

Bureaucratic Politics and the 9/11 Attacks: The Case of FBI Agent John O'Neill

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Under the rubble created by the collapse of the Twin Towers of the World Trade Center (WTC) in New York City, the body of former FBI agent John O'Neill was recovered. Just a few weeks prior to O'Neill's death, he had retired from the Bureau and was hired as head of security for the WTC. He was working on the morning of the attacks.

One of the ironies surrounding O'Neill's death was that few Americans understood better than he the threat posed to the United States by the terrorist organization that attacked the WTC, al Qaeda. For nearly six years, O'Neill had been the FBI's point man in the effort to identify and defeat Islamic extremists who targeted the United States. O'Neill was "one of the first people in counterterrorism to understand the threat posed to the United States and its interests abroad by Islamic fundamentalists, particularly al Qaeda" (Weiss, 2003, 5). The spectacular horror of the terrorist attack on the WTC made vivid, at last, a threat that O'Neill had struggled to make clear to national security policy makers in the years before his retirement.

The FBI was slow to recognize and respond to the threat of Islamic terrorism. One explanation for the resistance that O'Neill and a few other like-minded government officials encountered, both inside and outside the Bureau, is that the effort to mobilize the Bureau to meet its counterterrorism responsibilities clashed with its prevailing law enforcement/criminal justice mission. The FBI was essentially a reactive organization that excelled at investigating crimes and apprehending criminals. Progress was measured by cases opened and closed. Confronting terrorist conspiracies entailed devoting attention and resources to conducting surveillance and collecting intelligence to prevent crimes that might never materialize.

When John O'Neill was named Section Chief for Counterterrorism at FBI Headquarters in Washington, D.C., he had served for nearly nineteen years with the Bureau. The day he arrived in Washington, on February 5, 1995, from his prior posting at the FBI Field Office in Chicago, he received a call from Richard Clarke, the National Counterterrorism Coordinator on President Clinton's National Security Council (NSC). As National Counterterrorism Coordinator, Clarke chaired an interagency committee called the Counterterrorism and Security Group (CSG). Clarke informed O'Neill that Ramzi Yousef had been located in Pakistan. Yousef was believed to be the leader of a conspiracy that resulted in an attempt to destroy the World Trade Center in 1993. In that attack, on February 26, 1993, a van carrying a 1,500-pound bomb composed of fuel oil and fertilizer was detonated in a parking lot under the WTC, leaving a seventy-yard-wide crater in the underground garage. The twin towers of the WTC withstood the blast and, miraculously, only six people were killed. In contacting O'Neill, Clarke sought the assistance of the FBI in arresting Yousef and returning him to the U.S. to stand trial. For the next three days, O'Neill helped to plan and coordinate an operation from Washington that resulted in the successful seizure of Yousef a world away in Pakistan.

Two years prior to Yousef's arrest overseas, in the immediate aftermath of the 1993 van bombing in fact, FBI agents in New York arrested four Middle Eastern men in the WTC bombing conspiracy. All were convicted of participating in the plot and were sentenced to life in prison that same year. The arrest of Yousef, and O'Neill's supervision of that accomplishment, appeared to represent the satisfying culmination of the FBI's quest to bring the 1993 World Trade Center terrorists to justice.

But as O'Neill began to examine the case more closely, he became convinced that the

attack was not merely an “isolated event” (Weiss, 2003, 93). In fact, among the men who attempted to destroy the WTC “were very few strangers to law enforcement” (Miller, Stone, & Mitchell, 2002, 96). New York’s Joint Terrorism Task Force (JTTF), a law enforcement team composed of New York Police Department detectives and FBI agents, had been tracking the activities of a Middle Eastern terrorist cell in New York City since at least 1990. The attention of the JTTF had been drawn to the cell in the aftermath of the November 5, 1990 murder of Rabbi Meir Kehane, founder of the Jewish Defense League. The investigations centered on the activities of the Farooq Mosque in Brooklyn, which was led by a blind Egyptian sheik named Omar Abdel-Rahman. Abdel-Rahman had immigrated to the U.S. in May 1990 and was known even then as “a world figure in jihad, a man whose writing, preaching, and political savvy had helped create a international network of armed militants devoted to the re-creation of an Islamic empire” (Miller et al., 2002, 53).

