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A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

OF THE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

FEBRUARY 15, 2011

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CONTENTS

	Page
Opening statements:	
Senator Lieberman	1
Senator Collins	2
Senator Johnson	21
Prepared statements:	
Senator Lieberman	27
Senator Collins	29

WITNESSES

TUESDAY, FEBRUARY 15, 2011

Hon. Charles E. Allen, Former Under Secretary of Homeland Security for Intelligence and Analysis and Chief Intelligence Officer	3
General John M. Keane, USA, Retired, Former Vice Chief of Staff of the U.S. Army	5
J. Philip Mudd, Senior Global Adviser, Oxford Analytica	8
Samuel J. Rascoff, Assistant Professor of Law, New York University School of Law	12

ALPHABETICAL LIST OF WITNESSES

Allen, Hon. Charles E.:	
Testimony	3
Prepared statement	32
Keane, General John M.:	
Testimony	5
Prepared statement	41
Mudd, J. Philip:	
Testimony	8
Prepared statement	46
Rascoff, Samuel J.:	
Testimony	12
Prepared statement	48

APPENDIX

"A Ticking Time Bomb, Counterterrorism Lessons From the U.S. Government's Failure to Prevent the Fort Hood Attack," A Special Report by Joseph I. Lieberman, Chairman, and Susan M. Collins, Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs, February 2011	59
American Civil Liberties Union, prepared statement	130
Responses to post-hearing Questions for the Record from:	
Mr. Allen	136
Mr. Keane	139
Mr. Mudd	141
Mr. Rascoff	143

H605-41331-79W7 with DISTILLER

VerDate Nov 24 2008 11:07 Nov 29, 2011 Jkt 066620 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 P:\DOCS\66620.TXT JOYCE

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A TICKING TIME BOMB: COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK

TUESDAY, FEBRUARY 15, 2011

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:47 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Levin, Begich, Collins, Brown, and Johnson.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Two weeks ago, Senator Collins and I issued this report based on our bipartisan staff investigation. It was, as we have indicated, into the Fort Hood massacre that left 13 innocent people dead and 32 others, including Sergeant Lunsford, wounded.

Our report—titled "A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack"—concluded, painfully, that the attack at Fort Hood was preventable. The Department of Defense (DOD) missed several opportunities to reprimand and discharge Army Major Nidal Hasan for his growing and surprisingly open embrace of violent Islamist extremism, and the Federal Bureau of Investigation (FBI) neglected to investigate him thoroughly after it learned that Hasan, a member of the U.S. Armed Forces, after all, was communicating with a suspected terrorist already the subject of a major FBI counterterrorism investigation.

More broadly, our investigation uncovered a troubling lack of awareness among some U.S. Government officials about violent Islamist extremism, the ideology that inspires it, its manifestations, and how best we can prevent and confront it.

Today we are going to hear reactions to our report's findings and recommendations and discuss how our government must proceed if it is to prevent future homegrown terrorism broadly and the loss of innocent American life at the hands of violent Islamist extremists.

I want to particularly recognize, welcome, and, again, honor all those members of the victims' families, and Sergeant Lunsford, who

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are here today and also to welcome our panel of witnesses. They are really an extraordinary group of people with wide-ranging and long experience.

Charlie Allen was the first Under Secretary of Homeland Security for Intelligence and Analysis and Chief Intelligence Officer and before that for a long time had been a top counterterrorism official at the Central Intelligence Agency (CIA).

Phil Mudd is a former long-time CIA analyst and was the first Deputy Director for National Security at the FBI as post-September 11, 2001, made itself into the lead U.S. Government agency for counterterrorism purposes.

We are really honored to have Jack Keane with us, retired Vice Chief of Staff of the U.S. Army and four-star general, to discuss the military's response to this challenge.

And Samuel Rascoff, Assistant Professor of Law at the New York University School of Law and former director of the intelligence analysis unit of the New York Police Department (NYPD), will bring the other perspective of local government and academia to the discussion.

Because we are starting late, I am going to ask that the rest of my statement be included in the record.

And I will now call on Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Let me begin my remarks by also expressing my personal thanks to the family members and victims who have traveled from afar to be with us today. As I told them in our meeting prior to this hearing, they were the ones who kept us going throughout this investigation, even though at times we met with obstacles and a lack of cooperation. And meeting with you today redoubles our determination to ensure that the recommendations in our report will become a reality.

About a half a day, about 4 hours, that was the amount of time that the Washington Joint Terrorism Task Force (JTTF) spent determining whether a military officer in communication with a known terrorist suspect amounted to a national security threat. Underlying threat information was not shared with the Department of Defense. Additional investigative actions were not taken, even when the JTTF responsible for the lead called the investigation "slim" and pressed for more action.

This hasty decision to close the investigation cost the government its last, best chance to identify the violent radicalization of Major Nidal Hasan, the last, best chance to potentially prevent the November 2009 massacre at Fort Hood.

But well before this failure by the FBI, the Department of Defense itself had enough information regarding Hasan's violent radicalization to have disciplined or discharged him under current personnel and extremism policies. Hasan's extremist actions at Walter Reed Army Medical Center were well known to his supervisors and colleagues, and his poor medical performance was also evident. Yet the Department took no action—laying the foundation for the FBI's cursory investigation which relied, in part, on Hasan's inadequate and misleading officer evaluations.

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Our report's conclusion is alarming. It is a call to action. The Department of Defense and the FBI collectively had sufficient information to have detected Major Hasan's radicalization to violent Islamist extremism, but they failed to act effectively on the many red flags signaling that he had become a potential threat.

