INTRODUCTION

A veil of secrecy shrouds intelligence work and makes it difficult to assess whether Americans actually are safer because of the reforms implemented since September 11, 2001. The fact that no successful acts of terrorism by foreign nationals against U.S. civilians have occurred on American soil since 9/11 suggests we might indeed be safer, but one must be cautious when attempting to assert a nonevent as a success.

In 2004, Congress enacted the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The Act was born directly out of the recommendations of the 9/11 Commission, which investigated the events leading up to the devastating terrorist attacks on the World Trade Center and the Pentagon. The Commission found that in the summer of 2001, the intelligence community (IC) had many advance indications of an imminent attack by al-Qaeda operatives (including information about possible airplane hijackings) and missed several opportunities to derail the attack. The problem, the Commission found, was that the critical information was spread among dispersed individuals within the IC—the community was divided by

---

1. Two separate shooting incidents in this period can be considered terrorism, but the victims in both incidents were military personnel. Major Nidal Hasan killed thirteen people and wounded thirty others in a shooting at Fort Hood, Texas. See Robert McFadden, Army Doctor Held in Fort Hood Rampage, N.Y. TIMES, Nov. 5, 2009, at A1. Abdul Hakim Mujahid Muhammad shot two soldiers outside a recruiting station in Little Rock, Arkansas, killing one and wounding the other. See Steve Barnes & James Dao, Gunman Kills Soldier Outside Recruiting Station, N.Y. TIMES, June 1, 2009, at A16.


---

* Professor of Law, Washington University School of Law.
institutional barriers and there was no intelligence analyst or department to put all the clues together. The IRPTA aimed to rectify this deficiency by improving information-sharing between agencies, most significantly, by creating the Office of the Director of National Intelligence to collect, coordinate, and communicate information across the entire IC.

Five years in, it is now appropriate to ask whether the Act has succeeded. The answer, I will argue in this Essay, is not only that the effort to integrate the IC has fallen far short, but more importantly, that no amount of intelligence reform can make Americans safer from terrorist attacks when the ranks of terrorists keep swelling with new recruits. That is the situation we now face.

In Part I, I will highlight the juxtaposition between rosy assessments of improvements in the IC that have been issued contemporaneously with urgent warnings of the spread of Islamic radicalization. The IC failures leading up to 9/11 will be described in Part II, and Part III will detail the assessment of intelligence specialists that, although a few improvements have been made, the IRPTA reforms have not resolved the fundamental flaws in the IC. Even the best intelligence system, as Part IV elaborates, cannot prevent all terrorist attacks. Hence the most important components of the IRPTA are the provisions directed at dampening the supply of terrorists; as Part V shows, however, this aspect of the Act is inadequate and has no real practical effect. The way forward, Part VI suggests, begins with genuinely appreciating why Islamic terrorists are so determined to attack us.

I. Current Evaluations, or False Praise

Former Director of National Intelligence (DNI) Admiral Dennis C. Blair took credit for the IC in a recent editorial, asserting that “many successes must remain classified.” Intel!igence professionals, Blair claimed, “are already collaborative between and across agencies to an extent that was unheard of five years ago.” Still, he acknowledged that the work of “integrating the capabilities, cultures, and information technologies of sixteen diverse intelligence agencies is massive, and it is incomplete.”

Like Blair, many previous Directors of National Intelligence also offered positive assessments of the IC reforms that came out of the IRPTA. In November 2006, three months prior to his surprise resignation from his position as the country’s first DNI, John Negroponte said: “Yes, we’re better

---

4. Id. at 353-60, 399-419.
5. Intelligence Reform and Terrorism Prevention Act §§ 1011-1020.
8. Id.
prepared, and in that sense we're safer." The final report to Congress issued under Negroponte's tenure concluded:

[We have done much to make America safer against the very real threats that menace our fellow Americans . . . . The Intelligence Community and the [Office of the Director of National Intelligence] have embraced the reforms of the past two years and are implementing them, resulting in improvements to all aspects of the IC.]

Negroponte's successor as DNI, Michael McConnell, also gave an upbeat report to Congress: "The Intelligence Community has made significant strides in addressing the underlying deficiencies exposed by the attacks of 9/11." McConnell cited multiple examples of growing collaboration: the formation of an executive committee to advise the Director, comprised of heads of the major intelligence agencies; the establishment of the National Counterterrorism Center (NCTC) with rotating personnel from all intelligence agencies; the creation of an IC-wide searchable database of intelligence research and the development of a Wikipedia-style information resource accessible only by intelligence personnel. "[W]e have come a long way over the past years in developing a more integrated, more collaborative intelligence enterprise," McConnell said.

