal do? Roberts basically creates a National Intelligence Director who has complete and total control over the intelligence community--each and every agency, with the exception of those analytical agencies that are in the Defense Department, State Department, the Homeland Security Department, and the Departments of Energy and Treasury.

Under Roberts' proposal the CIA, the National Security Agency (NSA), the NRO, the NGA are all going to be under direct control of the NID. He would split up the CIA, having its analytical component merge with all the other analytical components; having its human collecting component merge with all the other collection agencies; having its science component merge with all the science and technology and R&D development components. A very neat organizational chart, giving the NID complete control over every aspect of the intelligence community, with the exception of the analytical bureaus in the Departments of State, Energy, Treasury, the DIA, and Defense and Homeland Security.

This is a radical change in the way the government has done business.

On the other side, if you look at the proposal by the Senate Intelligence Commission unanimously passed yesterday, and the Bush proposal, which is very similar--the difference is in the details--in terms of the nature of the power of the NID. What they've basically done is taken the current position of the Director of Central Intelligence, who is also the Director of the Central Intelligence Agency and split it in two. And said that we need to have the Director of Central Intelligence named the

National Intelligence Director and separate from the person who runs the Central Intelligence Agency.

And we have to make that person more powerful by giving him budgetary authority, and, to some extent, personnel and hiring authority, although that is going to be shared. But the NID will have to determine the budget for all these agencies; he/she will have the authority to reprogram funds as he finds necessary. But the NSA remains within the Defense Department. The NGA remains within the Defense Department. The control is, in that sense, shared.

The 9/11 Commission tried to come up with a way that bridged the gap between a fundamental, radical reform and what one might call the minimal reform that is now on the table in the Senate, and likely to be on the table in the House. The 9/11 Commission said that we really need the NID to have control of these agencies in a direct way, but it ought to share it with the other agencies.

So, they had three deputy directors: one for foreign intelligence, who would be dual-hatted as the CIA director; the second for defense intelligence, who will be dual-hatted as the undersecretary of defense for intelligence; and a third for homeland intelligence, who will be dual-hatted, either as the head of the FBI intelligence shop or as the undersecretary of homeland security for intelligence and analysis.

The 9/11 Commission tried to create not only a NID with budgetary and hiring authority, and with actual direct control over agencies by at least dual-hatting his deputies.

So, those are the three ways in which the debate has been going on. As legislation has moved forward, we have seen increasingly that the minimal approach has gained control in the intelligence committee: two days ago, the Roberts' proposal was

defeated by a 12-to-5 vote. It's sure to come up again on the Senate floor, but given that it went down in committee, it's unlikely to be accepted on the floor.

So, what we're left with is, basically, a reform that creates another layer of bureaucracy within the U.S. government: the NID who will have some power, particularly on the budgetary and more limited power on the personnel front. And the NID will also be the principal advisor to the President on intelligence affairs.

What does this do to how the intelligence community is going to support the policy making process? Because, ultimately, that's why they are there. The intelligence is an input into the policy making process. It is not an output. We don't do intelligence for our own sake. We do it to inform our policy and our policy making: to decide whether it is possible to do "A" rather than "B." So, having the relationship between the intelligence community and the NID, as well as the policy makers, developed in some detail is extremely important.

Equally important is the realization that our intelligence requirements are different depending on what policy area we're talking about. Much of this reform is being driven by 9/11. Very little of it is being driven by the failure over Iraq WMD. Frankly, none of it is being driven by our ability to have better diplomacy with regard to East Asia. That is to say, we have many intelligence requirements, yet reform appears to be driven by one, an important one--antiterrorism or counterterrorism--but one intelligence requirement. Not the requirement, for example, to deal with WMD proliferation. It's not being driven by the requirement to anticipate future crises in failed states. If that were the way in which you would drive reform, you may, in fact, end up with a different organizational structure.

Clearly, there are different requirements. For example, the Defense Department paints a very clear picture of what the enemy and his capabilities are, assuming you know who the enemy is, which, in this world may not necessarily be the case. Then you need to prepare for the worst case, and you have intelligence that informs that.

The State Department also needs to have a clear picture of what is going on, but it is less interested in the worst case. It's much more interested in what's likely to happen. What is the most likely thing to happen tomorrow in Congo? In Indonesia? Because that is the kind of intelligence information it needs in order to conduct its business.

In the Homeland Security area, it isn't necessarily that you want to know what happens--you'd like to know what happens tomorrow--but you also have to think about what can conceivably happen. What are the vulnerabilities out there that we need to test against so that we can protect and prevent those from coming about?

In other words, there is no one-size-fits-all intelligence. There can, therefore, not be a reform package that tries to reform to deal with one set of problems--9/11 and the terrorist attacks--but in the process may ignore the other set of problems.

The point has not been lost, as one would expect, to the Administration, nor, indeed, to the Senate Committee. Because how they now propose to resolve that disconnect is, in part, by creating what is called the Joint Intelligence Community Council, which is an advisory or assistant council to the NID. This joint intelligence council which will consist of the secretaries of Defense, State, Homeland Security, Energy, Treasury, Attorney General and will--under the Senate bill--be chaired by the National Intelligence Director is supposed to help make sure that the Intelligence

Director will guide the intelligence community in a way that is responsive to all the myriad different requirements of the Secretary of State, the Secretary of Defense, et cetera.