I, too, am going to submit the rest of my statement for the record since we are starting late, but I just want to make four quick points.

First, the Administration still is refusing to acknowledge that violent Islamist extremism is the ideology that fuels attacks.

Second, the FBI cannot go it alone. Its Joint Terrorism Task Forces have been successful and deserve credit for thwarting plots against our country, but they risk becoming another intelligence stovepipe.

Third, detecting and disrupting homegrown terrorism will require a sustained leadership effort from the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence, and active coordination across Federal, State, and local lines.

Fourth and finally, the U.S. Government must develop and implement an effective strategy to confront the violent Islamist ideology that fuels terrorism.

Again, as I met with the families today, they renewed my personal commitment and I know that of the Chairman and all the Members of this Committee. They deserve no less than our steadfast commitment to achieving the goals that we have set out in our report. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator Collins.

Now we will go to the witnesses. Mr. Allen, great to welcome you back. I think we are calling on you first, as we usually do, based on seniority. And may I say you look great. I have not seen you in a while, so welcome back.

TESTIMONY OF HON. CHARLES E. ALLEN,[1] FORMER UNDER SECRETARY OF HOMELAND SECURITY FOR INTELLIGENCE AND ANALYSIS AND CHIEF INTELLIGENCE OFFICER

Mr. ALLEN. Thank you, Mr. Chairman and Ranking Member Collins. It is great to appear before this distinguished Committee again. I have a longer statement for the record that I would like to be entered into the record.

Chairman LIEBERMAN. Without objection, it will be.

Mr. ALLEN. The focus today, of course, is on the murder of 12 servicemen and one Department of Defense civilian at Fort Hood by Nidal Malik Hasan, a U.S. Army major and a psychiatrist. But beyond that event, I think there is the broader issue of the potential growth of violent ideological Islamist extremism in our homeland, and Senator Collins just referenced that.

I found the section of the Committee's special report on violent Islamist extremism to be in accord with views that I have held since 1998 when I was at the CIA working against al-Qaeda and the global spread of Islamist extremism, along with Mr. Mudd. It delineates the ideology of violent Islamist extremism—and that of

[1] The prepared statement of Mr. Allen appears in the Appendix on page 32.

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al-Qaeda its affiliates and others—from the belief in the religion of Islam and its practice. And that is very important.

I am concerned, however, by the details in the report on the deference given Major Hasan by his superiors at the Department of Defense as he repeatedly persisted in studying Islamist extremism in ways that suggested he endorsed under some circumstances violent acts, including suicide operations.

As this Committee is well aware, the United States has successfully continued very relentless efforts under two Administrations to disrupt, dismantle, defeat, and destroy al-Qaeda, and it has been remarkably successful. The new factor, however, that has come to the fore over the last 2 years is a surge in homegrown extremism here in the United States. The growth of extremism, especially among young American Muslims, in 2009 and 2010 is very disturbing. According to a RAND Corporation study published in 2010, there were 46 publicly reported cases of radicalization and recruitment to jihadist terrorism between September 11, 2001, and December 31, 2009. But 13 of these cases occurred in 2009, up from an average of about four cases a year from 2002 to 2008. And the individuals charged with involvement in terrorism were primarily self-inspired, self-motivated. And with few exceptions, they were not directed by al-Qaeda "central" or by al-Qaeda in the Arabian Peninsula.

One cannot overstate the power of the Internet in fueling the growth of this radicalization. It is the primary means by which al-Qaeda markets its messages to hundreds of Web sites, commanding Muslims to kill or support the killing of U.S. citizens to defend Islam, which we know is a false statement.

Anwar al-Awlaki in his latest video, which I think was on November 9, 2010, had one simple message, and it was very direct: "Kill Americans."

Turning to the Committee's report, I agree strongly with the Committee's views in praising the work of the military, the FBI, and intelligence agencies, in disrupting and preventing attacks. And I think the Committee is accurate in its judgment that there is a need for a more comprehensive and coordinated approach to countering radicalization and homegrown terrorism across all agencies, including Federal, State, and local. If we are going to keep the country safe, I think we have to have a unified intelligence effort.

We have talked about an integrated national intelligence enterprise to deal with domestic terrorism, but I think we are far from one where we have firm resolution. There is no unified national intelligence collection plan or not even a set of recognized national intelligence requirements relating to domestic terrorism. There are fault lines across the Federal, State, and local governments and the information sharing and building of trust among counterterrorism authorities.

For example, the FBI is the country's primary domestic intelligence agency that has the responsibility to prevent and investigate acts of terrorism. It is a radically different agency from what existed on September 11, 2001, it really has improved. It has established the Joint Terrorism Task Forces, over a hundred of those. It has established Field Intelligence Groups in each of the FBI's 56 field offices. But it is not clear to me that the analysts are as well

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integrated into FBI investigations and operations as they should be, and it is especially important that they are not integrated with special agents in pursuing leads where there may be suspicious activity but no immediate predicate for investigation.

The Department of Homeland Security (DHS) and its intelligence arm has yet to realize its full potential at the State and local level. It must do more to enrich its relationship not only with the fusion centers but with local police departments. Local police departments are not yet fully utilized as part of the overall national intelligence effort, even though they are well positioned to combat homegrown terrorism. They know their neighborhoods, and they are very diverse.

It seems to me the lessons from Fort Hood are pretty clear. DOD needs to have both a doctrine and strategy for dealing effectively with the potential for Islamist extremism within our military services, and I believe this can be done while ensuring that military personnel have full freedom of religion, regardless of faith.