The JTTF investigation into the 1993 WTC bombing case revealed the existence of a larger, more ambitious conspiracy, the “Landmarks plot.” The plot included a plan “for the simultaneous bombings of four major New York City landmarks: the Lincoln and Holland tunnels, the United Nations and 26 Federal Plaza, the location of the New York offices of the FBI” (Miller et al., 2002, 113). On June 24, 1993, about five months after the WTC bombing, FBI agents arrested and charged thirteen men with a terrorist conspiracy in the Landmarks plot, including the blind sheik Abdel-Rahman.

But the 1993 WTC bombing and the “Landmarks plot” did not appear to exhaust all of the plans that stemmed from the New York City terrorist cell. O’Neill discovered that, with the capture of Yosef, alarming additional information was uncovered regarding terrorist attacks

against the U.S. Before fleeing to Pakistan where Yusef was caught on February 7, 1995, the Philippine police raided his apartment in Manila on January 6. Yusef escaped, but his laptop computer confiscated by the police revealed the “Bojinka” airline plot. The plan called for destroying as many as twelve U.S. commercial airplanes departing from various airports in Asia over the Pacific Ocean (Benjamin & Simon, 2003, 20-21).

As O’Neill immersed himself in government intelligence related to radical Islam, he soon encountered the name of the Saudi exile, Osama bin Laden, and the organization, al Qaeda. The 1993 WTC investigation uncovered the name “al Qaeda” on a list of donors who contributed to the Brooklyn mosque headed by sheik Abdel-Rahman. At the time, little was known of al Qaeda or Osama bin Laden. Bin Laden, a Saudi native from a wealthy family, spent the latter half of the 1980's raising funds for the Afghan rebels fighting the Soviet occupation of Afghanistan (Benjamin & Simon, 2003, 100). In 1992, he left Saudi Arabia for Sudan. In that same year, he issued a fatwa, or religious decree, demanding an end to the Western occupation of Islamic lands in the Middle East and urging attacks on military forces there. Nevertheless, U.S. intelligence officials regarded bin Laden as “just one among many diverse terrorist barons” (National Commission, 2004, 59).

Clarke (2004) notes that the terrorist cell in New York City which revolved around Abdel-Rahman was funded at least in part by al Qaeda, but no one grasped this at the time (79). Bin Laden’s connections to Yusef and the other terrorists in the cell surrounding Abdel-Rahman were “largely circumstantial, bound in a complex, poorly understood network of operatives, fundamentalist leaders, and wealthy Arab donors” (Miller et.al, 2002, 139). And it was not until 1996 that U.S. intelligence would learn that Bin Laden used the years he was in

Sudan, from 1992 to 1996, to strengthen and extend his terrorist network, eventually establishing “a large and complex set of intertwined business and terrorist enterprises” (National Commission, 2004, 57).

The Ramzi Yousef case drew O’Neill into the thick of radical Islamic terrorism and also marked the beginning of a close working relationship between the NSC’s Richard Clarke and O’Neill. Clarke believed that O’Neill exhibited “an obsessiveness about the dangers of terrorism” that Clarke shared (Wright, 2002, 2). O’Neill’s immersion in the world of international Islamic-based terrorism led him to conclude, as early as 1995, that Osama bin Laden was “the world’s most pressing threat” (Weiss, 2002, 100-101).

On the positive side, the 1993 WTC bombing case revealed the FBI’s strengths as a law enforcement agency. A crime was committed, an investigation ensued and evidence was collected, suspects were identified and arrested. But if the attack was not an isolated event, as O’Neill suspected, and represented instead the emergence of an international terrorist conspiracy targeting the U.S., then more attacks would likely follow. To prevent that possibility, the FBI would need to rely more heavily on its intelligence gathering and risk assessment capabilities. Yet many FBI agents “believed that one of the bureau’s great weaknesses is its failure to properly analyze the immense amount of information that it collects, and to share it among its field offices” (Van Natta & Johnston, 2002, 4).

As O’Neill struggled in 1995 to piece together the information that was revealed as a result of the FBI’s investigations of the 1993 WTC bombing and Ramzi Yousef, terrorist attacks on the U.S. continued. The continuing presence of U.S. military forces in Saudi Arabia, a consequence of the failure to remove Iraqi dictator Saddam Hussein during the Gulf War of

1991, was deeply resented by Islamic fundamentalists in the Middle East. In November 1995 and in June 1996, U.S. forces suffered attacks. A 1995 car bomb attack targeted the Riyadh headquarters of a facility housing U. S. Army personnel who were training the Saudi National Guard, killing five Americans. A 1996 truck bomb attack on a U.S. Air Force high-rise housing complex in Dahrhan killed nineteen Americans. O'Neill and the FBI were deeply involved in the investigations of both attacks. But the investigations revealed that most likely the Saudi Hezbollah, an affiliate of the Iranian-sponsored terrorist organization Hezbollah, was behind the attacks, not al Qaeda.