Here's your problem: This council sounds a lot like the principles committee. Or in either the Homeland Security Council or the National Security Council. But in one case, as the Joint Intelligence Committee Council, it will be chaired by the National Intelligence Director.

In the other case, the National Intelligence Director will be a member. And, indeed, as a statutory member, he's an advisory member to the NSC. So, when you meet to discuss intelligence, all of a sudden the intelligence guy is in control. But when you meet to discuss policy, as if you can really make those two sets of issues that separate, the person who has chaired the intelligence meeting now becomes an advisory member. Instead, the policy meeting is chaired by the National Security advisor or the Homeland Security advisor, since, under this Administration, we have two councils.

This is one way to make absolutely sure that either there won't be good policy guidance to the intelligence community, or, more likely, the intelligence and the policy makers become so intermixed that, the issue of the politicization of intelligence, gets put on the table, for example, the Iraq WMD problem.

We need to figure out how to make sure that the policy making process dominates and informs, guides and, at some point, coordinates what we do in the intelligence world. The critical element in the guiding principal must be that the NID and the intelligence community exists to support the policy making process, to be guided by it, and to be overseen by it.

One final point on the question of the policy making process: As the Senate Intelligence Committee recognizes, though the Administration's bill does not, the era in which we should have two policy making councils, one for homeland security and one for national security ought to be put behind us.

The notion that when we are dealing with a transnational threat--a threat that crosses our border to be foreign and domestic—it is to be dealt with in the policy making sense by two different councils. One that deals with the border outward, which is the National Security Council. And the other that deals from the border inward, which is the Homeland Security Council. And that these two very different councils, although the personnel will overlap, are to guide one intelligence community. That era should be over by merging those two councils and making very clear that when policy guidance is required, the intelligence community becomes a consumer of that guidance, rather than the producer.

MR. STEINBERG: Thank you, Ivo. I'm going to come back to some of the issues that you've raised in my own comments. Zoë.

MS. BAIRD: Thank you. The political debate that we're engaged in right now is the most substantial post-Cold-War discussion of how to protect the nation that we have had. And it's worthy of note that this political debate is all about how do we improve our ability to collect and use information.

Intelligence is the focus of the political debate, it has been since 9/11 when we started talking about stovepipes of information. And connecting stovepipes when we talk about intelligence failures. And you look at the 9/11 Commission report and what do they focus on in terms of what we should have been doing to prevent this

episode, it's whether a bit of information in one place got to someone else who might have understood it's importance or acted on it.

And this is really something that, by now, you probably take for granted, but is worthy of pausing on. We are not talking about enhancing our military capabilities. We are not talking about improving diplomatic relations. We are not talking about sorting out a global financial system, which has substantially changed since in the Carter Administration, we figured out how to use the tools of the financial system to go after those who would do us harm.

So, looking at this question of the importance of intelligence or information to protecting the nation, we started three years ago-- in this Markle Task Force that Jim mentioned--discussing these issue of how the government could better equip itself to both find and utilize the information that it needs to try to protect the country.

This task force was made up of national security experts from the time of the Reagan Administration to present, every Administration, both parties. It was made up of civil liberties advocates, including people who have been hostile to other government programs. It was made up of people from the information technology community, a lot of folks from Silicon Valley who understand both big systems and understand new technologies.

And, in the course of this work, we made some recommendations which have formed the basis of Executive Orders that the President put out about a week ago and are incorporated in most of the major legislation. They were recommended pretty much wholesale by the 9/11 Commission. And I think to try to help you understand that. I'll give you some examples of things that have transpired and how they might look

different. And this is not all about technology. You know, this is called the Share Network, but it's really a set of capabilities. It's not all about technology, it's really about how government does business differently.

Congresswoman Jane Harman has called this a virtual reorganization of government and we've argued that regardless of these other structural reforms that we need this capability and we need it very fast.

You know, Rich talked about things that have been done and remembering conversations with Rich, that's okay, I can talk through music, I have kids. Rich talked about things that have been done, but remembering conversations with Rich when he was in government, he's certainly had a lot of frustrations about things that weren't being done. And most of those things have to be--have to be with agencies protecting their traditional interests and their traditional ownership of information.

The old Washington adage that knowledge is power or that information is power, that hasn't gone away. Try as one might, to say that if you have something that somebody else might find useful, you should give it to them. That hasn't gone away. So, what we hope will be different now, moving forward with these Executive Orders or legislation, is that there will be a system developed that changes the rules for people in government so that they can't inhibit the sharing of information.

We have had a very hierarchical government, so moving information forward has meant moving it up. We have done great things on getting more information to the President, but we will not prevent terrorism if the President is the point of intersection between foreign and domestic information.

He will not be able to see what we need to act on if he's the first person who hears what the FBI director and the CIA director have to say. We, instead, need

people who are, themselves, examining a problem. Having the ability to get what other information the government might have on that problem. So, you have the FBI agent in Phoenix who was suspicious of someone who was taking flight training. And he sent a memo up in the traditional way government operates. Sent it to Washington; I'm concerned about this; is there something we should do about this?

Under our notion of these share network capabilities, he would be able to reach out horizontally, other FBI agents, people in state and local governments, and see if anyone else has expressed a concern about Arab nationals taking flight training and not learning to take off or land.