Grounds to discount these optimistic accounts of intelligence reform efforts will be presented shortly. First, however, consider assessments of the terrorism threat issued during this same period. The April 2006 National Intelligence Estimate said:

We also assess that the global jihadist movement—which includes [al-Qaeda], affiliated and independent terrorist groups, and emerging networks and cells—is spreading and adapting to counterterrorism efforts. Although we cannot measure the extent of the spread with precision, a large body of all-source reporting indicates that activists

---


12. Id. at 18.
identifying themselves as jihadists... are increasing in both number and geographic dispersion.\textsuperscript{13}

Consider also Director McConnell’s 2007 report to Congress:

[W]e judge that [al-Qaeda] will intensify its efforts to put operatives here... We assess that the spread of radical—especially Salafi—Internet sites, increasingly aggressive anti-US rhetoric and actions, and the growing number of radical, self-generating cells in Western countries indicate that the radical and violent segment of the West’s Muslim population is expanding, including in the United States.\textsuperscript{14}

In late 2009, a leading terrorism expert at the RAND Corporation, Brian Jenkins, testified before Congress that “the number and geographic range of al-Qaeda-inspired attacks has been growing each year”; the cumulative tally of terrorist plots with U.S. ties “puts the level of activity in 2009 much higher than that of previous years.”\textsuperscript{15}

If the number of committed terrorists is indeed multiplying, then Americans cannot be “safer” in an absolute sense. After all, metastasizing terrorist cells can elude the efforts of even the best intelligence system.

II. INTELLIGENCE OPERATIONS BEFORE 9/11

To evaluate intelligence reform, it is essential to review what went wrong in the period leading up to 9/11. An example best illustrates the pre-9/11 missteps. In July 2000, the CIA conducted surveillance of a high-level al-Qaeda meeting in Kuala Lumpur. Within days, the CIA identified one attendee, Khalid al-Mihdhar, and learned that he had a U.S. visa. The National Security Agency (NSA) had information about Nawaf al-Hazmi, another attendee holding a U.S. visa, but the CIA had not asked the other intelligence agencies, including the NSA, to share their information.\textsuperscript{16} Both al-Mihdhar and al-Hazmi were on the

\textsuperscript{13} Office of the Dir. of Nat’l Intelligence, Declassified Key Judgments of the National Intelligence Estimate “Trends in Global Terrorism: Implications for the United States” (2006) [hereinafter Declassified NIE].

\textsuperscript{14} McConnell Statement, supra note ii, at 2. Salafis advocate strict adherence to traditional Islamic values; although this sect in general is not violent, Salafi jihadist groups do promote violence on behalf of their version of Islam. See Fawaz A. Gerges, The Far Enemy: Why Jihad Went Global 131-33 (2d ed. 2009).


ARE WE SAFER FROM TERRORISM?

plane that hit the Pentagon, and al-Hazmi is thought to have been the second in command of the entire 9/11 operation.\textsuperscript{17}

Beyond the missed opportunity in Kuala Lumpur, al-Mihdhar and al-Hazmi had numerous contacts with an FBI informant in San Diego. The CIA, however, did not inform the FBI that the two were suspected terrorists until nineteen days before the attack.\textsuperscript{18} On August 24, the FBI placed the two on a watch-list and tasked a single FBI agent with searching for al-Mihdhar (with a thirty-day time table)—a search which proved unsuccessful.\textsuperscript{19} Had the CIA communicated earlier with the State Department, the NSA, and the FBI, al-Mihdhar and al-Hazmi might have been prevented from entering the country—al-Mihdhar left for a time and returned a few months before the attack\textsuperscript{20}—or brought in for questioning, or at least kept under closer surveillance.\textsuperscript{21}

Communication failures between agencies were compounded further by failures within agencies. After discovering that a number of Islamic extremists had enrolled in flight training schools in Arizona, an FBI agent in the Phoenix office sent a memo to FBI headquarters in July 2001, warning of the “possibility of a coordinated effort by [Osama bin Laden] to send students to the United States to attend civil aviation schools.”\textsuperscript{22} The agent recommended that the Bureau examine flight schools around the country and that other intelligence agencies be informed. FBI headquarters ignored the memo and did not forward it to other intelligence agencies. On August 15, 2001, a flight school in Minneapolis notified the local FBI office that a student without the usual qualifications paid cash to practice on a Boeing 747 flight simulator. A local FBI agent interviewed the student, Zacarias Moussaoui, and discovered that he had jihadist beliefs, that he could not explain $32,000 in his bank account, and that he had traveled to Pakistan.\textsuperscript{23} Strongly suspecting that Moussaoui might be involved in a terrorist plot involving airplanes, the agent took the preventative measure of arresting him on immigration charges for overstaying his visa.\textsuperscript{24} An agent at FBI headquarters, however, thought the field agent’s concern was overly alarmist and lacked support, so he did not advise the other agencies of the field agent’s suspicion. The Minneapolis field supervisor heatedly argued with the headquarters agent, to no avail, stating (eerily, in hindsight) that he

\begin{itemize}
\item \textsuperscript{17} Id. at 105-06.
\item \textsuperscript{18} Id.
\item \textsuperscript{19} 9/11 COMMISSION REPORT, supra note 3, at 271-72.
\item \textsuperscript{20} Id. at 237-40, 267.
\item \textsuperscript{21} Id. at 272.
\item \textsuperscript{22} Id. (internal quotation marks and citation omitted).
\item \textsuperscript{23} Id. at 273.
\item \textsuperscript{24} Id.
\end{itemize}
was “trying to keep someone from taking a plane and crashing into the World Trade Center.”

