

By Scott Stewart and Fred Burton

When a lone gunman, U.S. Army Maj. Nidal Malik Hasan, opened fire on a group of soldiers at Fort Hood, Texas, the victims were in the Soldier Readiness Processing Center, a facility on the base where troops are prepared for deployment and where they take care of certain processing tasks such as completing insurance paperwork and receiving medical examinations and vaccinations.

Even though the targets of Hasan's attack were soldiers, they represented a very soft target in this environment. Most soldiers on bases inside the United States are normally not armed and are only provided weapons for training. The only personnel who regularly carry weapons are the military police and the base civilian police officers. In addition to being unarmed, the soldiers at the center were closely packed together in the facility as they waited to proceed from station to station. The unarmed, densely packed mass of people allowed Hasan to kill 13 (12 soldiers and one civilian employee of the center) and wound 42 others when he opened fire.

Hasan is a U.S.-born Muslim who, according to STRATFOR sources and media accounts, has had past contact with jihadists, including the radical Imam Anwar al-Awlaki. Al-Awlaki is a U.S.-born imam who espouses a jihadist ideology and who was discussed at some length in the 9/11 commission report for his links to 9/11 hijackers Khalid al-Midhar and Nawaf al-Hazmi. Al-Awlaki, who is currently living in Yemen and reportedly has contacts with al Qaeda, posted a message on his Web site Nov. 9 praising Hasan's actions. Despite Hasan's connections to al-Awlaki and other jihadists, it is unknown at this point if he was even aware of al-Wahayshi's recent message calling for simple attacks, and therefore it is impossible to tell if his attack was in response to it.

However, one thing that is certain is that investigators examining Hasan's computer hard drive, e-mail traffic and Internet history will be looking into that possibility, along with other indications that Hasan was linked to radicals.

We noted recently that by their very nature, individual actors and small cells are very difficult for the government to detect. They must somehow identify themselves by contacting a government informant or another person who reports them to the authorities, attend a militant training camp or conduct correspondence with a person or organization under government scrutiny. In the Hasan case, it now appears that Hasan did self-identify by making radical statements to people he worked with, who reported him to the authorities. It also appears that he had correspondence with people such as al-Awlaki, whom the government was monitoring. Because of this behavior, Hasan brought himself to the attention of the Department of Defense, the FBI and the CIA.

The fact that Hasan was able to commit this attack after bringing government attention to himself could be due to a number of factors. Chief among them is the fact that it is tactically

impossible for a government to identify every aspiring militant actor and to pre-empt every act of violence. The degree of difficulty is increased greatly if an actor does indeed act alone and does not give any overt clues through his actions or his communications of his intent to attack. Because of this, the Hasan case provides an excellent opportunity to examine national security investigations and their utility and limitations.

The nature of intelligence investigations

The FBI will typically open up an intelligence investigation (usually referred to as a national security investigation) in any case where there is an indication or allegation that a person is involved in terrorist activity but there is no evidence that a specific law has been broken. Many times these investigations are opened up due to a lead passed by the CIA, National Security Agency or a foreign liaison intelligence service. Other times an FBI investigation can come as a spin-off from another FBI counterterrorism investigation already under way or be prompted by a piece of information collected by an FBI informant or even by a tip from a concerned citizen — like the flight instructors who alerted the FBI to the suspicious behavior of some foreign flight students prior to the 9/11 attacks. In such a case, the FBI case agent in charge of the investigation will open a preliminary inquiry, which gives the agent a limited window of time to look into the matter. If no indication of criminal activity is found, the preliminary inquiry must be closed unless the agent receives authorization from the special agent in charge of his division and FBI headquarters to extend it.

If, during the preliminary inquiry, the investigating agents find probable cause that a crime has been committed, the FBI will open a full-fledged criminal investigation into the case, similar to what we saw in the case of Luqman Ameen Abdullah and his followers in Detroit.

One of the large problems in national security investigations is separating the wheat from the chaff. Many leads are based on erroneous information or a misidentification of the suspect — there is a huge issue associated with the confusion caused by the transliteration of Arabic names and the fact that there are many people bearing the same names. Jihadists also have the tendency to use multiple names and identities. And there are many cases in which people will falsely report a person to the FBI out of malice. Because of these factors, national security investigations proceed slowly and usually do not involve much (if any) contact with the suspect and his close associates. If the suspect is a real militant planning a terrorist attack, investigators do not want to tip him off, and if he is innocent, they do not want to sully his reputation by showing up and overtly interviewing everyone he knows. Due to its controversial history of domestic intelligence activities, the FBI has become acutely aware of its responsibility to protect privacy rights and civil liberties guaranteed by the Constitution and other laws.

And the rights guaranteed under the Constitution do complicate these national security investigations. It is not illegal for someone to say that Muslims should attack U.S. troops due to their operations in Iraq and Afghanistan, or that more Muslims should conduct attacks like the June 1 shooting at a recruiting center in Little Rock, Ark. — things that Hasan is reported to have said. Radical statements and convictions are not illegal — although they certainly would appear to be conduct unbecoming a U.S. Army officer. (We will leave to others the discussion of the difficulties in dealing with problem officers who are minorities and doctors and who owe

several years of service in return for their education.)