And they would, themselves, informally, create a task force to talk about what information do each of them have; why does it concern them; when there's the person detained in Minnesota, that information, then, adds to the picture and the people who are working the problem will be able to find out if there are other bits of information that relate to that.

Now, this kind of capability can't happen in America unless there are strong guidelines that preserve privacy and that audit whether or not that's being complied with.

So, the system that we recommend is one that not only requires the sharing of information, it causes people to right to share rather than right to classify. It causes people to move from a system of classification to a system of authorization, authorizing people to get access to information. And it eliminates originator control. All these things have been put now, in this Executive Order and are in the legislation. It eliminates--if the CIA creates it, they don't own the document. The government owns

the document, Americans own the document. The document has to get to the person who needs it.

But we also have recommended an approach that requires the minimizing of personally identifiable information. So, unless there's a need to include the name of someone, that name doesn't get included. You can go back to the person who knows the name if you can demonstrate that you need it. But we put a priority on sharing knowledge, but also, at the same time on minimizing privacy intrusions.

The notion, also, is that it's not just any information that you want that you can collect. The government employees work best when they know very clearly what it is that they can do. So we need to empower government employees to act in this way, but we also need to make it very clear for them what the rules are for what under a new system they can look for.

In the past, the FBI, for example, had very clear operational guidelines that told FBI agents what they could do. They were law enforcement guidelines. When we moved to having FBI agents collecting domestic intelligence, we don't want them to be freed of all constraints, because we're not, necessarily, going to be using that information to lock someone up.

We still believe that the government has to exercise some constraint in how it operates against U.S. citizens. That just to be inquiring about someone can be harmful, whether or not you ever arrest them. So, we would require a documented relationship to terrorism for the inquiry that someone could go back and audit later or the system can audit later, in order to assure that what was done was appropriate.

We're hopeful as the Executive Orders are interpreted that they do have a very clear definition of terrorism information that all the activities relate to. We're

hopeful that the guidelines will be very specific, that there has to be a documented and auditable relationship to terrorism before information is collected and that this will be in the legislation, if there is legislation. Because these new borders or barriers, if you will, to intrusion on privacy are as important to develop as the new means of sharing information.

Jim is going to talk about the merger of domestic and foreign intelligence and so, I won't get into that. But we used to have a notion that we had different rules at home than we had abroad in order to protect the civil liberties of our citizens. That barrier to sharing domestic and foreign information won't allow us to do what we need to do to protect us against terrorism. But we need new rules, new clearly understandable, half a dozen clearly understandable decisions, policy decisions to be made by the President which say, we're not collecting any information domestically, we're collecting terrorism information. And this is how we're documenting why someone thinks that looking at something is going to help them understand.

The may be wrong, we can't punish people for making wrong judgments, but we can learn from it and improve and iterate the system and constantly try to improve it. But we need to give direction so that we're able to have both security and privacy with a new system where we're so heavily dependent on information.

The other major area that the Executive Orders address is one of how to use all the tools of government in going after terrorism. And the Orders provide for a new direction at the center of activities of all different agencies. An undecided question is whether or not once the--for example, if the Counterterrorism Center were to task the FBI to collect information based on what the Counterterrorism Center is seeing from

outside the U.S., can the FBI exercise independent judgment about whether or not it's legal for it to do that.

We've conclude, in looking at the laws that govern domestic agencies that the existing laws are really pretty good. And that, as long, as the agencies don't use their judgment about whether or not they have the legal authority to do something to be an exercise of their priorities, as opposed to their judgment about the law, that the system should work pretty well with having a centralized--whether it's a national intelligence director or a Counterterrorism Center directing other agencies to act as part of a collective whole of the government, where there's certain things we need the Treasury Department to do and certain things we need Customs to do and certain things we need the FBI to do. And there's got to be somebody who's overseeing all of that and who is making sure that it's drawing on all the resources and assets of the U.S. government.

This is a shocking absence, now, you would think that our National Security Council would have that ability or capability, but we've really never had the political debate that has led to the moment which said this needs to be done.

In 1995, there was a congressionally created commission that had a lot of members of Congress on it, Senator Warner and others, Porter Goss was on it, which looked at what the role of the intelligence community was.

[Technical interruption--tape flip.]

And we had a chapter in this report, I was on this commission and we had a chapter in this report, which said that we need to begin thinking about terrorism as a national security threat, not as a law-enforcement matter. And the purpose of this chapter was to say we need to be able to look at all the capabilities and assets of the U.S.

government and to put them in a cohesive way against this threat, not just think of terrorism as something that we use only our law-enforcement tools for.

The Executive Order takes a very big step forward on this front, it hasn't been noted in the media, as far as I know. And it is a very substantial change. And in the judgment of our task force, a very appropriate one. But along with that change, we need to have the half dozen new rules that the public clearly understand or any system we start with now will be back in Congress in two years, it'll be shut down and it won't be sustainable because, undoubtedly, people will do thing that the public doesn't realize is part of this whole package.

But if we have the public debate, if the President does, in the exercise of the Executive Orders, the implementation of the Executive Orders or the implementation of legislation, clearly articulate what are the policy decisions he's making about how domestic information can be collected and shared, then we can substantially move the government into its new responsibilities and enable information that might be deeply meaningful sitting in separate places, whether an FBI agent in Phoenix or with the New York Police Department to become meaningful because people who are working on a problem can come together, can see what each other has, can deploy state and local government to look for certain things that need to be looked for.