Moussaoui’s arrest came about a week after President George W. Bush was presented with the now infamous brief of August 6, 2001, entitled “Bin [Laden] Determined To Strike in US.” The memo warned that Osama bin Laden had repeatedly expressed the desire to “mount a terrorist strike” in the United States. The memo noted: “[Al-Qaeda] members—including some who are US citizens—have resided in or traveled to the US for years, and the group apparently maintains a support structure that could aid attacks.” It continued: “FBI information . . . indicates patterns of suspicious activities in this country consistent with preparations for hijackings or other types of attacks, including recent surveillance of federal buildings in New York.”

George Tenet, then Director of the CIA, was informed about Moussaoui’s arrest, but he did not see any connection with al-Qaeda and considered it an FBI matter involving visa overstay. The Acting Director of the FBI and the Assistant Director for Counterterrorism were not even briefed about Moussaoui. Moussaoui was later convicted on terrorism charges in connection with the 9/11 attacks.

There were other warnings and breakdowns in communication leading up to 9/11. In June and July of 2001, multiple reports issued from intelligence agencies warned of imminent “spectacular” terrorist attacks against U.S. and Israeli interests. “Director [George] Tenet told the 9/11 Commission that by late July ‘the system was blinking red’ and that it could not ‘get any worse,’ but the system was unable to make sense of the pieces of information it had.”

III. The Limited Achievements of Intelligence Reform

Reviewing these events, the 9/11 Commission lay substantial responsibility for the disaster on the lack of information-sharing and integration across the IC. Three of the Commission’s five major recommendations were about “unifying” the intelligence effort: “unifying strategic intelligence and

25. Id. at 275.
27. Id.
28. Id.
29. 9/11 COMMISSION REPORT, supra note 3, at 261-62.
30. Id.
31. Id. at 256-57.
32. ZEGART, supra note 16, at 112; see also 9/11 COMMISSION REPORT, supra note 3, at 259;
33. 9/11 COMMISSION REPORT, supra note 3, at 266-77, 340-60, 399-419.
ARE WE SAFER FROM TERRORISM?

operational planning . . . across the foreign-domestic divide”; “unifying the intelligence community with a new National Intelligence Director”; and unifying the counterterrorism intelligence effort through a network-based information-sharing system that transcends government agencies. With the Commission enjoying enormous public support, a mere four and a half months after the report was issued, Congress hastily enacted the IRTPA in 2004 to carry out the Commission's recommendations. Significantly, the Act created the Office of the Director of National Intelligence (ODNI) to oversee the sixteen intelligence agencies; to pull together, collate, share, and coordinate information across the IC; and to bring overarching coherence to the IC.

Since the IRPTA's enactment, however, intelligence experts have consistently rendered negative assessments of the reform efforts. The House subcommittee evaluating implementation of the IRTPA in July 2006 found that "limited" progress had been achieved on information-sharing and on integrating the agencies through joint-duty arrangements. Also in July 2006, the Markle Task Force on National Security issued a dismal report, concluding that "almost five years since the terrorist attacks of September 11, systematic, trusted, information sharing remains more of an aspiration than a reality." The government "lost its sense of the broader mission" to facilitate information-sharing and instead became "bogged down by gaps in leadership, policy articulation, turf wars, and struggles over competing—and frequently incompatible—technologies." A 2007 book by Amy Zegart on 9/11 and intelligence failures, drawing upon interviews with seventy-five former and current intelligence officials, concluded that "nearly six years after 9/11, the Intelligence Community’s most serious deficiencies remain." "Information sharing and analysis, two critical shortcomings raised in the wake of 9/11," Zegart wrote, "have not improved much, and in some cases have gotten worse."
A damning internal report was issued in November 2008 by the Inspector General of the ODNI following extensive interviews with intelligence personnel. The Inspector General found that a majority of IC employees could not articulate the roles and responsibilities of the ODNI or what the Office was doing to implement its goals. IC employees complained about a lack of information and communication, confusing lines of authority, conflicting messages, and duplicative or overlapping tasks, "thereby undermining ODNI's credibility and fueling assertions that the ODNI is just an 'additional layer of bureaucracy.'"41 According to the Inspector General, "IC elements do not consistently and effectively collaborate and integrate their program efforts."42 Turf battles and "stove-piping" (sending information to higher-ups without communicating it broadly) continue as before. Agencies still tightly control their own information and restrict access to others.43