Both DOD and the FBI also had sufficient information between them, if it had been acted upon—to have taken actions to prevent the attack by Major Hasan. However, neither had a total view of the potential threat posed by Nidal Hasan. More importantly, the DOD officer assigned to the JTTF never had access to all of the sensitive information involving Major Hasan's communications with a "suspected terrorist."

It is essential that personnel assigned to the JTTFs from other agencies, such as DOD, have "systems high" clearances if they are to perform their jobs. Failure to share information and excessive compartmentation have contributed to American casualties in the struggle against terrorism, there are some examples of that in the past.

I think the FBI is on its way to transformation, changing the Bureau's culture. But I believe the transformation is incomplete. It needs to move even more to become an intelligence-driven organization from its case-driven model that it has prided itself on over the years. I also believe that the JTTFs decentralized model has to be re-examined to ensure that FBI Headquarters' counterterrorism leadership is more directly involved in potential terrorism leads that could pose risks and the need for more intelligence colleague.

I look forward to your questions.

Chairman LIEBERMAN. Thanks very much, Mr. Allen, for an excellent opening statement.

General Keane, a pleasure to welcome you back. Thank you for all your service to our country and for coming forward to talk about this current challenge.

TESTIMONY OF GENERAL JOHN M. KEANE,[1] USA, RETIRED, FORMER VICE CHIEF OF STAFF OF THE U.S. ARMY

General KEANE. Chairman Lieberman, Ranking Member Collins, and distinguished Members of the Committee, thank you for inviting me to testify today about the most significant threat to the security of the American people that I have seen in my lifetime—radical, violent Islamist extremism. I commend this Committee and

[1] The prepared statement of General Keane appears in the Appendix on page 41.

H605-41331-79W7 with DISTILLER

the leadership of Senators Lieberman and Collins for their ongoing work in identifying this dangerous ideology and developing ways to protect against it.

My heart goes out to the family members of our murdered soldiers and civilian, and those who are here today. I hope you can find some satisfaction in the excellent work done by this Committee.

The most recent work of the Committee on this challenge to our national security is its investigative report on the Fort Hood massacre that took place on November 5, 2009. That report puts the key issue front and center and confirms what many of us feared after the attack. Self-radicalized violent Islamist extremists are not just here in America; they have penetrated the U.S. military, which is one of the last places you would expect to find people so violently opposed to this country and its citizens.

I would like to discuss my two reactions to this much needed and comprehensive report. First, I am shocked and disappointed by what this report reveals about the failure of the Department of Defense to come to grips with violent Islamist extremism and the danger it presents to our troops. Second, I wholeheartedly endorse the report's recommendations for reform in DOD to better protect against this threat.

I will start with my first reaction—just how unacceptable the Army's failure to deal properly with Hasan's radicalization to violent Islamist extremism was. I reach this conclusion with sadness. I was proud to serve in the Army, and while I did, I was involved in helping the Army devise policies to protect against racial extremism that turned deadly at Fort Bragg, North Carolina, where I commanded. And I know the military is full of people at all ranks who are dedicated to the protection of the men and women in service. But this time, some of those people—including Hasan's superiors and colleagues—failed to do what was needed to root out a dangerous extremist.

I agree with the report's conclusion that Hasan's open displays of violent extremism was a violation of military rules calling for good order and discipline. A list of things Hasan said and did in that report, when you add them up, shows he was an extremist who had no place in our armed services.

I want to caution here that I know that our military includes thousands of brave and patriotic Muslim Americans who serve this country with honor. Some have given their lives in service to our country. When Hasan concluded that Muslim Americans might commit fratricide, he was not talking about them, but he was giving a warning about himself. As the report states, Hasan's extremism was not a secret. The officer who assigned him to Fort Hood told commanders there, "You're getting our worst."

What should have Hasan's military superiors done? They should have been able to put the information together and conclude that Hasan believed the same things that the violent Islamist extremist enemies of this country believe, and that meant he should have been out of the military.

But instead of removing Hasan, his superiors promoted him, graduated him from his residency and fellowship, assigned him to Fort Hood, and even approved him for deployment to the conflict

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in Afghanistan. Instead of moving Hasan out, his Army commanders moved him up. This is exactly the opposite of what responsible officers should have done.

The report describes a series of reasons given by the Army for failing to deal properly with Hasan. I do not find any of those reasons credible. A pair of related reasons is that some of Hasan's superiors believed his views were not problematic, and others actually believed he provided valuable insight into Islamist extremism. This was a terrible misjudgment because the truth was that Hasan's views were problematic precisely because he was an extremist. It is hard to understand why senior officers did not see that.

So why did Hasan's superiors fail to take the action that was necessary? That brings me to my second reaction to the report, which is my agreement with the report's recommendations about changing military policies and training to identify the threat of violent Islamist extremism among service members and to require that it be reported and dealt with.

When I testified at a hearing before this Committee at the beginning of the investigation, I said this: "It should not be an act of moral courage for a soldier to identify a fellow soldier who is displaying extremist behavior; it should be an obligation." This is as true today as it was then. Unfortunately, the report reveals that the military to this day still does not have policies and training which identify what violent Islamist extremism is and what our men and women should do when they see it.

I know a lot of good people in the military have reviewed the Fort Hood attack to determine lessons learned, and some of their work and recommendations do move us forward. But we have to directly address the threat we face exactly, and that threat is violent Islamist extremism. Over a year after the Fort Hood attack, this direct and honest step still has not been taken by the military. Instead, the military avoids labeling our enemy for what it is, rather subsuming it under ambiguous terms such as "extremism" or trying to call it something completely different such as "workplace violence." That is not acceptable because it leaves our service members vulnerable to more attacks from these extremists.

