

By Fred Burton and Scott Stewart

Over the past couple of weeks, we have been carefully watching the fallout from the Obama administration's decision to release four classified memos from former President George W. Bush's administration that authorized "enhanced interrogation techniques." In a visit to CIA headquarters last week, President Barack Obama promised not to prosecute agency personnel who carried out such interrogations, since they were following lawful orders. Critics of the techniques, such as Sen. Patrick Leahy, D-Vt., have called for the formation of a "truth commission" to investigate the matter, and Rep. Jerrold Nadler, D-N.Y., has called on Attorney General Eric Holder to appoint a special prosecutor to launch a criminal inquiry into the matter.

Realistically, those most likely to face investigation and prosecution are those who wrote the memos, rather than the low-level field personnel who acted in good faith based upon the guidance the memos provided. Despite this fact and Obama's reassurances, our contacts in the intelligence community report that the release of the memos has had a discernible "chilling effect" on those in the clandestine service who work on counterterrorism issues.

In some ways, the debate over the morality of such interrogation techniques — something we do not take a position on and will not be discussing here — has distracted many observers from examining the impact that the release of these memos is having on the ability of the U.S. government to fulfill its counterterrorism mission. And this impact has little to do with the ability to use torture to interrogate terrorist suspects.

Politics and moral arguments aside, the end effect of the memos' release is that people who have put their lives on the line in U.S. counterterrorism efforts are now uncertain of whether they should be making that sacrifice. Many of these people are now questioning whether the administration that happens to be in power at any given time will recognize the fact that they were carrying out lawful orders under a previous administration. It is hard to retain officers and attract quality recruits in this kind of environment. It has become safer to work in programs other than counterterrorism.

The memos' release will not have a catastrophic effect on U.S. counterterrorism efforts. Indeed, most of the information in the memos was leaked to the press years ago and has long been public knowledge. However, when the release of the memos is examined in a wider context, and combined with a few other dynamics, it appears that the U.S. counterterrorism community is quietly slipping back into an atmosphere of risk-aversion and malaise — an atmosphere not dissimilar to that described by the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) as a contributing factor to the intelligence failures that led to the 9/11 attacks.

Cycles Within Cycles

In March we wrote about the cycle of counterterrorism funding and discussed indications that the United States is entering a period of reduced counterterrorism funding. This decrease in funding not only will affect defensive counterterrorism initiatives like embassy security and countersurveillance programs, but also will impact offensive programs such as the number of CIA personnel dedicated to the counterterrorism role.

Beyond funding, however, there is another historical cycle of booms and busts that can be seen in the conduct of American clandestine intelligence activities. There are clearly discernible periods when clandestine activities are deemed very important and are widely employed. These periods are inevitably followed by a time of investigations, reductions in clandestine activities and a tightening of control and oversight over such activities.

After the widespread employment of clandestine activities in the Vietnam War era, the Church Committee was convened in 1975 to review (and ultimately restrict) such operations. Former President Ronald Reagan's appointment of Bill Casey as director of the CIA ushered in a new era of growth as the United States became heavily engaged in clandestine activities in Afghanistan and Central America. Then, the revelation of the Iran-Contra affair in 1986 led to a period of hearings and controls.

There was a slight uptick in clandestine activities under the presidency of George H.W. Bush, but the fall of the Soviet Union led to another bust cycle for the intelligence community. By the mid-1990s, the number of CIA stations and bases was dramatically reduced (and virtually eliminated in much of Africa) for budgetary considerations. Then there was the case of Jennifer Harbury, a Harvard-educated lawyer who used little-known provisions in Texas common law to marry a dead Guatemalan guerrilla commander and gain legal standing as his widow. After it was uncovered that a CIA source was involved in the guerrilla commander's execution, CIA stations in Latin America were gutted for political reasons. The Harbury case also led to the Torricelli Amendment, a law that made recruiting unsavory people, such as those with ties to death squads and terrorist groups, illegal without special approval. This bust cycle was well documented by both the Crowe Commission, which investigated the 1998 East Africa embassy bombings, and the 9/11 Commission.