Nevertheless, events in 1996 appeared to confirm O'Neill's suspicions that Osama bin Laden and al Qaeda were major threats to the United States. In August, 1996, before bin Laden left Sudan to move his operation to Afghanistan, he released a message to fellow Muslims declaring war, in effect, on the U.S. and exhorting Muslims to expel the U.S. from Muslim holy lands. Just before his departure from Sudan, the secret defection to the U.S. of a Sudanese al Qaeda member, Jamal Ahmed Mohamed al Fadhli, occurred. Al Fadhli's defection was a major breakthrough for the U.S. government, for he had "an intimate, comprehensive knowledge of al Qaeda" (Miller et.al, 2002, 154). Al Fadhli revealed to the Central Intelligence Agency (CIA) information which "provided the first extensive road map of the bin Laden terrorist empire" (Wright, 2002, 4), including the presence of al Qaeda cells in over fifty countries (Clarke, 2004,148). By 1996 the CIA was concerned enough about bin Laden/al Qaeda that it established a "Bin Laden unit" composed of about "a dozen officers to analyze intelligence on and plan operations against him" (National Commission, 2004, 109).

In January 1997, O'Neill left his post as Section Chief for Counterterrorism at FBI

headquarters in Washington, D.C., to become Special Agent in Charge of the National Security Division at the New York City FBI Field Office. The move complimented O'Neill's experience and expertise, where he supervised about four hundred agents, including the office's counterterrorist squads (Weiss, 2003, 153).

O'Neill publicly expressed his concerns about the growing threat of Islamic terrorism when he had the opportunity. In a speech on June 11, 1997, to the National Strategy Forum in Chicago, he warned that Islamic extremism was "growing very, very fast." More ominously, he warned that "Various organizations have a presence in the United States." He added, "Almost all of the groups, if they chose to, have the ability to strike us here They're working toward that infrastructure" (Weiss, 2003, 180-183).

In 1998, from his headquarters in Afghanistan, bin Laden again declared war on the United States in even more explicit terms than his 1996 pronouncement. First published in an Arabic newspaper in London in February and then via an ABC-TV interview in May 1998, the fatwa declared the murder of Americans was the "individual duty for every Muslim who can do it in any country in which it is possible to do it." Later on the ABC-TV interview, bin Laden explained, "We do not have to differentiate between military or civilians. As far as we are concerned, they are all targets" (National Commission, 2004, 47).

Whatever doubts existed among intelligence officers and law enforcement officials about the degree of al Qaeda involvement in prior terrorists attacks, those doubts were dispelled by what intelligence revealed in the aftermath of the U. S. embassy bombings in Africa in 1998. The August 7, 1998 coordinated truck bombings of U.S. embassies in Nairobi, Kenya and Dar es Salaam, Tanzania killed 12 Americans, 212 mostly Kenyans, and injured 5,000 more people. In

the high-level meetings in the days immediately following the attacks, according to NSC staffer Richard Clarke, CIA director George Tenet told President Clinton that the evidence pointed unambiguously to al Qaeda. “ ‘ This is one is a slam dunk, Mr. President. There is no doubt that this is an al Qaeda operation’ ” (Clarke, 2004, 184).

According to the head of the New York FBI Field Office, Lewis Schilro, O’Neill immediately suspected that bin Laden was responsible (Weiss, 2003, 206). Though O’Neill wanted badly to guide a team of agents from the New York office to investigate the bombings, FBI regulations placed that responsibility elsewhere. In overseas cases involving crimes against U.S. citizens, the Washington, D.C. Field Office had jurisdiction (Weiss, 2003, 208). The FBI investigations quickly led to four arrests. More importantly, the arrests and the information that was revealed subsequently indicated a shift in strategy by al Qaeda. In the past, the organization had provided “funds, training, and weapons for actions carried out by members of allied groups.” The African embassy bombings revealed attacks “planned, directed, and executed by Al Qaeda, under the direct supervision of Bin Laden and his chief aides” (National Commission, 2004, 67).

The embassy bombings prompted the strongest U.S. response to bin Laden and al Qaeda to date. On August 20, 2001, nearly two weeks after the embassy attacks, the U.S. launched seventy-five Tomahawk missiles at terrorist training camps in Afghanistan and at a Khartoum, Sudan pharmaceutical plant that the U.S. believed was manufacturing a precursor ingredient for nerve gas with Bin Laden’s financial support. Though the missiles struck their intended targets, neither Bin Laden nor any of his terrorists leadership were killed (National Commission, 2004, 116-117).