Clarity is all the more important here because of the complexity of dealing with someone like Hasan, who commingles dangerous extremism with religion. Unless service members clearly understand the difference between legitimate religious observance and dangerous extremism, everyone in the military is in an unfair position. The reason is that service members are understandably reluctant to interfere with the practice of religion and that they are, rightly, trained by the military to respect religious observance. But that should never mean that violent Islamist extremism should be tolerated. The Department of Defense's failure to identify the enemy clearly causes service members at all ranks to avoid dealing with extremists properly, just as they avoided the need to deal with Hasan.

The lack of clarity is also deeply unfair to the thousands of Muslims who serve honorably in the U.S. military. If service members clearly understand the difference between their religion and the dangerous radicalism of violent Islamist extremism, the patriotic

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Muslims in our armed services will be protected against unwarranted suspicion. In fact, it was just that sort of awful, untrue stereotype about Muslim soldiers that Hasan believed and promoted in his statements. The best way to defeat that stereotype is to educate our service members about the difference between the legitimate, peaceful observance of Islam, which is respected and protected, and the violent Islamist extremism which should lead to reporting, discharge, and law enforcement intervention.

I endorse the changes that this report recommends because they do what needs to be done to fix the problems I have described. They are necessary to make, and they are not hard to make.

I know from experience that the changes this report recommends could be made and implemented in a month or two if DOD chose to do so. That sort of urgency is necessary because our men and women in the military are vulnerable to a known danger and because DOD has an equal responsibility to protect its thousands of brave and patriotic Muslim-American service members from unwarranted suspicion by colleagues who have never been trained about what violent Islamist extremism is and how it differs from the peaceful exercise of Islam.

I welcome this Committee's hard work to protect them, and I hope that DOD will act immediately to follow the recommendations in this investigative report, and I look forward to your questions. Thank you.

Chairman LIEBERMAN. Thanks very much, General Keane. Excellent statement, and it means a lot to our Committee to have your support of the recommendations and the findings.

Next, Phil Mudd, we welcome you back, another familiar face. We thank you again for your service and welcome your statement now.

TESTIMONY OF J. PHILIP MUDD,[1] SENIOR GLOBAL ADVISER, OXFORD ANALYTICA

Mr. MUDD. Thanks for having me, Senator. I do not really have a statement. I just wanted to have a conversation with the Committee about what I think about this and—I have been out of the business for 10 months—what my friends talk about when they speak about this. There are 13 people are dead and we talk about this a lot.

There has been a lot of complaining among my friends. They do not like the tone, they do not like the title. Others say we need a lot of accuracy in here, we ought to focus on the accuracy. I have heard other sides, including staff, say we did not get full cooperation.

I would like to put that aside and say, Look, it is an honor to be here. I know families are behind me. Thirteen people are dead, and 32 are injured. I am not going to focus on what I heard in terms of bitching and moaning from my friends. I want to talk about what we should do.

Chairman LIEBERMAN. Great.

Mr. MUDD. I think we should start by focusing on the problem we face in terms of threat, and this is a good time to do this be-

[1] The prepared statement of Mr. Mudd appears in the Appendix on page 46.

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cause we are 10 years in. When I was sitting at the threat table in 2001, 2002, and 2003, you were talking about looking at a point target in a place like Pakistan and saying, do we understand the point target well enough tactically to figure out if they are going to send somebody to Chicago? That is Jose Padilla. So you could focus on an intelligence target overseas and in essence look for the point where that intelligence target was focusing in the United States.

Flip that on its head right now and think now we have to look for people in the United States who might be motivated by people overseas, but in essence we are looking for a needle in a haystack because the overseas guys are not sending people here anymore. They are relying on the ideology of the revolution, to motivate someone here. So what we have to do is say, how do we get down from 20,000 people, or 50,000 or 1,000, to in the future find the Major Hasans? So that is the premise I am going at this with.

What I would like to do is to offer some suggestions in seven or eight areas that relate to things like field operations, that relate to coordination among agencies, State and locals, and I have talked to some of them about this at the FBI, CIA, and DHS. But every one of the seven or eight comments I have relates to this question of how do you find people in the field when you cannot presume anymore that point targets overseas, that is, al-Qaeda leadership, will give you the clues you need to solve the problem.

The fundamental transformation I am talking about is getting CIA intelligence or the National Security Agency (NSA) intelligence to penetrate al-Qaeda in Pakistan and Afghanistan versus getting State and locals or a JTTF or a fusion center in Amarillo, Texas, to tell you something is wrong here that we would never have seen overseas.

A couple of broad categories I mention: When I think about this as a manager, you think about how do people operate in the field; how do we train them; what kind of guidance do we give them; how does headquarters operate to drive them; and what kind of policy background you have in terms of training when they enter service—especially in dealing with this as a metastasized threat and in dealing with this after conversations with friends in the Middle East and Europe—who are, by the way, facing the same things and talking about the same problems.

I want to end with a couple comments specifically about the Internet because I think that is the biggest problem we have here, both operationally and in terms of guidance and legislation.

In terms of field operations, as I said, I want to step through seven or eight ideas. Each of these, I will offer a specific comment about a way ahead that you could look at over 90 to 120 days with your staff. I do not want to just lay a problem at your doorstep. I want to give you a solution.

We have a metastasized threat where you cannot just focus on a Federal group or a federally led group like a JTTF. You have to focus on State and locals. You have something like 17,000 or 18,000 police departments. There is not a lot of staff on JTTFs. We need to understand how we can get information from these State and locals up.