After the 9/11 attacks, the pendulum swung radically to the permissive side and clandestine activity was rapidly and dramatically increased as the U.S. sought to close the intelligence gap and quickly develop intelligence on al Qaeda's capability and plans. Developments over the past two years clearly indicate that the United States is once again entering an intelligence bust cycle, a period that will be marked by hearings, increased controls and a general decrease in clandestine activity.

Institutional Culture

It is also very important to realize that the counterterrorism community is just one small part of the larger intelligence community that is affected by this ebb and flow of covert activity. In fact, as noted above, the counterterrorism component of intelligence efforts has its own boom-and-bust cycle that is based on major attacks. Soon after a major attack, interest in counterterrorism spikes dramatically, but as time passes without a major attack, interest lags.

Other than during the peak times of this cycle, counterterrorism is considered an ancillary program that is sometimes seen as an interesting side tour of duty, but more widely seen as being outside the mainstream career path — risky and not particularly career-enhancing. This assessment is reinforced by such events as the recent release of the memos.

At the CIA, being a counterterrorism specialist in the clandestine service means that you will most likely spend much of your life in places like Sanaa, Islamabad and Kabul instead of Vienna, Paris or London. This means that, in addition to hurting your chances for career advancement, your job also is quite dangerous, provides relatively poor living conditions for your family and offers the possibility of contracting serious diseases.

While being declared *persona non grata* and getting kicked out of a country as part of an intelligence spat is considered almost a badge of honor at the CIA, the threat of being arrested and indicted for participating in the rendition of a terrorist suspect from an allied country like Italy is not. Equally unappealing is being sued in civil court by a terrorist suspect or facing the possibility of prosecution after a change of government in the United States. Over the past few years, there has been a dramatic increase in the number of CIA case officers who are choosing to carry personal liability insurance because they do not trust the agency and the U.S. government to look out for their best interests.

Now, there are officers who are willing to endure hardship and who do not really care much about career advancement, but for those officers there is another hazard — frustration. Aggressive officers dedicated to the counterterrorism mission quickly learn that many of the people in the food chain above them are concerned about their careers, and these superiors often take measures to rein in their less-mainstream subordinates. Additionally, due to the restrictions brought about by laws and regulations like the Torricelli Amendment, case officers working counterterrorism are often tightly bound by myriad legal restrictions.

Unlike in television shows like "24," it is not uncommon in the real world for a meeting called to plan a counterterrorism operation to feature more CIA lawyers than case officers or analysts. These staff lawyers are intricately involved in the operational decisions made at headquarters, and legal issues often trump operational considerations. The need to obtain legal approval often delays decisions long enough for a critical window of operational opportunity to be slammed shut. This restrictive legal environment goes back many years in the CIA and is not a new fixture brought in by the Obama administration. There was a sense of urgency that served to trump the lawyers to some extent after 9/11, but the lawyers never went away and have reasserted themselves firmly over the past several years.

Of course, the CIA is not the only agency with a culture that is less than supportive of the counterterrorism mission. Although the prevention of terrorist attacks in the United States is currently the FBI's No. 1 priority on paper, the counterterrorism mission remains the bureau's redheaded stepchild. The FBI is struggling to find agents willing to serve in the counterterrorism sections of field offices, resident agencies (smaller offices that report to a field office) and joint terrorism task forces.

While the CIA was very much built on the legacy of Wild Bill Donovan's Office of Strategic

Services, the FBI was founded by J. Edgar Hoover, a conservative and risk-averse administrator who served as FBI director from 1935-1972. Even today, Hoover's influence is clearly evident in the FBI's bureaucratic nature. FBI special agents are unable to do much at all, such as open an investigation, without a supervisor's approval, and supervisors are reluctant to approve anything too adventurous because of the impact it might have on their chance for promotion. Unlike many other law enforcement agencies, such as the Drug Enforcement Administration or the Bureau of Alcohol, Tobacco, Firearms and Explosives, the FBI rarely uses its own special agents in an undercover capacity to penetrate criminal organizations. That practice is seen as being too risky; they prefer to use confidential informants rather than undercover operatives.