For example, if we have a suggestion by a source in Kabul to the CIA that there is a cell in the U.S. that is trying to engage in a biological weapons activity, that the biological agent would need to be stored in something that looks like whatever it looks like.

If you have this kind of information-sharing network set up, you can use state and local entities. You can use labs, biological labs around the country without

having to share with them everything you now, but use them as part of a system of feedback and information exchange.

So, we think that that is, perhaps, the most important change that can occur from the 9/11 Commission recommendations and is necessary regardless of the structure that's put in place. I'll leave it there.

MR. STEINBERG: Thank you, Zoë. I'll just make a couple of observations, then we'll get to your questions.

First, I think one of the things that the discussion of my colleagues really illustrates is that embedded in this debate, this single debate that we've talked about in terms of intelligence reform, are, really, three separate analytic questions. They're closely related to each other, but there are three separate challenges.

One, as Rich suggested is: What kind of information are we going to collect? What information do we need? And how do we go about getting it? And what kind of structures and processes do we need to deal with that question.

Embedded in that, it seems to me, are two problems: One is the question of trade-offs, both of deciding what resources we need and how they should be allocated among the various missions and actors, if you would.

But also, in connection with those trade-offs, how do we coordinate them so that when people are collectors who have different capabilities are all trying to respond to the same problem, how do we make sure that we're bringing together the full range of assets to collect comprehensively against a particular problem. So, in some cases, it's coordination and in some cases, it's just making judgments about how do we use finite resources, whether they're human intelligence, platforms, and the like.

Second question which is the more traditional intelligence question is the analytic one, which is: How do we understand what this information is that we have? How do we make sure that we get the best mileage, the best judgments, the best perspective about the significance of the dots?

And there, it seems to me, that the principal question is making sure that we bring the full range of expertise, knowledge, perspective to make sure that we maintain the diversity and challenge that we don't have the collective mind set, we don't have the single view, but manage to bring enough different perspectives to bear that the different potential meanings of this welter of undifferentiated data can be brought to bear, assessed, and made useful to people who have to make decisions.

And the final challenge is the operational challenge, that is: What do you do with it, once you've collected it and you've made some judgments about what it means. And there, there's a very substantial question about how do you, again, coordinate and bring together the various assets? But, also, not only how do you operate on them, but, in many cases, how do you make a policy judgments about whether you should take an action in a given case.

And, so, there you have the challenge, both of the operational side of just simply saying who's going to do what about it. But, second, also, because there will always be choices about which--should we use a law-enforcement approach; should we use an intelligence approach; do you want to act now to interdict something; do you want to stand back and try to understand it. You've got all those choices have to be made and you need a process and a set of arrangements to deal with that challenge.

And I think one of the difficulties that this debate has had is that each of these have a different set of requirements. If you were to organize a system around each

of them, you would probably come up with different judgments about the roles and responsibilities of different actors. And, yet, you have to construct all of these missions together.

And, I think, by having some clarity about the need to do all and try to develop a structure that recognizes that each has its own different imperatives, I think we will end up with a more nuanced approach.

But I think the one thing that is common to all of them and it's one reason why I, perhaps, am a bit more sympathetic to the Commission's approach than some of my colleagues, is that accountability is important in each of these cases. And that one of the big challenges that we've had, it seems to me, is that even with the changes that have taken place--but other than the President who's obviously accountable for every dimension of this, it is the government that we elected him to run, that we haven't really addressed the question of who is responsible, in any case?

Who's responsible for making sure that each of these fundamental missions are taken care of? Who can we look to to make sure that all the actors in the system are doing what they need to do?

And I think that it's not necessarily the case that it has to be a single person for each of these things. But I do think that there needs to be some greater clarity about where those decisions are going to be made.

And I think that even in the Commission's own judgment, it's not always clear where that accountability should come. But I think that that dimension of it really needs to be fleshed out, because, as has often been said, you know, whatever you think about, you know, the events of both 9/11 and Iraq, it's all clear who ultimately should be

looked to be said, here's what went wrong, here's the person who's responsible for making sure that it doesn't go wrong in the future.

And I think that part of the debate needs to get resolved.

I want to say a word about this question about foreign and domestic intelligence. Not the least of which because this has, once again, been raised by the distinguished group of former government officials who put the go-slow sign up.

It has been true for some time that we have largely divided the questions of security at home and abroad into two very distinctive boxes. And there are a lot of reasons, historically, for that.

There has been a strong sense that both for civil liberties reasons and for operational reasons that these are two different spheres of operations where different rules should apply. And, because different rules should apply, different institutions should be responsible for conducting activities in each of these spheres.

We see that with respect to policy making in the decision to have, as Ivo pointed out by the Homeland Security Council and the National Security Council. We see it on the intelligence collection side, where foreign intelligence is collected by the CIA and NSA, where domestically, intelligence is collected at home, primarily by the FBI. There's some other agencies that have limited roles, like the Secret Service and others, but, largely, by the FBI, both on the technical and human side.

We see it in the debate about the role of the Department of Defense and the question of whether the Department of Defense should have a role in homeland security, particularly in dealing with actual terrorist attacks in the United States.