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So point one, I think there needs, 10 years in, to be a conversation about coordination among JTTF, State and locals, and—we have not mentioned this yet—fusion centers. Fusion centers are out there. There are 70-plus. They operate differently. They are charged with looking for these needles in haystacks. I would argue more specifically that you talk to people like the International Association of Chiefs of Police (IACP), the major city chiefs, and talk to them in conjunction with DHS and the FBI and say if the threat is changing but we are still driving the leads down from Washington and operating in relatively small centers like JTTFs, do we need to change that concept and what are your ideas from the people who see this problem in the streets—that is, State and local enforcement.

I would argue second that you have to think about staffing there. I know there are a lot of discussions on the Hill about budget cuts. You understand the linkage between cutting off staffing for cops and cops' willingness to participate in Federal task forces. That is sort of a one-to-one correlation. The cops I talk to understand budgetary issues, but they are saying with a lot of violent crime, it is going to be increasingly difficult for us to participate in these intelligence-sharing programs like fusion centers and JTTFs if we have fewer and fewer cops to go on the streets. Believe me, behind the scenes when we have a beer, they are not complaining about what you have to do here; they are just saying we live in a reality. And police chiefs are saying, "I might have to pull back from task forces."

We also should look at joint training. CIA trains human intelligence (HUMINT) officers; FBI trains HUMINT officers; FBI trains investigators; the Defense Intelligence Agency (DIA) trains analysts; CIA trains analysts; FBI trains analysts; fusion centers train analysts. Unbelievable. I would argue that we take a city approach. You take a city like Houston, Dallas, or Los Angeles. Los Angeles is a good example because they have a terrific counterterrorism program in the police out there. And say, should we think about training in a different way—that is, hugely expensive. Bring people back to a training facility near Washington, put them together with a problem set of how do you find extremism—and have a standard process by which police, analysts, FBI agents, CIA officers, and DHS officers are sitting down saying, when we face a problem, here is how we are going to train to attack the problem and get out of this, having analysts and operations in an information-sharing world train separately. So that is the second or third thing I would ask the staff to do.

Let me shift quickly to talk about things like ideology, which is a problem I talked about, again, in the Middle East and Europe. We have a problem of extremism. Extremism is not a Federal violation, but it is the precursor for what we saw that led to the murder of 13 people. I would argue that Members of the Committee might want to talk to other places who have longer experience dealing with hate speech, places like Western Europe—I am talking about the Germans, the Dutch, the Swedes, and the Brits. The Australians are having this problem. We have to think about not just why one person murdered 13 people. We have to think about how we take hate speech and indications of violence on the Internet and

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boil that down to find one person and what indicators we can use. I am not talking about psychology. I am literally talking about technical tools to boil that down. But part of that has to be comfort from this side of the street to say that is OK, because people like me are very nervous about this. They saw the PATRIOT Act debate last week. They see people saying you are getting too intrusive in our lives. And, meanwhile, they are getting the message to be more intrusive as you look on the Internet. Very problematic for a practitioner.

I will close quickly, but a couple other things.

First, as I close, a bit of an off-the-wall comment, but we are looking for needles in haystacks, and a lot of these are coming from new communities that are nervous about working with security services. I would bring in DHS and say when we are bringing new people in for things like swearing them in to this country, do we have a conversation with them about how to be comfortable with your national security apparatus; what numbers can you call; what protection you have when you call someone. I think we ought to have a quick conversation—this is sort of the royal "we," but I am suggesting your staff look into this—about how we talk systematically to new immigrants about how they can help integrate in this society and prevent further isolation of their communities in the event there is another attack, because this is bad for all of us, and I think most of them would understand it is bad for their communities. They are just nervous about talking to the Federal Government.

I think similarly we should have an imam training program. I know this is government intruding into religion, but we are behind the curve on this. Countries overseas are doing this. I am not suggesting that we train imams about how to teach people about religion. I am suggesting that, similar to what I am talking about with immigrants, we have a conversation with them—and people overseas have already done this—to say this is how we need help, this is the message you should give to a kid who is considering violence, this is who to call, this is what protections you have—because a lot of them will say, "I am not going to call if the kid is just going to get picked up."

My last point is about the Internet. We need to go from an ocean to a drop of water, because the number of people who are involved in this Islamist violent revolution is in the tens or hundreds of thousands. So to find people like Hasan, you are going to go from 10,000 or 20,000 people to one. I would suggest we consider looking at the legislation and regulations that guide how people—people like in the jobs I used to have—look at the Internet and how they investigate potential violent activity on the Internet. Look at the laws and regulations, and then ask people on the other end, people like me, in a perfect world when you had no legislation, no regulations, what would you do? Characterize that air gap and say, are we comfortable giving people guidance to cover that air gap? Because I suspect—I am not sure about this—that you will find that air gap is wider than you think.

But, again, it is an honor to be here. It is really an honor because I used to be here because of the position I held, and now you in-

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vited me because maybe I know something. And I know the families are behind me, and it is really a privilege, so thank you.

Chairman LIEBERMAN. Having heard your testimony, Mr. Mudd, we made the right move in inviting you because you clearly do know a lot. Your testimony was very helpful, and particularly the specific recommendations you made, which I would like to come back to.

I do want to put an exclamation point around something you said, and it builds on the numbers that Mr. Allen and General Keane also talked about, which is that—and this is why we really ought to talk about this directly. When we talk about violent Islamist extremists, we are talking about a very small number of people in the Muslim-American community. I think Mr. Allen's numbers said something like 46 cases since September 11, 2001, although the escalation was to 13 cases in 2009.

Mr. ALLEN. In 2009.

Chairman LIEBERMAN. Yes, that was the number from September 11, 2001, through 2009. So that is a very small number of cases.