This negative assessment was reiterated in an evaluation of IC reforms issued by the Brookings Institution in September 2009 based on interviews with current and former intelligence officials. Notwithstanding the implementation of a number of measures designed to integrate the IC better, the report concluded:

"[I]nformation sharing remains a very nettlesome issue in the IC, and the system remains overall heavily skewed toward protecting narrow analytical silos. There are multiple reinforcing factors that contribute to this outcome: analysts' and collectors' desire to closely protect their most secret sources, budgeting processes, career patterns, and the general culture of the community."44 These problems persist despite multiple initiatives to bring about institutional change. In October 2005, early in his tenure as DNI, John Negroponte promulgated a guiding strategy directive, "Transformation Through Integration and Innovation."45 Director McConnell issued a "100 Day

42. Id. at 6.
43. Id. at 4-5.
ARE WE SAFER FROM TERRORISM?

Plan for Integration and Collaboration” in summer 2007,46 and a “500 Day Plan for Integration and Collaboration” in fall 2007.47 He followed these up in February 2008 with an extensive “Information Sharing Strategy”48 and then again in January 2009 with Intelligence Community Directive 501, designed to “[f]oster an enduring culture of responsible sharing and collaboration within an integrated IC.”49 The very repetitive nature of these efforts bespeaks their failure.50

A charitable explanation for the evident lack of progress is that insufficient time has lapsed for the desired changes to take hold. But this is not persuasive. The House subcommittee charged with assessing the IRTPA recognized in 2006 that it was premature to try to measure ultimate success: “Former senior leaders of the Community have told the Subcommittee and staff that it will take five years to fully implement the Act.”51 The fifth anniversary of the Act, however, has now passed, and it appears integration still has not been achieved.

The failure to achieve substantive change is not unique to the IRTPA. Decades of law and society research have repeatedly drawn the conclusion that efforts to use law to implement agency reform often fall short or produce unanticipated consequences.52 Existing institutions, structures, roles, norms, attitudes, habits, incentives, and inertia often conspire to entrench and reinforce the status quo. A host of such problems has been identified in the IC and continue in the design and implementation of the IRTPA:

(1) The IC was constructed to monitor “large, static, conventional military opponents,” relying heavily upon technical collection systems (satellites) and


50. The National Counterterrorism Center (created by presidential directive prior to the IRTPA, though absorbed and renamed by the Act), staffed by personnel from across the IC, generally is regarded as the most successful reform, although it too suffers from barriers to information flow. See Zegart, supra note 16, at 186.

51. IRTPA ASSESSMENT, supra note 35, at 35.

52. See Brian Z. Tamanaha, Law and Society, in A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 9-10 (Dennis Patterson ed., 2d ed. 2010).
neglecting human intelligence on the ground. This reliance is reflected, for example, in the scarcity of agents fluent in languages spoken in Islamic countries.

The ODNI was crippled at its very inception by turf battles between various agencies and between the various congressional committees with oversight and budgetary power over these agencies. Facing stiff resistance from Secretary of Defense Donald Rumsfeld, the IRTPA did not grant the DNI effective authority over intelligence activities in the Defense Department, which controls more than eighty percent of the IC budget and personnel. Thus the ODNI's power is rather limited;

Intelligence activities fit poorly within the dominant law enforcement orientation of the FBI. Apprehending criminals and building cases for successful prosecution entail different skills and priorities than intelligence gathering and analysis. The structuring of the FBI into separate regional field offices may be effective for conducting criminal investigations but it actually inhibits coordinated intelligence;

The CIA's limitation to foreign intelligence activities creates a jurisdictional barrier that benefits terrorists who can exploit the distinction;

The CIA and the FBI possess different internal cultures and harbor mutual distrust. Information-sharing across agencies grates against the very ethos and incentives operating with the IC, which prizes secrecy (various agencies and their personnel hold different levels of clearance, blocking access and exchange) and in which ownership of information translates into influence and career advancement; and

The unwillingness or inability of successive DNIs, weakened by their brief tenures in office, to take real charge over the IC.

53. See James Lewis & Mary DeRosa, Intelligence, in Five Years After 9/11: An Assessment of America's War Against Terror 26, 28 (Julianne Smith & Thomas Sanderson eds., 2006).
54. 9/11 Commission Report, supra note 3, at 92.
58. See 9/11 Commission Report, supra note 3, at 89.
59. See id. at 91.
ARE WE SAFER FROM TERRORISM?

An often-echoed sentiment is that "the DNI has become what intelligence professionals feared it would: an unnecessary bureaucratic contraption with an amazingly large staff." 62

IV. INTELLIGENCE FAILURES ARE INEVITABLE

There are limits to what even the best intelligence system can do to prevent acts of terrorism. Two paradoxical constraints are inimical to the IRPTA's objective: the immensity and dearth of information, both of which further terrorists' inherent tactical advantages.