And, as I said, there are historical reasons for this. We have the posse comitatus laws coming out of the 19th century, having to do with fears about the role of

the military in the reconstruction period. We have this division between the CIA and the FBI, which was deeply re-enforced by the experiences of the 1960s and the fear of the abuse of the system and the like, with respect to the NSC and HSC, I think, both the historical focus of the NSC on external affairs, in a sense, here's a system that works very well, let's not overburden it with other activities that it's not used to where it sets up problems and constituencies that it's not used to having to deal with, so let's create a separate agency.

And throughout the debate, we've seen a continuing discussion about whether these divisions should continue.

It seems to me that for the reasons that both Ivo and Zoë have suggested, we clearly need to rethink about these divides. That, first of all, in terms of the civil liberties concerns, over time, in fact, the rules have begun to converge on intelligence collection both at home and abroad.

That is to say that on collection at home, we more and more find that there are--the limits that we have on collecting about U.S. citizens, also apply to non-U.S. citizens in the United States. That restrictions that are for any intelligence collection in the United States have lost the distinction between U.S. and non-U.S. citizens.

And similarly abroad, the rules that we have been applying at home are now beginning to be seen to apply abroad, as well. That is to say, if you try to collect against U.S. citizens abroad, the similar rules and procedures are now being used to protect against the misuse of intelligence collection against citizens abroad.

And because the nature of the threat doesn't easily recognize these distinctions between at home and abroad, it becomes harder and harder, in the case of

collections against the Internet, for example, almost impossible to even identify what is at home and what is abroad.

So, it seems to me that on a substantive basis there's a stronger and stronger case for seeing this comprehensively, as a whole. Both on the intelligence side, on the resource side in terms of trying to decide where our priorities are and on the policy making side to decide how we should focus on operational activities.

The President's own arguments where he talks about the need to deal with terrorists abroad so that they don't attack us here, really is a reflection of this recognition that we have a set of trade-offs and we need to decide how we prioritize our own strategy. But recognizing that these are choices all within one frame work.

It doesn't mean we have to have the same agencies operate at home and abroad. There may be very important functional reasons to have different individuals and different institutions carrying out those activities. It's not necessarily if you see this as one comprehensive whole, it doesn't mean that the CIA has to be the one who is running agents in the United States. But it does have to recognize that you have to build a frame work that sees these as a part of a comprehensive whole that develops a strategy that begins with what we do abroad, but sees the trade-offs and the interconnections between what we do at home and what we do abroad.

So, with that, let's turn it to your questions. A whole range of issues, fair play.

PARTICIPANT: [OFF MICROPHONE] [unintelligible].

MR. DAALDER: It shouldn't make any difference, for the moment, Porter Goss has been nominated to be the Director of the Central Intelligence Agency. Under all but the Roberts' proposal, which I think is not going to be enacted, there will

be a Central Intelligence Agency. And he would then, presumably be that person. If the President--whoever that President is--decides that they would like to have Porter Goss be the NID, then they would have to nominate him specifically for that job. But, for now, he is the Director of the Central Intelligence Agency and, indeed the DCI, he's both.

But if you create a new NID, I assume he can stay as the CIA Director if that's what you want, but he'd have to be appointed by and confirmed by the Senate for the new job. And I have no idea which way that will go.

PARTICIPANT: How confident--and this is for any of the panel--how confident are you that the report, the 9/11 Commission Report, accurately reflects what occurred at the very top level of the U.S. government [unintelligible]?

MR. FALKENRATH: Well, you were there for the Clinton part of it and I wasn't directly involved for the Bush part of it, though I was serving in the complex at the time. I find a lot of gaps in the history. The historical sections in the 9/11 Report are written, I think, very effectively, it's a very spare narrative and they don't say what they don't know. And so, they don't speculate in the historical section.

There are a number of, sort of detailed discussions of what was happening at the principal level that just sort of stop at the principal level and it's not clear exactly what was going on in the Oval, so, I suggest--I suspect that there is history, both on the Bush side and a much longer history, actually, on the Clinton side, that hasn't been told yet, but may never be told.

MR. STEINBERG: I mean, I think that there's--I mean there's a lot of richness there. And I think that certain lines of the story are very well explicated. But I think the problem--one of the things that I find--it's understandable because of where the

9/11 Commission Report is coming from is that it's important to recognize that, while Bin Ladden and al Qaeda are the dominant terrorist threat, a lot of what happened, particularly through the mid 90's was a much more complex threat environment.

I mean, there's not a lot of discussion about Iran and Iranian-sponsored terrorism. There's not a lot of discussion about some of the other challenges that we faced. And, so, there really is, there's a complexity that I think either it may--I'm not critical of the Commission for not doing it, but in terms of the range of things that people had to deal with, that it needs to be seen as part of the context.

I also think that there is a difficulty in looking at inside the sort of way in which the day-to-day work, because the day-to-day sort of isn't dramatic. And, yet, a lot of it is the development of the day-to-day.

And I think the final think is that there needs--there's still not, I think, a full understanding about some of the obstacles to change that were faced during this period. And some of them are legitimate; some of them having to do with the fact that there were other missions, other priorities that were real and legitimate.