The embassy bombings signaled the need for a “cultural change” within the FBI

(National Commission, 2004, 76). According to Assistant Director Dale Watson, in the wake of the bombings, “ ‘ the light came on,’ “ revealing the urgency of a stronger intelligence collection effort. As a result, a five-year strategic plan was developed that, for the first time, designated counterterrorism as the FBI’s “top priority.” Yet, the plan was never successfully implemented before 9/11 (National Commission, 2004, 76-77).

The next major threat of attacks on the U.S. from al Qaeda occurred in December, 1999. The “millennium crisis” appears to have originated in a terrorist cell in Jordan. But, according to Benjamin and Simon (2002), “all the lines of activity converged in the hands of one man,” a Palestinian named Abu Zubayda living in Peshawar, Pakistan(32). The plot was revealed when the Jordanian police arrested sixteen members of the cell in Amman. The Jordanian authorities disrupted the cell after intercepting a telephone call from one of the members of the cell to Abu Zubaydah, “a longtime ally of Bin Laden.” (National Commission, 2004, 174). The Jordanians suspected the call conveyed a sign to launch terrorists attacks. The Jordanians discovered a plan to attack several targets in the Middle East.

Those initial arrests, the subsequent investigations and more arrests that followed, led the Jordanians to conclude that the Jordanian plot was probably part of a larger series of attacks that included targets in the U.S. to coincide with the up-coming Millennium. Two of the men arrested in connection with the plot in Amman were Raed Hajiz and Khalid Deek. Hajiz, the leader of the cell, had lived for many years in the U.S. and for a time was a cab driver in Boston. Deek was a naturalized U.S. citizen. When the Jordanians informed the U.S. officials of the cell on December 4, the news prompted a “millennium alert,” in which embassies, military bases, and police agencies were warned that “al Qaeda terrorists may be planning attacks around the time of

the Millennium” (Clarke, 2004, 211).

On December 14, 1999, U.S. Customs officials arrested an Algerian, Ahmed Ressam, attempting to enter the U.S. from Canada at Port Angeles, Washington. In the trunk of Ressam’s rental car was discovered explosives and timing devices. The arrest and investigation into Ressam’s activities revealed plans to detonate a bomb at Los Angeles International Airport on January , 2000. Further investigations also revealed Ressam “had been recruited, trained, and prepared in a network affiliated” with al Qaeda (National Commission, 2004, 180). Moreover, Ressam was to be assisted by another co-conspirator, Abdelghani Meskini, who was to have met Ressam in Seattle.

Since Meskini’s apartment was located in Brooklyn, New York, O’Neill supervised the New York surveillance operation to learn more about Ressam’s accomplice (Wright, 2002, 6). Since taking the job in New York, O’Neill had made the New York office “the operational arm of the FBI for going after al Qaeda overseas,” according to Richard Clarke (2004, 215). Wire taps to Miskini’s phone lines soon revealed a larger network of conspirators in Brooklyn and Queens (Weiss, 2003, 253). On December 30, O’Neill arrested Meskini on conspiracy charges. The end result of the FBI’s “millennium roundup” were the arrests of “more than forty people with ties to Ressam and Meskini in six states” (Weiss, 2003, 263).

In the aftermath of the millennium terrorists threats, the CSG, led by Richard Clarke, conducted a review of what had transpired and prepared a list of recommendations for the future. Clarke was disturbed by the lack of attention given to domestic terrorism by the FBI. The millennium investigations clearly revealed the existence of “sleeper cells” in the U.S. (National Commission, 2004, 182). Yet, according to Clarke, “there was a general disbelief in the FBI that

Al Qaeda had much of a presence here. It just hadn't sunk through to the organization . . . “ (Wright, 2002, 6). Clarke identified two exceptions at the FBI: John O'Neill in the New York Field Office and Dale Watson, who had filled the position in Washington that O'Neill had vacated when he moved to New York (Clarke, 2004, 215; 218).

On October 12, 2000, the *USS Cole*, a destroyer that was refueling off the coast of Aden, Yemen, was the target of a terrorist attack. A small boat, loaded with explosives and piloted by two men, approached the *Cole* and exploded, ripping a huge forty-foot hole in the side of the ship, killing seventeen sailors and seriously wounding thirty-nine others. An FBI team of investigators was dispatched to Yemen to investigate, and this time O'Neill personally led the FBI investigation.

