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## **FBI's Intelligence Role is Mischaracterized**

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The lack of clear talk about what the FBI does and doesn't do in regards to intelligence-gathering must be addressed if we are to save countless American lives at home.

I have a clear memory of the domestic intelligence work the FBI did during my first seven or eight years as a bureau special agent. I also remember grappling with the Attorney General's Guidelines on Terrorism Investigations from time to time until I completed my career as legal counsel for the FBI in Portland in Oregon in 1996.

In 1976, President Ford's attorney general issued the Guidelines on Terrorism Investigations. Their purpose was to shut down J. Edgar Hoover's 40-plus years of collecting domestic intelligence on "subversives." The only investigative activity authorized in the guidelines essentially concerned criminal conspiracies.

The guidelines carefully prohibit expanding after-the-fact investigations into a broader intelligence-collection activity. The guidelines effectively shut down all FBI intelligence collection, indexing and analysis. That was more than 25 years ago.

To call the post-Hoover FBI, or more accurately, the post-guidelines FBI, an "intelligence agency," as politicians and the media now are, is the grossest kind of mischaracterization.

This is not a criticism of the FBI, or of those who mistakenly cast the FBI in this manner. Most people have no understanding of the difference between a criminal conspiracy investigation and intelligence collection. The former is the type of investigation the FBI does well; the latter is something the FBI has been prohibited from doing for more than 25 years.

To use the iceberg metaphor, consider the tip of the iceberg to be the information the FBI collects and identifies during a post-crime investigation of a terrorist act. Now consider the underwater portion of the same iceberg as the enormous infrastructure that supports the criminal activity at the tip.

Under existing and the so-called new guidelines, the FBI will chip away at the tip whenever a terrorist act is committed in the United States. It will not get at the underwater part of the monster.

Penetrating the infrastructure can begin only after the sort of intelligence collection that the FBI has been and is prohibited from doing by guidelines.

This predicament is a result of wanting it both ways, a common human trait. We don't want a robust domestic intelligence collection and analysis agency inside our borders looking at non-criminal activity of either U.S. citizens or of foreigners living in this country.

At the same time, we want the FBI to somehow develop non-crime-related "intelligence" that will prevent terrorist acts. These two wishes are mutually exclusive.

To the extent that we balance in favor of no robust collection and analysis within our borders, we leave ourselves open to attack inside our country. The terrorists have figured this out. The Twin Towers killers effectively "cooled off" by living unnoticed inside the United States for months and years before striking.

It is vital to our national security that Congress engage not just in hearings, but in a public debate. How long will we limit rather than require robust FBI intelligence collection inside the United States? Thoughtful opponents must address this question by describing how they would have the FBI collect intelligence within the United States. These opponents also need to know the likely consequences of continued restrictions that prevent real intelligence collection inside our borders.

Real terrorist intelligence collections requires development of human sources who can go, see, hear and report what no one else can. Such people will not readily assist without assurances that they will never be discovered. The climate prevailing in the press and in government today is not likely to increase the confidence of those who might otherwise be induced to become intelligence sources inside the United States.

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