I mean, as we've come to recognize that even as important as terrorism is, there are other challenges that the United States faces, like nonproliferation and the like. And, so all these things were being dealt with by the same people and a lot of the same organizations.

That having been said, though, I do think that a lot of light has been shed. And a lot of important historical record has been established that I don't think ever would have happened, had there not been a 9/11 Commission. So, I think that's really an extraordinary achievement. And I say that not the least of which because we have some of the very distinguished staff of the Commission in the audience here today.

MR. FALKENRATH: Excepting those, of course whose--no.

MS. PERLMAN: I'm Diane Perlman [ph], co-chair Committee on Global Violence and Security for the American Psychological Association. Anyway, this is, obviously, a multilayered approach to intelligence and everything you're saying is important. But there is one layer that I often find either missing or misunderstood or just not known about, which is what I'm starting to call psychological intelligence. And, for example, before the war, everybody that I know in the social sciences in the field were predicting everything that's happening now, as opposed to having a square named after Bush this year or being greeted with flowers. And you mentioned Jane Harman, she has been talking about group think. And so we're starting to understand some of the psychological dimensions of how we perceive the enemy. And Ivo, you mentioned that we have to prepare for the worst case scenario, which we do, but I think we also can think of strategies to prevent the best case scenario and actually design--I mean, prevent the worst case scenario but also we can design for the best case scenario, but a lot of it involves bodies of knowledge that we don't normally use involving you know, tension reduction, conflict transformation, understanding the psychology of the enemy and their desire to take revenge upon us.

So, we sort of have a world view like there are threats out there and we have to do everything we can to stop them, without understanding ways that we can actually, you know, predict and prevent and change the outcome through our policies. So, is there any interest or anybody working on integrating some of these? Because it's a lot cheaper and could have a much more profound effect than to, you know, constantly-- I mean, sometimes, you know, there is the law of unintended consequences.

MR. FALKENRATH: I agree with that. I will say I think the most interesting sort of next phase in the War on Terror is going to be this much broader question of, is there anything we can do to reduce the hatred of America in the Islamic world that is the wellspring of so much of this terrorism? Recognizing that only an infinitesimally small percentage of the Muslim population in the world decides to become a soldier of God and commit suicide, while killing, you know, as many westerners as they can.

Some do, and it's not happening elsewhere in the world. And I think this is a very deep question. One that doesn't suggest obvious answers or obviously effective policy responses, but, something that definitely needs to be worked on very hard.

We cannot fight a completely tactical War on Terror, although the tactical part of it must continue and be effective.

MR. STEINBERG: Just to note in passing, we'll see if it produces anything, but one of the very significant projects that DHS has now put out to engage the social science community is to try to bring social scientists into this debate and to their own analysis about trying to understand the wellsprings of the problem and we'll see if it is effective, but the fact that they are reaching out to the community of psychologists and social scientists, I think is a sign of a recognition of the problem.

MR. ENSOR: David Ensor, CNN. A quick question for you, Jim, and one sort of generally for, maybe, Richard. You said you were more favorable to the 9/11 Commission proposal than, perhaps, others, so what do you think of dual-hatting? Some people don't think it works, but I wonder whether you think it works, you've obviously, seen it. There are dual-hats in government and there were when you were there.

And the other question is, Richard, you raised the question of not collecting enough, that you felt that the Commission Report highlighted not directly but by the way it listed things. And I very much agree with you and I worry that, perhaps, the most fundamental questions may have to do with getting better at spying in this country; getting better at--I mean, for example, most of the successful human intelligence that the United States seems to get, seems to come from walk-ins. So, why isn't it rewarded to solicit walk-ins? Why isn't it better rewarded at the CIA to squeeze walk-ins for what they're worth, to stimulate more of them? Why aren't knocks [ph] in wider use? Why are we so bad at languages in this country? Why isn't there more money being spent on that? And why are the rules so tight for hiring first-generation Americans whose mother tongue is something else that's useful at the CIA? I mean, there's a whole series of questions about human intelligence, it seems to me are important. Now, maybe some--maybe Porter Goss will answer them all by himself. But I worry about those kinds of issues and wonder whether you think that the moving the boxes may be missing that kind of thing?

MS. BAIRD: May I just interrupt for one minute. I apologize and I just wanted to apologize to the audience that I have to leave for another commitment, but I didn't just want to walk out. So.

MR. STEINBERG: Thank you, Zoë. I think that dual-hatting is, basically, a kind of a political compromise which, in some respects may get the worst of both worlds. And I think the reason it was done was because there was a reluctance, particularly with respect to the DOD assets, to fully take on the question about who's in charge?

But I think at the end of the day that somebody and it goes back to my point about accountability, needs to be in charge. It's very hard for an agency like the NSA to be, you know, reporting to two different people with some kind of inflection point of the person who's going to, you know, I mean, this dual-hatted deputy has got two bosses. And I'm not sure how you ever decide what your job is, how you make decisions in that kind of context. I think that, ultimately, you need to decide with respect to those authorities, you know, who in the end of the day gets to make the call? Is it going to be the NID or is it going to be the Secretary of Defense?

I think there's no problem having somebody from that community come over and be a deputy, but not to be the operational person who's responsible for the agency left in the other building. So, I would prefer that the decision just get made.