Even before the investigation commenced, CSG head Richard Clarke suspected the attack was the work of an al Qaeda cell known to exist in Yemen (Clarke, 2004, 223). But the investigation was difficult. The Yemeni authorities were reluctant to cooperate. The U.S. ambassador to Yemen, Barbara Bodine, clashed with O'Neill over the course of the investigation (Wright, 2002, 8). After spending a month in Yemen, O'Neill returned to the U.S. and continued to lead the investigation. Yet, relations between the ambassador and O'Neill were so contentious, that in January 2001, Bodine denied O'Neill's application to return to Yemen. O'Neill was disappointed when FBI Director Louis Freeh did not challenge the ambassador's decision. Finally, in June of 2001, on O'Neill's recommendation, Director Freeh withdrew the FBI team from Yemen after nearly six months. Despite the turf battles with the American ambassador, American and Yemeni investigations led to the identification and arrests of individuals “which the United States knew were part of al Qaeda.” Further arrests in 2002 and

2003 established proof of “Bin Laden’s personal involvement” (National Commission, 2004, 193).

The *USS Cole* investigation that O’Neill led was his last. He retired from the FBI on August 22, 2001, after twenty-five years of service. At the time of O’Neill’s retirement, he was clearly frustrated. O’Neill had been denied two choice promotions. First, while serving in the New York Field Office, a top level position at FBI headquarters in Washington opened in 1998, the Assistant Director in Charge of the National Security Division. O’Neill applied for the job, but in November, 1998, another candidate was chosen (Weiss, 2003, 235). Then, in 2000, when the position of Agent In Charge of the New York Field Office became vacant, O’Neill applied. It was a job he had always coveted, and he lobbied hard for it. When he was passed over in May 2000, he “was devastated”(Weiss, 2003, 276-277). He admitted to a friend, Jerry Hauer, the head of New York City’s Emergency Management Service, “ ‘I don’t think I am going anywhere in the bureau’ “ (Weiss, 2003, 336).

Part of the reason for O’Neill’s frustration was that he was not perceived as a team player. Richard Clarke, an ally of O’Neill’s, was quoted as saying, “ ‘ John had the same problems with bureaucracy as I did’ “ (Wright, 2002, 2). The “problem” that Clarke and O’Neill shared was the conviction that the FBI underestimated the threat from al Qaeda. Based upon this conviction, O’Neill was not always tactful or deferential when challenged. Benjamin and Simon (2003) write that O’Neill “was energetic and incorrigibly certain of his views . . . he steamrolled those who opposed him. Those qualities turned FBI management against him” (305).

John O’Neill’s frustration and ultimate failure to move the FBI toward a more aggressive posture toward terrorism is explained in some measure by the novelty of threat. Though the FBI

had confronted domestic terrorism before the decade of the 1990's, the threat represented by radical Islam was unprecedented. Organizations like al Qaeda operate internationally and are comprised of loose cells in many countries, making the organization difficult to locate. Members are motivated by their religious identity, a radical form of Islam, that exhorts them to engage in jihad, or holy struggle, against the United States. In essence, the FBI faced a threat in al Qaeda that was well-funded, well-organized, international in scope, and extremely dedicated to destroying its enemies.

FBI Director Louis Freeh (1993-2001) “recognized terrorism as a major threat” (National Commission, 2004, 76). Consistent with Freeh’s concern, during his tenure spending on counterterrorism tripled and the number of agents assigned to terrorism cases increased 250 percent (Van Natta & Johnston, 2002, 5). But the increase in resources was insufficient. From 1998 to 2001, a critical period between the African embassy bombings and the 9/11 attacks, counterterrorism spending was flat. Moreover, there was a reluctance in the fifty-six field offices to shift resources from violent crime and drug enforcement to terrorism. Even with the increases in agents assigned to terrorism, in 2000 there were only one-half as many agents assigned to counterterrorism as agents assigned to drug enforcement (National Commission, 2004, 77).

Ultimately, the novelty of the terrorist threat cannot adequately explain the stubborn resistance of the Bureau to face it, even after the repeated efforts by O’Neill and others to redirect the Bureau to meet the danger. To better understand that failure, it is useful to apply the insights derived from a bureaucratic politics approach to understanding government agency behavior. The bureaucratic politics approach originates from the observation that administration consists of much more than “the mechanical execution of decreed policy” (Kozak, 1988, 4).