On the other hand, of course, it does not take too many people to do a terrible amount of damage, as we saw at Fort Hood, 13 dead, 32 injured, some quite seriously. So it puts our challenge in context, but I think it also ought to encourage us to just be very direct about who is the enemy and who is not the enemy, and to enlist, as I think you are suggesting, members of new American communities and the Muslim-American community to join us in this effort to find the drops of water in the ocean, if you will.

Mr. MUDD. I know it is not time to respond, but I would quickly say my sense is most members of the community do not know, and I include both family and——

Chairman LIEBERMAN. Yes.

Mr. MUDD. I watched hundreds of investigations, particularly at the Bureau, but a few like this at CIA. And I know there are a lot of questions about community participation and cooperation with law enforcement, and I think there is some fair criticism to be made. But I think mostly they do not know.

Chairman LIEBERMAN. Our final witness is Mr. Rascoff. You have been before us before—I guess you were before us when you were with the NYPD. Thanks from being here today.

TESTIMONY OF SAMUEL J. RASCOFF,[1] ASSISTANT PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW

Mr. RASCOFF. Thank you, Chairman Lieberman, Ranking Member Senator Collins, and distinguished Members of the Committee. I am truly honored for the opportunity to testify today about aspects of the exceedingly important report that the Committee recently issued examining the failures that led to the Fort Hood tragedy and making structural recommendations to ensure that such an incident will not be repeated.

Mr. Chairman, I ask that my written statement be entered into the record.

Chairman LIEBERMAN. Without objection.

[1] The prepared statement of Mr. Rascoff appears in the Appendix on page 48.

H605-41331-79W7 with DISTILLER

Mr. RASCOFF. Thank you.

And let me also say that I am humbled to be addressing you in the presence of a courageous survivor of the attack as well as relatives of the brave women and men who lost their lives on that truly awful day.

My goal this morning is to elaborate on three findings in the report, with an eye to making constructive suggestions.

First, I would like to say something about certain challenges to the achievement of meaningful collaboration or what I will call "jointness" on the Joint Terrorism Task Force.

Second, I would like to comment about the proper role of the FBI as an intelligence agency in relation to domestic counterterrorism generally, and specifically as it pertains to the homegrown threat.

And, third, I would like to offer some preliminary thoughts on the proper organization of American counter-radicalization and on some lessons learned from the British experiment, with similar strategies and programs.

Let me just say at the outset that the issues that I am going to be talking about and that I have written about for the Committee all grow out of the work that I do as a law professor focused on issues of intelligence and counterterrorism, but certainly also are informed by my practical experience as the founding head of the NYPD's intelligence analysis arm.

On the question of jointness in the JTTF, let me begin by saying what many of us already know, which is that the JTTF has clearly served as an indispensable facet of domestic counterterrorism from well before September 11, 2001. The JTTF recently marked its 30th birthday and, if anything, has only become that much more significant in the aftermath of September 11, 2001. So any account of what we have done right in counterterrorism in this country over the last decade would have to assign a prominent role to the institution of the JTTF. And yet, as the report properly observes, there are aspects of the JTTF, and specifically with this question of jointness to which the JTTF naturally and justifiably aspires, that remain ill defined.

What is the proper role of detailees from local police departments, let us say, or other Federal agencies on JTTFs? Are those detailees best thought of in the way of liaison between the FBI and the astonishing variety of institutional actors who have a role to play in counterterrorism?

Perhaps the real significance of detailees is the different perspectives that they bring to bear on the work of the JTTF itself? Or for that matter, and for a host of reasons that I am happy to get into during the question-and-answer period, do detailees effectively end up becoming viewed by their FBI managers as only so many extra personnel to whom those habitually strapped leaders can turn to perform tasks that might otherwise have fallen to FBI special agents?

In my view, the most significant contribution that the report makes in this area is in pointing out that the answers to many, if not all, of these critical questions remain elusive. On the whole, I think it is fair to say, JTTFs remain dominated by the strategic outlook of the FBI and only imperfectly function as clearinghouses for domestic counterterrorism information and for the disparate

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perspectives on terrorism that are brought by Federal and local agencies.

On the question of intelligence and homegrown terrorism, I think this is, if anything, a more significant area in which jointness is lacking, and that is because on the JTTF, as part of the FBI's investigative work, the Bureau is playing at its core strength. When we turn to the intelligence mission, by contrast, and specifically to the enterprise of domain management—which is an innovation in the FBI that my colleague Mr. Mudd had an enormously important role in debuting—what we are really talking about is FBI agents understanding the environment in which they work.

Now, to my mind, domain management represents a clear case where the Bureau and where the Federal Government more generally ought to be leveraging much more effectively the know-how of local police officers who, after all, know their terrain intimately, have lived and worked in their communities more or less their whole lives, and have a distinctive leg up, I would say, on their Federal counterparts when it comes to that kind of anthropological understanding of the world in which they operate.

On counter-radicalization, I wholeheartedly endorse the report's conclusion that we need a national strategy. We need a national strategy that is headquartered in the White House; that is in a sense orchestrated by elements of Federal Government, such as the National Counterterrorism Center (NCTC)—and this is the nub—and a strategy that devolves most of the heavy lifting when it comes to the implementation of counter-radicalization to local actors. And when I say local actors, I mean to suggest police and other local officials, but even more so, local non-governmental entities. Why is that? Lessons learned from the United Kingdom and from other countries that have experimented with counter-radicalization suggest that effectiveness only comes when communities themselves become engaged with the enterprise of counter-radicalization. So if we are going to succeed and if we are going to avoid some of the intensely knotty political and, in some sense, policy issues that have dominated the conversation about counter-radicalization in the United Kingdom, I think we are going to need to lean heavily on our own communities, and specifically our Muslim communities, to play a key role in moving the agenda on counter-radicalization.