And I think it's--I think a good case can be made on the national intelligence assets, that those decisions should be made by the National Intelligence Director with input, obviously, from the Secretary of Defense. And that the tactical assets, the tiara [ph] assets ought to be fully under the control of the Secretary of Defense.

But, I would rather have it stay where it is than to put this person in what I think is just an insupportable position. I just don't believe that the dual-hatting really solves the problem.

MR. DAALDER: Can I just follow-up on that? Because I think what we've just seen is a classic Washington political game. Which is that the 9/11 Commission and the consensus behind it seemed to be to take those agencies away from DOD. But they decided that, politically, they couldn't do it. So, they ended up dual-

hatting and that has been rejected now in favor of making sure that the agency stays within DOD.

But in the end, I think we will look back a year or two from now and look at the NID and say, this guy's got no power. And we'll have exactly the same debate we've been having for the last 50 years. We are about to skirt away from fundamental reform just because the Commission didn't do the courageous thing and did the political thing, which is dual-hat to try and solve the problem and, of course, it doesn't solve the problem.

MR. FALKENRATH: I agree with Ivo on this one and also with Jim, the problems with dual-hatting are very serious. Also, there's a problem with almost sort of half-hatting, that is, to give a senior official responsibility for only a portion of the enterprise beneath him. And so the NID in the Commission's concept has these dual-hatted deputies, which is a recipe for disaster, given how operational those people are.

The Commission's proposal suggests, you know, that the Director of the FBI will still have line authority over the operations, for instance, running a counterterrorism investigation in a mosque in Brooklyn. But that the NID will control the budgetary levers. And, I mean, maybe some other personnel levers. Well, this doesn't make any sense, you either--you have, as a senior executive, you have a number of levers to control your organizations and you need them all. You need to control budget, you need to give orders, you need to be able to hire and fire. And you need to organize and decide on office space and redeploy, all of that thing.

And to just say, well, this one guy over here will control certain levers of organizational control, but the others will remain back in their parent agency, in my judgment is really a recipe for disaster. And I agree here completely with IVO. It's, you

know, Jim made the good point in his initial remarks about the need for accountability. And said it in a way that was sort of endorsing of the Commission's recommendation. But I actually find that the Commission's recommendation reduces or dilutes accountability in this respect.

In the area in which I work, which I know best, domestic collection and intelligence, really does it quite severely. Where if you were to enact the Commission's recommendation and then try to figure out who's responsible for a screwed up counterterrorism operation in Phoenix or Minneapolis, I have no idea who that would be. It's several different people. Dual-hatting, I actually thinks works fine in purely nonexecutive policy places, like the White House staff. I think it's--there it's sort of okay, because you're effectively dual-hatted anyway because you've got a number of different very senior officials who you have to answer to and you have to, you know, the Chief of Staff has to be on-board, the National Security Advisor has to be on-board, in some cases the political advisor has to be on-board, the Director of OMB has to be on-board, so you're not an actor, you're a coordinator and a facilitator.

Question on capabilities and authorities. I differ here a little bit with Jim. Jim suggested that the rules governing collection--foreign collection or domestic collection were merging and becoming the same. In my understanding, you're a lawyer, I'm not--but my understanding is we have rules that govern collection against U.S. persons. Foreign citizens in the United States, U.S. citizens abroad, and certainly U.S. citizens in the United States. And to include U.S. corporations and communication entities that are based here.

So that category has rules that govern it. Everything else for foreign intelligence collection, I believe we have no rules. That is to say, if the DCI wants or the

Director of NSA wants to begin collection against a communication service in a foreign countries which only foreign nationals are participating in, he just gets to do it. There's no law.

MR. STEINBERG: He does, but the problem is that you take a communication service, is that problem is it's harder and harder to know whether they're U.S. persons or not U.S. persons on the service. So--

MR. FALKENRATH: Where that comes through is the presumption-- what is the presumption that the Director of NSA makes and there we do write that down and they're different and they've changed post-9/11. In the old days, the more restrictive standard is, you presume a U.S. person until determined not. And we flipped post-9/11 and we presume not a U.S. person until you have information that says they are, as far as one of the post-9/11 kind of internal reforms. And so I think they're real different.

On the foreign intelligence side, the main questions are capabilities. What are you capable of doing? It's not a question of what are you authorized to do?

On the domestic side, for anything relating to U.S. persons, it's both what are you capable of doing and what are you authorized to do? You have to look at both. It's far more difficult and complicated. So, I don't really see a leveling so much, I'd like to keep foreign intelligence as you're more or less authorized to do anything you're capable of doing. I believe that's what it is.

MR. STEINBERG: We could have this debate further. But the problem is that one domestically, we lowered the barriers.

MR. FALKENRATH: Indeed, yes.

MR. STEINBERG: And with respect to foreign stuff, certainly with respect to U.S. persons abroad and at home, the rules are now the same. That is, we don't--

MR. FALKENRATH: Yes.

MR. STEINBERG: So, the only question is, how much difference is there now, against foreigners abroad as against both foreigners and U.S. generally? And I think the answer is that my view is that they're becoming more similar, too.

It's, but I don't disagree with you as a policy matter. I'm just saying as a practical matter, I think they're the same.