Instead, government agencies are viewed as “political” institutions themselves and, as such, behave in characteristic ways. A number of propositions flow from the bureaucratic politics approach to understanding agency behavior (Kozak 1988, 5-10). In general, the interests of agency personnel are defined by their commitment to the accomplishment of the agency’s goals or mission. To sustain the agency’s ability to meet its mission, the agency will seek to maintain or expand certain resources, including funding, expertise, decision-making discretion, and political support. Because these resources are limited and are dependent on the support of external political bodies like Congress, agencies are engaged in competitive struggle with other political actors for resources. This competitive struggle for agency resources, vital to the accomplishment of the agency’s mission, engenders in agency personnel certain patterns of behavior (“patterned role playing”) that sustain and support the agency and its mission. As a result, agencies develop an internal culture that influences the attitudes and behavior of agency personnel.

Consequently, a more complete explanation for the failure of the FBI to adequately confront terrorism incorporates an understanding of the Bureau’s mission and the institutional culture that sustains and supports that mission. Though the FBI is tasked with intelligence and counterterrorism responsibilities, before 9/11 at least, the Bureau favored its criminal justice mission. Intelligence collection and analysis--activities associated with a broader national security mission were not accentuated. In large part, the performance of the FBI both collectively and among individual agents was “generally measured against statistics such as numbers of arrests, indictments, prosecutions, and convictions” (National Commission, 2004, 74). Because counterterrorism and counterintelligence work frequently involve “lengthy

intelligence investigations that might never have positive or quantifiable results,” this work is devalued. In other words, as far as most agents are concerned, these types of investigations are not “career-enhancing” (National Commission, 2004, 74). So pervasive is the pressure to achieve results, that agent investigators operate according to a tacit “Golden Rule: Whenever the risks of collecting intelligence were weighed against the imperatives of making cases, the need to make the case won out” (Miller et al., 2003, 331).

Even though, in 1998, the Deputy Director of the FBI, Robert Bryant, produced a five-year strategic plan to make counterterrorism a top priority, the plan did not succeed (National Commission, 2004, 76). Part of the problem was that the FBI’s fifty-six field offices were slow to respond. In 1999, Dale Watson, the head of the FBI’s Counterterrorism Division, believed that there were still too few agents working terrorism (Van Natta & Johnston, 2002, 3). With Louis Freeh’s authorization, he convened in March 2000 a meeting of all senior FBI supervisors from the fifty-six field offices. Richard Clarke, the head of the CSG, spoke to the supervisors, informing them that al Qaeda was “ ‘ our number one enemy and they are among us, in your cities. Find them’ ”(Clarke, 2004, 218). Watson reinforced Clarke’s message, even warning the supervisors that, “ ‘ Your bonus, your promotion, your city of assignment all depend upon how well you do on this mission’ ”(219). Watson later confided in Clarke that redirecting the FBI was like steering an aircraft carrier. “ ‘ It takes a long time to stop going in one direction and turn around and go in another. These field offices have all had their own way, little fiefdoms, for years,’ ” he said (219). Thus career incentives help explain why FBI agents and supervisors clung to the investigation of traditional criminal activities--bureau performance could be more easily assessed and measured.

If the national security counterterrorism investigations were not generally regarded as “career enhancing,” the lack of appeal was also compounded by opening the Bureau and its agents to greater risks. These risks include the loss of prestige and status for the Bureau as well as destruction of the careers of individual agents. FBI intelligence gathering (spying) for domestic security purposes is a task with a checkered history. The 1975 Senate Church Committee investigations into intelligence activities revealed a number of FBI domestic spying abuses, from 1956 to 1971, targeted at civil rights leaders and anti-Vietnam war activists, among others (Johnson, 2004, 417).

Despite these historical abuses of its authority, in order to meet the threat to national security posed by spying, sabotage, or terrorism, federal law permits the FBI to monitor the activities of persons operating in the U.S. who act on behalf of foreign powers. One of the primary tools the Bureau utilizes to collect foreign intelligence information in regard to these threats is electronic surveillance. Ordinarily, in the course of a criminal investigation, the Fourth Amendment protection against an “unreasonable search and seizure” would necessitate law enforcement to show “probable cause” of criminal activity before electronic surveillance was permitted. Since 1978, however, the Foreign Intelligence Surveillance Act (FISA) permits the FBI to conduct electronic surveillance for the purpose of gathering foreign intelligence information by demonstrating only “probable cause” that the target of the surveillance is an agent of a foreign power (Congressional Research Services, 20). Probable cause of criminal activity is not a requirement for the authorization of the electronic surveillance in these circumstances. The FBI’s application for FISA electronic surveillance authorization is made to a special court created by the FISA law for these purposes, the Foreign Intelligence Surveillance Court.