Let me conclude by saying that the report admirably calls attention to a range of lessons that ought to be internalized from the Fort Hood tragedy. I am particularly encouraged by the report and by this Committee's ongoing involvement in issues relating to the design and implementation of a domestic counterterrorism architecture that is suited to the emerging threat environment.

I look forward to answering your questions, and I thank you for your time.

Chairman LIEBERMAN. Thanks very much, Professor Rascoff. Since I first met you when you clerked here for Justice David Souter, I believe, and I just called you "Sam," it is a pleasure for me now to refer to you as "Professor." It is actually quite noteworthy in its way that you are a professor who has focused at a law school on these issues, and that is important as well.

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We will do 7-minute rounds of questions. Excellent opening statements and very helpful to us.

General Keane, let me come back to ask you to speak just a little bit more about the perplexing part of the results of the investigation about the the army's handling of Major Hasan, which is, I kept asking myself as we went over the findings, why were his superiors not dealing directly with his open expressions of violent Islamist extremism? Put aside for a moment whether he was a good psychiatrist or some evidence that they were pushing him along and promoting him when he really was not that good. But was this some kind of exaggerated political correctness in the superiors? Was it that it was just easier to move him along rather than creating a bureaucratic problem? Or was it something else?

General KEANE. It has been my experience in dealing with racial extremism when I first confronted that as a result of the two murders at Fort Bragg that the normal thing that happens when people use speech that is so abhorrent to most of us, the natural thing is to pull away from it because you have great difficulty identifying with it in terms of your own values, and in this case even in terms of the military's values. And I saw that with racial skinheads. The tendency was for the soldiers to pull away from it, and in those cases, the chain of command failed to act on the hate speech and on behavior as well.

I think much the same has taken place here. People have a tendency to pull away from it. They know they are hearing something that they do not agree with and do not identify with. And what is particularly problematic is this is a military organization, and we have responsibilities to act on behavior or conduct that is not in keeping with the good order and discipline of our organizations. And that is the thing that is most troublesome, responsible officers hearing that pulled away from it and decided not to confront it because they were uncomfortable and were giving up their responsibilities as officers to deal with this.

I also think that Hasan, in the environment he was operating in, had certain tolerances and privileges that probably would not have existed if he was in a normal warfighting organization.

Chairman LIEBERMAN. How do you mean?

General KEANE. He was an officer, a doctor, and a psychiatrist. And I think that gave him certain tolerances that contributed to this. That does not excuse the officers in not confronting them.

Chairman LIEBERMAN. Right.

General KEANE. But I do think it probably contributed to a certain degree.

Chairman LIEBERMAN. I think you are right. If I am not mistaken, he was the only Muslim psychiatrist in the army. Is that correct?

There was one other. So that in that sense, they may have wanted to defer to him as a resource, but obviously with tragic consequences.

Incidentally, the families who are here quite rightly focused Senator Collins and me in our discussion before the hearing on people being held accountable for their behavior in these cases. And I know we have talked to people at the Department of Defense. They say they do not want to act on these cases until the legal pro-

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ceedings against Hasan are over. But it is really important that the people who acted negligently—and I know we all have the clarity of hindsight here, but that they be held accountable. And we are going to stay on that until that happens.

Let me ask you this question and maybe ask a few others to get involved in it. In this strange, to me, unwillingness to describe the enemy as what it is here, violent Islamist extremism, I mean, the 9/11 Commission Report, the Kean-Hamilton report, had a conclusion that really rings out so clearly. The enemy—I am paraphrasing, of course, here—is not just al-Qaeda, they said; and it is certainly not the religion of Islam. It is a politicized ideology, a corruption of the religion, which is violent Islamist extremism. I believe that is the literal word they used for it.

I think that there are still some people in the Executive Branch of government who believe that—incidentally, notwithstanding the fact that we have been fighting the manifestations of that ideology at considerable loss of life and national treasure in Iraq, Afghanistan, and elsewhere. We refuse to call it that here. I think some people in the Administration feel that if we do so it will compromise our relationship with the broader Muslim world outside of America and, to some extent, with the Muslim-American community. And I wonder if you, General Keane, Mr. Allen, or any of the others want to comment on that conclusion.

General KEANE. Well, first of all, I find it outrageous that 10 years after September 11, 2001, we still have difficulty identifying this for what it is and are unwilling to name it. That is profoundly disappointing.

And as a soldier, I mean, the first place you start with is who your enemy is.

Chairman LIEBERMAN. Right.

General KEANE. And what are their motivations and what are they trying to accomplish? And you have to come to grips with that if you are expecting in any way, shape, or form to be successful against them. So that is stunning in and of itself.

The issue that we get into here because the ideologues have used religion to fuel their belief system and somehow we are unwilling to confront it because it is associated with a religion is such an insult to the Muslims who find this ideology abhorrent themselves. They do not identify with this. They are outraged by that ideology. It is against everything that they stand for, and it translated into this horrific behavior that we saw at Fort Hood. Muslims inside the military and Muslims outside of it do not identify with this. They want it to be separated from them.

And coming to grips with what it is helps provide them the separation that they so desperately need. It helps to remove the veil of suspicion and mystery that may surround it. Helping to educate people about the ideology and how abhorrent it is and what it stands for is something that is certainly needed. And in this case in the military, I am absolutely convinced that training and education programs are necessary, must be mandated for the whole chain of command to participate in, much as we did with racial extremism. And I believe in my heart that will also find some protection for the Muslim soldiers who are in the military to avoid the

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stereotyping that grows out of this and the unwillingness of people to confront it.

