SS464: Homeland Security

Department of Social Sciences, United States Military Academy

Lesson 26

Evolution of US CT Policy & “The Wall”

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Agenda

1. US Counterterrorism Policy pre-9-11
2. Warnings and Miscues
3. Emergence of Homeland Security Policy Area
4. US Counterterrorism Policy post-9-11
5. Conclusion

Readings

- 1. National Commission on Terrorist Attacks upon the United States. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*. (New York, NY: W.W. Norton & Company, Inc., 2004): 71-107, 198-214.

- 2. PBS Frontline, "*The Tools of Counterterrorism*", posted October 16, 2003. Review the laws and policies on this webpage, then read the document linked on the right entitled "*The Role of the Judiciary in the War on Terrorism.*"

- 3. Electronic Privacy Information Center (EPIC), *Foreign Intelligence Surveillance Act*, updated 10 Nov 2005: read the section entitled "*Overview of FISA*."

- 4. Richard A. Falkenrath, *Europe's Dangerous Complacency* in *Financial Times*, July 2004.

Study Questions

1. How did the US Government's espionage and domestic surveillance authorities and practices change in the early 1970s, and why?

2. What is "The Wall?" What were its causes? Its effects? To what degree were the concerns that contributed to the wall legitimate and important?

3. How did US counterterrorism policy evolve through the 1960s, 70s, 80s, and 90s?

4. What is the CIA Counterterrorist Center (CTC) and what does it do?

5. How has the White House managed counterterrorism policy over time? What is the Counterterrorism Security Group (CSG) and what does it do?

6. How did the George W. Bush Administration approach the terrorist threat prior to 9/11?

7. What is the Foreign Intelligence Surveillance Act, and what does it do?

8. What is the FISA Court, and how does it function?

9. How important is it to align US counterterrorism law and counterterrorism law in other countries?

US Counterterrorism Policy Pre-9-11 (1 of 3)

- Domestic intelligence gathering 1930s – 1960s
- State Department primacy in 1960s
- Church Commission ... birth of “the wall”
- 1978: Foreign Intelligence Surveillance Act (FISA)
- Mid-1980s: VP George H.W. Bush heads comprehensive review of US CT policy – creation of CIA Counterterrorist Center (CTC)
- Reagan administration – shift to offense; terrorism as acts of war; Presidential directives and White House focus (but, Iran Contra)
- Cold War – focus on technology
- End of Cold War – funding cuts in FBI, CIA, etc.
- Start of “watchlisting”

US Counterterrorism Policy Pre-9-11 (2 of 3)

- Fragmented effort with broader set of agencies: e.g. INS, Customs, other law enforcement agencies
- Clinton Administration focuses
- Counterterrorism "czar" – Richard Clarke, Counterterrorism Security Group (CSG), Principals Committee
- 1995: PDD-39 – US Counterterrorism Policy (Classified)
  - "deter, defeat, respond vigorously"
  - Taskers to State, Defense, Justice, Transportation
  - FBI lead for "crisis management;" FEMA lead for "consequence management"
- 1998: PDD-62 – Combating Terrorism (Classified)
- 1998: PDD 63 – Critical Infrastructure Protection
- 1998: PDD 67 – Enduring Constitutional Government (Classified)

US Counterterrorism Policy Pre-9-11 (2 of 3)

- Transition to Bush Administration
- USS Cole
- Bush keeps Richard Clarke (and entire staff), George Tenet, Louis Freeh
- NSPD-1: Organization and Operation of the NSC
- Richard Clarke, chair of the Counterterrorism Security Group (CSG) reports to Principals through the Deputies Committee
- Administration's focus on comprehensive strategy
- Clarke urges Principals Committee meeting to focus on Al Qaeda
- Drafting of a new NSPD on aggressive strategy to defeat Al Qaeda
- Principals Committee met 4 Sep 2001
- Vice President's Task Force on Homeland Security: inaugural meeting, morning of 11 Sep 2001

Warnings, Miscues, Debates

- 1970: Palestinian terrorists attempted simultaneous hijacking of 4 aircraft
- Early 70's: Gather intel? Aggressive law enforcement? Negotiate? Force airlines to upgrade security? Which militant groups to define as terrorists?
- 1976: Presidential candidate Reagan warns against danger of allowing civil-rights minded "bleeding hearts" to dismantle intel operations against domestic terrorists
- 1984: After Beirut, ambitious attempt by Reagan administration to launch comprehensive assault that would "take the fight to the terrorists," but four antiterrorism proposals got bogged down in Congress
- Reagan White House viewed terrorism through a Cold War lens (Soviet sponsored)
- Officials failed to treat terrorism as a strategic threat; rather an irritant

Source: Richard A. Posner, *Intelligence Reform in the Wake of 9/11* (Rowman & Littlefield, 2005).