The authorization procedure for electronic surveillance is designed to prevent the abuse of the surveillance power. Even so, given the potential for the misuse of the power, the FBI proceeds very cautiously here. O'Neill himself recognized the reluctance was especially pronounced among supervisors at FBI headquarters in Washington. All too often supervisors minimized the risk of a investigation going awry by following this rule: "Big cases, big problems; small cases, small problems; no cases, no problems" (Weiss, 2003, 37). And among the FBI field offices, the perception prevailed that the "FISA process was lengthy and fraught with peril" (Report of the Committees, 2002, 96).

Two examples that illustrate the Bureau's caution both occurred in 2001, only a few months before the 9/11 attacks. In both episodes, the attention of the FBI was drawn to Middle Eastern men who were receiving flight training in U.S. flight schools.

The first episode concerns the so-called "Phoenix memo." An FBI agent, an experienced terrorism investigator, in the Phoenix Field Office was alarmed by the discovery of a number of suspected Islamic terrorists who were applying for pilot training at a local flight school. On July 10, 2001, the agent dispatched a memo to FBI headquarters detailing his concerns about "the possibility of a coordinated effort by Osama bin Laden to send students to the United States to attend civil aviation universities and colleges" (Miller et.al, 2003, 289). The agent recommended that the FBI canvass these aviation schools around the country and investigate the possibility of this kind of conspiracy. The memo was forwarded also to the New York City Field Office. But neither there nor at headquarters was any action taken. Nor was the information provided by the Phoenix office forwarded to the NSC. FBI officials believed that they could not provide the manpower that the Phoenix agent's recommendation would require. It was also noted that

“targeting Middle Eastern or Islamic men across the nation would have amounted to racial profiling under the Attorney General guidelines, and would have subjected the bureau to the risk of litigation or congressional censure or both” (Miller et.al, 2003, 289).

The second episode occurred just five weeks after the “Phoenix memo” and stemmed from the suspicions of the Minneapolis Field Office. Unlike the situation in Phoenix, in this episode, the Minneapolis Office petitioned to exercise the authority under FISA. On August 15, 2001, the field office initiated an investigation into the activities of Zacarias Moussaoui, a French-Moroccan, who was receiving flight training at the Pan American International Flight Academy in Eagan, Minnesota. The investigation determined that Moussaoui was an Islamic extremist and might be planning to hijack an airplane (National Commission, 2004, 273). Lacking sufficient evidence to arrest Moussaoui on hijacking charges, he was arrested on immigration violations--his visa had expired.

FBI headquarters were not convinced there was probable cause to obtain a criminal warrant for the purpose of examining Moussaoui’s laptop computer. As a result, the Minneapolis office requested FISA authority to conduct a physical search. Under the FISA protocol, the agents would only need to demonstrate probable cause that Moussaoui was an agent of a foreign power. The Minneapolis Office reached out to both French and British intelligence to learn more about Moussaoui’s past associations. The Minneapolis Office was convinced the information gleaned about Moussaoui was substantial enough to secure FISA authority and enable a search of his laptop computer. FBI headquarters did not think so. At one point in the communications between Minneapolis and FBI headquarters, the Minneapolis supervisor “said he was ‘trying to keep someone from taking a plane and crashing into the World Trade Center’”

(National Commission, 2004, 275). FBI headquarters refused to submit a FISA application. Once again, there is no evidence that the Moussaoui case received attention at the highest levels of the bureau--neither FBI Acting Director Pickard nor Assistant Director for Counterterrorism Dale Watson was briefed on the case before 9/11 (National Commission, 2004, 275). Nor was word of Moussaoui's arrest forwarded to the White House or the NSC. After 9/11, it was discovered that Moussaoui had trained in an al Qaeda training camp in Afghanistan and may, in fact, have been preparing for a role as one of the 9/11 hijackers.

If the primacy of the Bureau's criminal justice mission detracted from counterterrorism and intelligence gathering functions, there were other institutional factors that undermined the effectiveness of the FBI's efforts to stop al Qaeda. Hindsight following 9/11 reveals the existence of several tantalizing clues and bits of information that, if the information had been aggregated and analyzed, the 9/11 plot might have been exposed. But information obtained from FBI investigations was rarely shared. The Criminal Division was reluctant to share information with outside agencies. Even within the FBI, the Criminal Division and the Intelligence Division were reluctant to share information with each other. Legal constraints and the adherence to customary practices inhibited the cooperation and information sharing that could have resulted in a clearer picture of the al Qaeda plot.