I think, I just want to go a little bit to the other part of David's question, though, which is part of the reason we have these problems is that we're always solving yesterday's problem, not the next one. And the reason we have restriction on knocks, the restriction on walk-ins is we used to worry more about Walter Jameses [ph] than we worried about this. And so, when you got walk-ins, the judgment was a very substantial percentage of people who walked in were there for the wrong reason. They weren't there to help you. They were there to penetrate you or they had or at least you didn't know.

And we lived in the Angleton [ph] kind of you know penumbra that was always concerned about, you know, who was trying to take advantage of you. And so there was--and you can remember all the great stories of the volunteers of the Soviet era and how, you know, we treated them or didn't treat them right. But it was because the dominant fear was and the assessment of balance of benefit and risk was that whatever benefit you might get out of it was outweighed by the fact that you would like somebody

who was going to either destroy your intelligence or worse penetrate your organization and get into it.

So, like so many things now, the question is, are we now re-evaluating those things? When it comes to foreign nationals, are we--should we draw a different balance between the risk that these people will be double agents, you know, or have a not legitimate motive versus what we're denying ourselves in terms of capabilities. And I would hope that we are revising those risks in judgments.

MR. FALKENRATH: We are and there's likely someday there'll be a scandal. Based and then we'll react the other way. The pendulum will swing the other way.

MR. STEINBERG: I think we're about out of time thank you, oh--

MR. MITCHELL: Gary Mitchell from The Mitchell Report, I'm trying figure out how to phrase this so that it is neither argumentative or rhetorical.

MR. STEINBERG: Gary, you're never either.

MR. MITCHELL: I'm also struck by the sort of, I was thinking about Einstein's and I will butcher this to paraphrase Einstein about we can't solve the problems of today and tomorrow with the minds and the mind sets that got us there. And yet, it seems to me that that's exactly where we up on the Hill personified by the nomination of Porter Goss. And that's not directed at the person, it's directed at sort of the profile.

And the second thing that I'm struck by in listening to all of this is the concept of accountability, that somehow, in the--relating to the prior question, that by moving around the boxes, we're going to get at the question of accountability and it

seems to me that if there's any lesson that we've learned in the last three-plus years, and probably before that is that accountability is a dead issue in this town.

I don't come to Richard's point about we don't have enough dots. I don't know what there was about the August 6, 2001, PDB that didn't make somebody say, we need to be doing something. And that if we didn't respond to that appropriately, a head or some heads should have rolled. Ditto with what I would describe as intelligence failures that have followed that I don't need to roll out.

But, to me, it's a really serious question, and that is we have lived through some remarkable circumstances, in the last three-plus years, the names of which we all know. And I don't think there's a head rolling anywhere in Washington. So, how do we get at the question of accountability? I don't think it's by moving boxes around.

MR. STEINBERG: There's a political question, which you can debate and I'm sympathetic to your basic argument, but it does seem that there's just--there isn't any responsibility. But I do think that, let me say there are pluses and minuses in organizational change. But the minuses are that they become one dimensional. They organize around a single problem and you sort of try to optimize for that but all problems are multidimensional and people have multiple responsibilities and so, you may damage your ability to deal with others.

The thing I liked best about the Commission Report is, I believe very strongly in the idea of the National Counterterrorism Center. Because I do think that the director of that center, in my judgment, has accountability.

And, hopefully, would have the authority to go with it. But there is somebody, and I see it as an outgrowth of the CSG and since I lived that experience, I mean, the advantage of that kind of system is there's a place that you go and you say,

who is responsible for deciding a strategy and in the implementation of the strategy to deal with this particular threat? And the Commission's proposal creates a place where I know the answer to that question. And I want them to have the authority, including over the FBI and others so that I can then say, if there's a botched-up operation, you know, he's going to have to make sure the FBI is, you know, suited and trained and resourced to do it. But that's the person I'm looking to.

And, you know, you can argue that that's part of what was going on with DHS or creation would never happen. There are lots of problems with the DHS being the place for it. That's why Ivo and I were not for the big DHS organization, because I never thought that could be the lead agency for dealing with counterterrorism and all its manifestations.

But the NCTC solves the foreign and domestic problem because it is responsible across the foreign and domestic divide and, theoretically, is the place where you have just like with the Joint Chiefs of Staff, the place where you develop multidisciplinary operations to deal with the problem. So, to my mind, that's, in terms of organization the most important organizational change recommended. If the authority is provided to go with it.

And I think, at least within whatever political culture we have, at least creates some place where you can say, this is, here is Mr. Counterterrorist. And it's not like the drug czar where there is no authority to go with the position and it's just kind of like a hat that you wear.

And I would like to see more of the response of structures that are built on that pattern.

MR. FALKENRATH: I'm just fine with the National Counterterrorism Center proposal, I think it has the virtue Jim describes. As you read the Commission's proposal closely, it doesn't actually have operational authority over what's going on, it does strategic planning and it clearly is responsible for the assessment and analysis part. We've already done that with TTIC, but it builds on TTIC in ways which I think are useful. And so I support that.

The DHS analog, you know, DHS was never supposed to be the solution to this problem. It's a solution to another problem, which was the immense fracturing of our domestic agencies and their inability to act in any kind of cohesive manner and with scale.

This, the problem that the NCTC addresses, like TTIC addressed earlier, incompletely, is a slightly different one. Very important one, and I think that part is fine.

MR. STEINBERG: Thanks a lot.

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