The 9/11 Commission's reporting of the litany of pre-9/11 intelligence blunders deceptively trades on the easy task of sifting through intelligence information with the benefit of hindsight. 63 Beforehand, however, intelligence-gathering and analysis suffer simultaneously from a lack of data (ignorance of the essentials of a forthcoming attack) and an excess of data (overflowing noise about possible risks). In the months leading up to 9/11, as the Commission observed, many intelligence officials "knew something terrible was planned," but they were helpless because they had "few specifics regarding time, place, method, or target." 64 The vast trove of collected intelligence information is suffused with ambiguities and uncertainties that support various interpretations and predictions. Not everything can receive equal attention, and it is not evident what to prioritize. Heightened sensitivity to risks taxes capacity and increases false alarms which in turn reduce sensitivity. 65 As intelligence expert Richard Betts definitively elaborated three decades ago, these sources of failure "are inherent in the nature of intelligence . . . . As such, they constitute severe constraints on the efficacy of structural reform." 66

Tradeoffs in this area are unavoidable. Decentralization makes coordination harder, while unification encourages group-think and enhances the risk that political pressure will shape the intelligence to meet policy goals. Extensive information-sharing improves communication, but it also compromises secrecy and can create a mountainous haystack that hides pivotal clues.

Terrorists, for their part, have tactical advantages that grow out of their stark power disadvantage. Incapable of defeating state opponents through direct military confrontation, they engage in violence against civilians for political ends—terrorizing the populace is the means by which they pressure


63. 9/11 COMMISSION REPORT, supra note 3, at 266-77.

64. Id. at 262-63.

65. The classic article on the topic is Richard K. Betts, Analysis, War, and Decision: Why Intelligence Failures Are Inevitable, 31 WORLD POL. 61, 62-72 (1978).

66. Id. at 72.
government leaders to accede to demands. Not limited to military targets or traditional fields of engagement, their attacks can take place literally anywhere. Targets are selected to sow maximum public outrage and fear: transportation hubs, symbolic buildings, public gatherings, and high-profile individuals. Also, until they attack, terrorists are camouflaged in plain view as ordinary members of society. They continually adjust their tactics as well as the time and place of their attack in response to the changing likelihood of being discovered. Enhanced intelligence and greater military and police forces cannot completely prevent or eradicate terrorism. Due to sheer volume alone, all potential targets cannot be protected from all forms of destruction all the time.

The coupling of the tactical advantages held by terrorists with the inevitability of intelligence failure was demonstrated anew on Christmas Day in 2009 by Nigerian citizen Abdul Farouk Abdulmutallab’s attempt to destroy a plane while landing in Detroit. After Abdulmutallab’s father advised U.S. officials that his son might have become radicalized in Yemen, Abdulmutallab was placed on the watch-list. The CIA prepared a biographical report on him; the NSA intercepted al-Qaeda conversations about a forthcoming attack by a Nigerian man; the NCTC received a cable from the U.S. embassy in Nigeria warning about possible terrorism; and the United Kingdom had rejected his request for a visa renewal. U.S. intelligence agencies failed to connect the various pieces of information they had about Abdulmutallab. Thus Abdulmutallab still held a valid U.S. visa; he was allowed to board a flight to the United States without being questioned despite paying cash for a one-way ticket and not checking any baggage; and he was able to conceal explosives in his underwear.

Echoes of pre-9/11 missteps are manifest, although disaster luckily was avoided when the fuse failed to ignite properly and passengers subdued him. Critics were outraged at what they viewed as shoddy intelligence and security, heaping blame on the NCTC, heretofore considered the most successful example of reform. What their reaction fails to sufficiently appreciate, however, is that Abdulmutallab’s name was just one among a half million others on the


68. See id. at 169-99.


watch-list, and one among an untold total number of individuals on whom the IC has files.

With respect to the terrorists’ tactical advantage, the explosives and method of concealment were selected because they could not be detected through existing screening procedures. (And in future attempts the terrorists likely will purchase their tickets in advance and go through the trouble of checking a bag.) A critical autopsy and additional changes in intelligence and security procedures will no doubt follow in the wake of this incident, but terrorists will evolve in sync to exploit other vulnerabilities.

This incident is a reminder that the IRTPA will fall tragically short of its goal of making Americans safer from terrorism if intelligence reforms are the main focus of the effort. Reform is more of a partial palliative than a viable solution. As the 9/11 Commission recognized, “even the most vigilant and expert agencies cannot always prevent determined, suicidal attackers from reaching a target.”73 The only long-term solution to terrorism, the only way to make Americans truly safer, is to reduce the supply of terrorists.