Potentially useful information on terrorist activities gathered by the Criminal Division from criminal investigations of terrorism was rarely shared with outside agencies or with the Intelligence Division. The restricted information flow was defended by the Criminal Division's adherence to the Federal Rules of Criminal Procedure. Rule 6(e) of the Federal Rules prohibits the disclosure of any material that appears before a federal grand jury, with some exceptions

(Federal Rules, 28-38). Although one of the exceptions to the prohibition on disclosure includes foreign intelligence information deemed to be useful to other government officials, the FBI Criminal Division has been cautious about releasing even this type of information. This cautiousness has prevented the information from flowing in two directions where it might have been helpful, to the foreign policy leadership at the NSC and to the Intelligence Division within the FBI itself.

According to Benjamin and Simon (2003), Rule 6(e) is a bulwark of the FBI's "institutional culture" and one of its "foremost tools" for preserving the Bureau's independence. As such, "it is used far more often than it should be" (227). The reluctance to share potentially useful intelligence on terrorism derived from criminal investigations with the executive branch foreign policy leadership exacted a toll. The FBI "contributed nothing to the White House's understanding of al-Qaeda. Virtually none of the information uncovered in any of the Bureau's investigative work flowed to the NSC" (Benjamin & Simon, 2003, 304). The reluctance of the Criminal Division to share information with agencies outside the FBI also applied to Bureau's own Intelligence Division, and for the same reason, Rule 6(e) of the Federal Rules of Criminal Procedure.

But if the Criminal Division held closely information that might have been of use to the Intelligence Division, the Intelligence Division also had its own reasons for secrecy that inhibited the sharing of intelligence. The reasons also stem from legal imperatives and customary practices that protect the integrity of the intelligence gathering effort. The surveillance of foreign agents to collect foreign intelligence information may in fact reveal criminal activity. When that occurs, there are procedures by which the incriminating evidence collected from the

surveillance may be transferred to the Criminal Division. But this information transfer must proceed carefully. If the incriminating evidence transferred becomes the basis for a criminal prosecution, Justice Department prosecutors must be able to demonstrate to a judge that FISA authorization was not used from the beginning as a means to collect incriminating evidence. In other words, the FISA process must not be used as a criminal investigative tool in order to escape the burden of “probable cause” that would ordinarily be met. Prosecutors may not exploit the Intelligence Division’s use of the FISA authorization to stage an end run around the Fourth Amendment protections against an “unreasonable” search.

To prevent this type of exploitation, procedures authorized by the Attorney General of the Justice Department were promulgated to minimize the risk of the abuse of the FISA surveillance authority, yet at the same time, allow enough information transfer to enable the prosecution of criminal activity. But in practice, there was minimal cooperation and information sharing on terrorist threats and activities between agents of the Intelligence Division and the Criminal Division leading up to 9/11. Reluctant to share information, the procedures designed to regulate but assist the transfer of intelligence gleaned from surveillance under FISA authority were instead interpreted as erecting a “wall” prohibiting the transfer of such information. Many agents “incorrectly believed that the FBI could not share FISA-derived information with criminal investigators at all or that an impossibly high standard had to be met before the information would be shared” (Report of the Committees, 2002, 83). As a result, FISA-derived information rarely passed to criminal investigators.

The primacy of the FBI’s criminal justice mission, and the institutional patterns and imperatives that accompanied that mission, undermined the Bureau’s ability to fight al Qaeda.

John O'Neill understood the gravity of the threat, but was unable to shift the Bureau's priorities in time to avert disaster. Perhaps it is naive to assume that he, and a few other officials that shared his outlook, could have succeeded in transforming time-honored, deeply-ingrained organizational procedures.

Since the 9/11 attacks, with additional funding by Congress, the FBI is addressing the systemic weaknesses exposed by the al Qaeda attacks. It is improving and strengthening its counterintelligence and counterterrorism capabilities. It is hiring and training agents skilled in intelligence analysis. It has weakened the "wall" separating intelligence and criminal functions.

In the future, government agencies like the FBI must preserve places for stubborn, nonconformists like O'Neill who, at the same time, are talented and dedicated civil servants. The insights they bring are too valuable and the costs of marginalizing or dismissing them are too great.

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