There are also many officers and enlisted soldiers in the U.S. Army who own personal weapons and who use them for self-defense, target shooting or hunting. There is nothing extraordinary or illegal about a U.S. Army major owning personal weapons. With no articulable violation of U.S. law, the FBI would have very little to act upon in a case like Hasan's. Instead, even if they found cause to extend their preliminary inquiry, they would be pretty much limited to monitoring his activities (and perhaps his communications, with a court order) and waiting for a law to be violated. In the Hasan case, it would appear that the FBI did not find probable cause that a law had been violated before he opened fire at Fort Hood. Although perhaps if the FBI had been watching his activities closely and with an eye toward "the how" of terrorist attacks, they might have noticed him conducting preoperational surveillance of the readiness center and even a dry run of the attack.

Of course, in addition to just looking for violations of the law, the other main thrust of a national security investigation is to determine whom the suspect is connected to and whom he is talking to or planning with. In past cases, such investigations have uncovered networks of jihadist actors working together in the United States, Canada, Europe and elsewhere. However, if all Hasan did in his correspondence with people such as al-Awlaki was exercise his First Amendment right to hold radical convictions, and if he did not engage in any type of conspiracy to conduct an attack, he did not break the law.

Another issue that complicates national security cases is that they are almost always classified at the secret level or above. This is understandable, considering they are often opened based upon intelligence produced by sensitive intelligence programs. However, this classification means that only those people with the proper clearance and an established need to know can be briefed on the case. It is not at all unusual for the FBI to visit a high-ranking official at another agency to brief the official on the fact that the FBI is conducting a classified national security investigation involving a person working for the official's agency. The rub is that they will frequently tell the official that he or she is not at liberty to share details of the investigation with other individuals in the agency because they do not have a clear need to know. The FBI agent will also usually ask the person briefed not to take any action against the target of the investigation, so that the investigation is not compromised. While some people will disagree with the FBI's determination of who really needs to know about the investigation and go on to brief a wider audience, many officials are cowed by the FBI and sit on the information.

Of course, the size of an organization is also a factor in the dissemination of information. The Department of Defense and the U.S. Army are large organizations, and it is possible that officials at the Pentagon or the Army's Criminal Investigation Command (still known by its old acronym CID) headquarters at Fort Belvoir, Va., were briefed on the case and that local officials at Fort Hood were not. The Associated Press is now reporting that the FBI had alerted a Defense Criminal Investigative Service agent assigned to the Joint Terrorism Task Force (JTTF) in Washington about Hasan's contacts with al-Awlaki, and ABC reports that the Defense Department is denying the FBI notified them. It would appear that the finger-pointing and bureaucratic blame-shifting normally associated with such cases has begun.

Even more severe problems would have plagued the dissemination of information from the CIA to local commanders and CID officers at Fort Hood. Despite the intelligence reforms put in place after the 9/11 attacks, the U.S. government still faces large obstacles when it comes to sharing intelligence information with law enforcement personnel.

Criminal Acts vs. Terrorism

So far, the Hasan shooting investigation is being run by the Army CID, and the FBI has been noticeably — and uncharacteristically — absent from the scene. As the premier law enforcement agency in the United States, the FBI will often assume authority over investigations where there is even a hint of terrorism. Since 9/11, the number of FBI/JTTF offices across the country has been dramatically increased, and the JTTFs are specifically charged with investigating cases that may involve terrorism. Therefore, we find the FBI's absence in this case to be quite out of the ordinary.

However, with Hasan being a member of the armed forces, the victims being soldiers or army civilian employees and the incident occurring at Fort Hood, the case would seem to fall squarely under the mantle of the Uniform Code of Military Justice (UCMJ). From a prosecutorial perspective, a homicide trial under the UCMJ should be very tidy and could be quickly concluded. It will not involve all the potential loose ends that could pop up in a federal terrorism trial, especially when those loose ends involve what the FBI and CIA knew about Hasan, when they learned it and who they told. Also, politically, there are some who would like to see the Hasan case remain a criminal matter rather than a case of terrorism. Following the shooting death of Luqman Ameen Abdullah and considering the delicate relationship between Muslim advocacy groups and the U.S. government, some people would rather see Hasan portrayed as a mentally disturbed criminal than as an ideologically driven lone wolf.

Despite the CID taking the lead in prosecuting the case, the classified national security investigation by the CIA and FBI into Hasan and his possible connections to jihadist elements is undoubtedly continuing. Senior members of the government will certainly demand to know if Hasan had any confederates, if he was part of a bigger plot and if there are more attacks to come. Several congressmen and senators are also calling for hearings into the case, and if such hearings occur, they will certainly produce an abundance of interesting information pertaining to Hasan and the national security investigation of his activities.

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