V. THE IRTPA AND REDUCING ANTI-AMERICAN EXTREMISM

The 9/11 Commission recognized that the looming threat for America was not so much al-Qaeda, whose operational capacity had been weakened substantially, but the spread of radical extremism and anti-Americanism across the globe.74 The Commission identified what it considered the roots of this growing radicalism:

Because the Muslim world has fallen behind the West politically, economically, and militarily for the past three centuries, and because few tolerant or secular Muslim democracies provide alternative models for the future, [bin Laden]’s message finds receptive ears. It has attracted active support from thousands of disaffected Muslims and resonates powerfully with a far larger number who do not actively support his methods.75

The causes, according to the Commission, are internal to Muslim societies: “The United States finds itself caught up in a clash within a civilization. That clash arises from particular conditions in the Muslim world, conditions that spill over into expatriate Muslim communities in non-Muslim countries.”76 The solutions, opined the Commission, are economic development, greater democracy and freedom, women’s rights, increased literacy, and the establishment of the rule of law.

---

73. 9/11 COMMISSION REPORT, supra note 3, at 365.
74. Id. at 363.
75. Id. at 362.
76. Id. at 363.
The Commission correctly noted that many of these societies are underdeveloped economically, have suffered under authoritarian rulers, and are undergoing seething convulsions over the role religion should play in politics.\textsuperscript{77} But none of this explains why the country is so despised. Missing from its diagnosis was a serious examination of whether, or in what ways, U.S. actions might have contributed to negative attitudes toward the nation in particular. The Commission summarily dismissed polls showing that an overwhelming proportion of citizens in Muslim countries holds negative views of the United States: “Many of these views are at best uninformed about the United States and, at worst, informed by cartoonish stereotypes . . . .”\textsuperscript{78} The Commission neglected to add that Muslims’ opinions of the United States plummeted in part owing to the Iraq war,\textsuperscript{79} which was viewed around the world as unjustified.

The 9/11 Report made only two oblique references to U.S. actions that might have generated enmity in the Muslim community. The first allusion was put in less than forthcoming terms: “One of the lessons of the long Cold War was that short-term gains in cooperating with the most repressive and brutal governments were too often outweighed by long-term setbacks for America’s stature and interests.”\textsuperscript{80} A more frank statement of this point is that anti-American attitudes exist because the United States has long supported authoritarian regimes in the region. A Defense Department report bluntly acknowledged this fact, noting that “[t]he United States finds itself in the strategically awkward—and potentially dangerous—situation of being the longstanding prop and alliance partner of [the] authoritarian regimes [Egypt, Saudi Arabia, Pakistan, Jordan, and other Gulf states].”\textsuperscript{81} The second allusion was to our appalling treatment of Muslim prisoners: “Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the government will need.”\textsuperscript{82} Coming on the heels of public disclosure of abuses at Abu Ghraib prison and the Justice Department’s torture memo, this tepid prose provides an inadequate sense of the shattering impact and universal outrage such conduct generated against the United States.

\textsuperscript{77} For independent analysis on this point, see Gerges, supra note 14; and Ahmed Rashid, Descent into Chaos: The U.S. and the Disaster in Pakistan, Afghanistan, and Central Asia (2008).

\textsuperscript{78} 9/11 Commission Report, supra note 3, at 375.


\textsuperscript{80} 9/11 Commission Report, supra note 3, at 376.


\textsuperscript{82} 9/11 Commission Report, supra note 3, at 379.
The IRTPA almost wholly adopted the Commission’s recommendations for dampening Islamic radicalization, omitting only the proposals for better treatment of prisoners. To combat anti-American views, the Act directs funds to help establish a media network and directs the Secretary of State to carry out a public diplomacy campaign to counter misinformation and propaganda against the United States. It expands scholarship and exchange programs for Muslim youth to learn about American ideals and values, and it creates a youth opportunity fund to reduce illiteracy rates in the Middle East. The Act also urges the creation of a Middle East Free Trade Area to facilitate economic development.

That is the sum of the provisions in the IRTPA for reducing the spread of anti-American extremism in the Muslim world. The package comes to two propositions: If Muslim populations (especially young men and women) get to know America better, and if Muslim countries become more like Western liberal democratic capitalist countries with greater freedom and economic opportunities, then Muslims will stop lining up to destroy us.

These propositions, however, square poorly with the facts. Many individuals who have planned or committed acts of terrorism, especially among the terrorist network leadership, are well-educated and did not suffer from impoverished backgrounds or a lack of economic opportunity. Many known terrorists, including the 9/11 hijackers, lived for lengthy periods in the United States or in other Western countries with extensive exposure to our values and ideals. The accused mastermind of 9/11, Khalid Sheikh Mohammed, has a degree in mechanical engineering from North Carolina Agricultural and Technical State University. Anwar al-Alwaki, considered a grave danger for his effective use of the Internet to spread radical messages to English speakers, with connections to the Fort Hood shooting and the failed Detroit airplane

85. Id. § 7109.
86. Id. §§ 7112, 7113.
87. Id. § 7114.
89. See Olivier Roy, Al Qaeda in the West as a Youth Movement: The Power of a Narrative 14-15 (Nov. 2008) (unpublished manuscript, on file with the Yale Law & Policy Review) (“Al-Qaeda] recruits are not specifically puritanical and often live or have lived the usual life of [W]estern teenagers.”).
incident, was born and raised for a time in the United States and earned bachelor's and master's degrees from American universities. A number of terrorists were Western-raised converts to Islam. The recent rash of radicalized American citizens provides yet more evidence that a lack of familiarity with American values and ideals is not the problem.