Emergence of Homeland Security Policy Area

- End of the Cold War
- 1st World Trade Center (1993), Oklahoma City (1995), Embassies (1998), USS Cole (2000)
- Recognition of “assymetric threats”
- Nunn-Lugar and the Threat Reduction Program
- Nunn-Lugar-Domenici and WMD Civil Support Teams
- Late 1990s: Joint Staff considering a Homeland Security Command as part of the Unified Command Plan
- Hart-Rudman Commission proposes “National Homeland Security Agency”
- “Catastrophic Terrorism”

Administration Policy

- Redefine law enforcement mission to focus on prevention of terrorist acts
- Use all legal means– both traditional and non-traditional—including investigative, criminal, civil, immigration, and regulatory powers to identify, halt, and, where appropriate, prosecute terrorists
- Pursue not only individuals directly engaged in terrorist activity, but also sources of support (funding, logistical assistance).
- Strengthen federal law enforcement community.
- Augment scope and quality of information available to all law enforcement.
- Build fully integrated, fully accessible terrorist watch list.

- *National Strategy for Homeland Security*, July 2002

Federal Structure (1 of 2)

- Department of Justice
  - FBI
    - Executive Assistant Director for Counterterrorism
    - Counterterrorism Division (CTD)
    - National Joint Terrorism Task Force (National JTTF)
    - Field Joint Terrorism Task Forces (JTTFs)
    - Executive Assistant Director for Intelligence
  - Other DOJ subordinate agencies (ATF, Marshalls)
- Director of National Intelligence
  - National Counterterrorism Center (formerly TTIC) … also runs NCPC
  - National Counterintelligence Exeuctive (NCIX)
- CIA - Counterterrorism Center (CTC)

Federal Structure (2 of 2)

- Department of Defense:
  - Defense Intelligence Agency and Joint Interagency Task Force-CT (JITF-CT)
  - National Security Agency (NSA)
- DHS
  - Information Analysis and Infrastructure Protection (IAIP)
  - Customs and Border Protection (CBP)
  - Immigration and Customs Enforcement (ICE)
- Department of State
  - Bureau of Intelligence and Research (INR)
  - Counterterrorism Coordinator (SCT)
  - Consular Affairs (CA)
- Department of the Treasury
  - Financial Crimes Enforcement Network (FINCEN)

Significant Counterterrorism Law (1 of 2)

- Foreign Intelligence Surveillance Act (1978)
  - Distinguished between criminal and intelligence information
  - Set standards for electronic surveillance
  - Purpose of surveillance is to obtain “foreign intelligence information”
  - Wiretaps of foreign agents with “reasonable suspicion”
  - FISA Court to oversee (has never rejected a request for surveillance)
  - FISA Court of Review (has only convened once)

- Antiterrorism Act (1996)
  - Designation of terrorism organizations
  - Exclusion of visas based on material support, membership
  - Freezing assets

- Pre-9-11 Attorney General Guidelines
  - Reinforced “the wall”

Significant Counterterrorism Law (2 of 2)

- Patriot Act (2001)
  - Amends FISA … lowers threshold to "significant purpose" (one of several)
  - Break down the intel/law enforcement "wall"
  - Can share information across the wall if "foreign intelligence information"
- Post 9-11 Attorney General guidelines
  - Procedures for sharing information across the wall
  - Approval of AG, DCI, and Secretary of Homeland Security
- Intelligence Reform and Terrorism Prevention Act (2004)
- Enemy Combatant Designation: Jose Padilla & Yaser Esam Hamdi

Next Class

- USA PATRIOT Act