The FBI is also strongly tied to its roots in law enforcement and criminal investigation, and special agents who work major theft, public corruption or white-collar crime cases tend to receive more recognition — and advance more quickly — than their counterterrorism counterparts.

FBI special agents also see a considerable downside to working counterterrorism cases because of the potential for such cases to blow up in their faces if they make a mistake — such as in the New York field office's highly publicized mishandling of the informant whom they had inserted into the group that later conducted the 1993 World Trade Center bombing. It is much safer, and far more rewarding from a career perspective, to work bank robberies or serve in the FBI's Inspection Division.

After the 9/11 attacks — and the corresponding spike in the importance of counterterrorism operations — many of the resources of the CIA and FBI were focused on al Qaeda and terrorism, to the detriment of programs such as foreign counterintelligence. However, the more time that has passed since 9/11 without another major attack, the more the organizational culture of the U.S government has returned to normal. Once again, counterterrorism efforts are seen as being ancillary duties rather than the organizations' driving mission. (The clash between organizational culture and the counterterrorism mission is by no means confined to the CIA and FBI. Fred's book "Ghost: Confessions of a Counterterrorism Agent" provides a detailed examination of some of the bureaucratic and cultural challenges we faced while serving in the Counterterrorism Investigations Division of the State Department's Diplomatic Security Service.)

Liaison Services

One of the least well known, and perhaps most important, sources of intelligence in the counterterrorism field is the information that is obtained as a result of close relationships with allied intelligence agencies — often referred to as information obtained through "liaison channels."

Like FBI agents, most CIA officers are well-educated, middle-aged white guys. This means they are better suited to use the cover of an American businessmen or diplomat than to pretend to be a young Muslim trying to join al Qaeda or Hezbollah. Like their counterparts in the FBI, CIA officers have far more success using informants than they do working undercover inside terrorist groups.

Services like the Jordanian General Intelligence Department, the Saudi Mabahith or the Yemeni National Security Agency not only can recruit sources, but also are far more successful in using young Muslim officers to penetrate terrorist groups. In addition to their source networks and penetration operations, many of these liaison services are not at all squeamish about using extremely enhanced interrogation techniques — this is the reason many of the terrorism suspects who were the subject of rendition operations ended up in such locations. Obviously, whenever the CIA is dealing with a liaison service, the political interests and objectives of the service must be considered — as should the possibility that the liaison service is fabricating the intelligence in question for whatever reason. Still, in the end, the CIA historically has received a significant amount of important intelligence (perhaps even most of its intelligence) via liaison channels.

Another concern that arises from the call for a truth commission is the impact a commission investigation could have on the liaison services that have helped the United States in its counterterrorism efforts since 9/11. Countries that hosted CIA detention facilities or were involved in the rendition or interrogation of terrorist suspects may find themselves exposed publicly or even held up for some sort of sanction by the U.S. Congress. Such activities could have a real impact on the amount of cooperation and information the CIA receives from these intelligence services.

Conclusion

As we've previously noted, it was a lack of intelligence that helped fuel the fear that led the Bush administration to authorize enhanced interrogation techniques. Ironically, the current investigation into those techniques and other practices (such as renditions) may very well lead to significant gaps in terrorism-related intelligence from both internal and liaison sources — again, not primarily because of the prohibition of torture, but because of larger implications.

When these implications are combined with the long-standing institutional aversion of U.S. government agencies toward counterterrorism, and with the difficulty of finding and retaining good people willing to serve in counterterrorism roles, the U.S. counterterrorism community may soon be facing challenges even more daunting than those posed by its already difficult mission.

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