Nor is it obvious that the majority of citizens within Muslim societies would embrace the full package of social and political transformations prescribed by the Commission, or that embracing such change would indeed lessen terrorism against the U.S.. But the most fundamental problem is that the radical make-over of Muslim economies, polities, legal systems, and cultures envisioned by the IRPTA cannot be accomplished by any means at our disposal. That fact explains why the critical sections of IRTPA's Title VII are filled mostly with exhortations and precatory fluff, devoid of concrete proposals or programs. Versions of this transformative project—the spread of democracy, capitalism, rule of law, human rights—have been attempted around the world (including in Muslim countries) for decades, supported by billions of dollars from the World Bank, the UNDP, USAID, and other funding organizations—with meager results.

To propose an impossibly ambitious transformation of Muslim societies as the long-term solution to terrorism is tantamount to conceding that it will not be solved. Looking through the fluff, the only concrete measures created by the IRPTA are a few youth scholarship and exchange programs and setting up a media presence that likely will be viewed as an outlet for American propaganda.

Congress and the Commission offered these token gestures perhaps out of a sense of resignation that nothing can be done. America is fated to endure the plague of terrorism for decades, they apparently thought, so we better improve intelligence coordination, ramp up security in public venues, tighten borders and immigration control, increase surveillance and data mining, target terrorists whenever and wherever they emerge, include a few token gestures at improving the lot of Muslim countries, and just hope America does not suffer a truly catastrophic disaster. That, after all, is the essence of the IRTPA.

90. Al-Alwaki also developed a "close relationship" with two 9/11 hijackers, al-Hazmi and al-Mihdhar. 9/11 COMMISSION REPORT, supra note 3, at 221.


VI. What Can Be Done?

A gaping hole in the analysis of the 9/11 Commission and Congress is the absence of an effort to grasp why Muslims' attitudes toward the United States are so negative. Resentment at the country's global power or jealously at its riches or way of life are frequently supplied as explanations, but they cannot account for the depth and breadth of the anger—the willingness to die to inflict harm against us. The proffered explanations also do not comport with what Muslims themselves are saying. The key to understanding what inspires Muslims around the world to volunteer in the fight against us lies in this oddity: The antagonists on both sides of this conflict sincerely see themselves as acting defensively, responding with force reluctantly only after being aggressively set upon by a vicious adversary.

On the evening of September 11, 2001, President Bush spoke to the stunned nation:

Today, our fellow citizens, our way of life, our very freedom came under attack in a series of deliberate and deadly terrorist acts.... Thousands of lives were suddenly ended by evil, despicable acts of terror.... A great people has been moved to defend a great nation. Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America.94

Although President Bush and Americans undoubtedly thought that we had been attacked without provocation or justification, in bin Laden's eyes the attacks were in self-defense. On February 23, 1998, Osama bin Laden and the World Islamic Front issued a fatwa ordering Muslims to kill all Americans (civilians and military) and their allies, explaining:

All these crimes and sins committed by the Americans [listed earlier] are a clear declaration of war on God, his messenger, and Muslims. And [religious scholars] have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys the Muslim countries.... Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life.95

President Bush explained that "America was targeted for attack because we're the brightest beacon for freedom and opportunity in the world. And no one will keep that light from shining."96 Bin Laden, employing a similar rhetoric of self-defense, explained: "Why are we fighting you and opposing you? Because


96. September 11 Address, supra note 94.
you attacked us and continue to attack us." In 2004, he followed: "We fight you because we are free men who don't sleep under oppression. We want to restore freedom to our Nation and just as you lay waste to our Nation, so shall we lay waste to yours." Almost as if reading from the same book, both leaders portrayed their attacks as defensive. In turn, Americans believe the United States was attacked first by Islamic terrorists—and remains under attack—while Muslims targeting the United States believe Muslims were attacked first by America, and remain under attack. Neither is the aggressor, in its own eyes, so neither has the ability to stand down from the fight.

Americans tend to perceive their country as a benevolent world power and thus have little sense of why Muslims harbor such resentment. Yet a 2004 Defense Department report found that "U.S. policies and actions are increasingly seen by the overwhelming majority of Muslims as a threat to the survival of Islam itself. Three recent polls of Muslims show an overwhelming conviction that the U.S. seeks to 'dominate' and 'weaken' the Muslim World." Many Muslims "believe America's war on terrorism is really an effort to control Mideast oil or to dominate the world."

Talk by U.S. leaders of the desire to spread democracy in the Middle East might work with uninformed Americans, but it rings hypocritically hollow to a Muslim populace intimately familiar with the history of U.S. support for authoritarian allies in the region. After all, the United States is visibly less enthusiastic about democracy whenever it looks like popular Islamic parties might use the ballot box to win control of the government. Consider the frustration Muslims experience when the United States is quick to condemn Palestinian and Hezbollah terrorist actions against Israeli civilians but slow to criticize Israeli actions that injure Palestinian or Lebanese civilians. Imagine the anger in the Muslim world at knowing—as reported by UNICEF, the International Red Cross, and other organizations (although most Americans remain blissfully unaware)—that U.S.-led sanctions on Iraq after the first

99. DEFENSE SCIENCE BOARD REPORT, supra note 81, at 35 (footnote omitted).
101. See supra text accompanying note 81.
ARE WE SAFER FROM TERRORISM?

Gulf War resulted in the deaths of a half-million Iraqi children.\textsuperscript{104} Think of the sadness over the tens of thousands of Iraqi civilians who have perished during the Iraq War and the bitterness aroused by reports of innocent civilians accidentally killed by American and coalition troops in Iraq and Afghanistan, or by unmanned predator drones shooting rockets from the sky that kill whomever is in the blast zone. Imagine the anger at images of snapping dogs set upon naked prisoners stacked into a pile at Abu Ghraib, at pictures of shackled detainees at Guantánamo, and at repeated accounts of American infliction of torture in interrogation—all of which make U.S. rhetoric about human rights and the rule of law a mockery in the eyes of Muslims. Envision what it feels like to watch military forces from an alien culture and religion increase their presence in and encircle your country, stationing troops in your holiest of lands. Picture how a Muslim would interpret President Bush’s public statement a few days after 9/11—"This crusade, this war on terrorism, is going to take awhile"\textsuperscript{105}—knowing that “crusade” is the historic name of the bloody Christians invasions of Muslim lands during the Middle Ages.

These events and actions, seared into Muslims’ consciousness, are what give bin Laden’s message resonance. We may attempt to explain and protest our good intentions for each of our incursions, but the case against us taken as a whole is formidable. Thus, the ranks are swelling with terrorists signing up to attack the United States,\textsuperscript{106} and it takes a modicum of empathetic imagination to realize that many Americans would do the same if the situations were reversed.

There is hope, though. Recent polls have shown a dramatic increase in unfavorable views of bin Laden and al-Qaeda across the Muslim world.\textsuperscript{107} Although many continue to agree with the goals expressed by bin Laden, especially that America should remove its military presence from Muslim lands, large majorities in the Muslim countries polled believe that it is wrong and inconsistent with Islamic principles to attack civilians.\textsuperscript{108} Fawaz Gerges, the author of a book about the rise of al-Qaeda, recently interviewed former jihadists and Islamists, and found that, “[al-Qaeda]’s gruesome attacks on civilians, particularly in Muslim countries . . . and the mayhem these wrought—have


\textsuperscript{105} Richardson, supra note 67, at 194 (footnote omitted).

\textsuperscript{106} See Declassified NIE, supra note 13.


\textsuperscript{108} C. Christine Fair, Clay Ramsay & Steve Kull, \textsc{Pakistani Public Opinion on Democracy, Islamist Militancy, and Relations with the U.S.} 6 (Feb. 2008) (unpublished manuscript, on file with the Yale Law & Policy Review).
rightly relegated [al-Qaeda] to the margins of Islamic society.’”109 Iraq and Pakistan have suffered large numbers of civilian casualties from bombings by extremists attempting to destabilize or intimidate the government or to whip up sectarian violence. Leading religious authorities and former jihadis in Muslim countries have forcefully condemned the actions of al-Qaeda in recent years.

The remarkable parallelism between Bush’s and bin Laden’s characterizations of the nature of the conflict is now matched, ironically, by parallel negative ratings of the United States and of al-Qaeda in the eyes of the majority of Muslims. Both sides are now condemned. There is hope in this state of affairs because an essential step toward the decline of terrorism is to remove the base of community support that provides resources, refuge, and fresh recruits to terrorist organizations.110 It is important to recognize, however, that this can only be a partial step. After all, the growing backlash against terrorism by Muslims who have witnessed its awful consequences for their own communities is felt less by radicalized Muslims living in the West. And homegrown acts of terrorism are on the rise.

CONCLUSION

The long-term threat of terrorism will not lessen until Americans understand that Muslims have real grievances, and the United States begins to change its policies and actions in the Muslim world to address these grievances. Foremost, we must eliminate the ultimate provocation that inflames Islamic terrorists to attack us—we must remove our troops from Muslim lands. Only then will we really be safer from terrorists.