Chairman LIEBERMAN. Thanks. My time is actually up. Mr. Allen.

Mr. ALLEN. I would just like to say that I think Mr. Mudd hit it right. It is the ideology. You have it right, Mr. Chairman. And the Internet is fueling it, and when Mr. Mudd talks about not just dozens but hundreds, if not thousands, are listening to this extremist virulent message day after day after day, it is infecting a small segment of American-Muslim society. And for us not to call it what it is and deal with it directly I think only exacerbate long-term our problems here in the homeland.

Chairman LIEBERMAN. Agreed. Mr. Mudd.

Mr. MUDD. Senator, let me be quite specific. It is the difference between what we do and what we say. We have a problem with violent Islamist ideology in this country. That is a problem. We should not say this, and I would discourage you from ever using the word "terrorism" or "Islamist" in a speech. Let me tell you why. My job is to kill the adversary ideologically. Operationally they are just trying to inspire people, their revolutionary movement. So operationally you can take people out of the streets. Ideologically you are hoping that the revolution dies over time because people start to say there is no message here, this is nihilistic, there is no future.

Three years ago, Ayman al-Zawahiri, the second in charge of al-Qaeda, had his one and only Internet interview, not live but he took questions. The first question he chose to respond to came from North Africa. It was from an engineer, I believe, or a teacher. And the question was about explain, Mr. Zawahiri, why you kill so many innocent Muslims.

Now, why does he choose to take this question? Why does he choose—and, again, it was not live, so al-Qaeda put this one at the top of the hopper. If you look at research post-September 11, 2001, across the Islamic world—and Pew Research does some pretty good work—most of these countries—Jordan, Saudi Arabia, Yemen, North Africa, going into Southeast Asia—have experienced the murder of innocents by al-Qaeda. You remember the horrific murder at a wedding in Jordan a few years ago, just a horrible thing. And the murders that led, I think, to the uprising against incoming Islamists in Iraq, I do not think the surge was the only thing that resulted in some success. There were a bunch of Iraqis saying, "Why are they killing us? We may not like the Americans, but we sure as heck do not like some Sunni coming from Yemen shooting us up."

I think what Zawahiri is realizing is that people who he needs to recruit are losing interest in the movement not only because they do not see a future, but because too many locals have died. They cannot defend the accusation of murder in their own communities. They can defend being terrorists.

So to close this circle, as someone who wants to kill the ideology, I think we ought to call them what they hate to be called. They liked to be called terrorists. They liked to be called Islamist radicals and revolutionaries. They hate to be called murderers. And that is what they are.

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Chairman LIEBERMAN. I am unconvinced. I am going to call them all of those things because I think that is what they are. They are violent Islamist extremists and they are murderers and they are terrorists.

Mr. MUDD. No, I agree that is what they are. I am just saying don't give them what they want. Let us fight about this—no, I am just kidding. [Laughter.]

Chairman LIEBERMAN. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. That was an extraordinarily interesting exchange that you just had with Mr. Mudd. From my perspective, particularly when we are dealing with the military, the refusal to distinguish violent Islamist extremism from the peaceful, protected exercise of the Muslim religion sends exactly the wrong message because it implies that they cannot be distinguished. And it does lead to suspicion being cast upon peaceful, patriotic, law-abiding, courageous Muslim members of our armed forces.

So I see it a little bit differently because I think the Administration needs to be clear about who our enemy is as much as who it is not in order to protect the vast majority of peaceful Muslims. And that is why I think defining for our military exactly the way the general did, when confronted with the white supremacists at Fort Bragg, is very helpful in allaying misplaced suspicion. But your point is a fascinating one, nonetheless, and I appreciate your making it.

I want to talk about the Joint Terrorism Task Forces. This model was created to ensure that information was shared, and I remember when the JTTFs were first created, I was very upset that there was not one in Portland, Maine, and I went to the FBI and I said, "We have to have one in Portland, Maine." After all, two of the terrorists began their journey of death and destruction on September 11, 2001, from Portland, Maine. And, interestingly—and to get back to a point that two of our witnesses made—at first the police chief in Portland did not want to participate because he did not want to devote an officer full time to a JTTF and lose that officer from the street.

I want to get back to that point, but to me, the most perplexing aspect of this case is that the army was never notified about Hasan's communications with a known terrorist suspect, a known murderer and planner. That to me is just inconceivable. After all, think about the name of the task force. It is the Joint Task Force. Both those words—all three of those words imply a sharing of information and personnel. And yet the information was not communicated to the army.

First let me start with the general. If that information had been communicated to the army, to Hasan's superiors, given all else they knew, do you think action would have been taken?

General KEANE. It is probably likely that something would have been done because if that came through intelligence circles, then into the Criminal Investigation Division, they would come down and start talking to the chain of command and saying, "Look, we have information on this major who is dealing with an extremist. What have you got on this guy?" And they would start having a conversation saying, Oh, yes, we have this, this, this, and that. I

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think that probably would have been a call to some kind of action on the part of the chain of command. Particularly from that external source, it would have been enough motivation to get Major Hason's superiors over their reluctance to confront what they were facing. I think it is likely that something would have been done.

Senator COLLINS. Mr. Allen, when we talked to the FBI about why that information was not shared, at first they said there were legal impediments. Then later they said they were worried about compromising the integrity of their investigation of the suspect in Yemen. Then they said that they were concerned that the "least intrusive means" language was somehow a barrier to sharing that information.

Were there means by which the FBI could have passed on the information about Major Hasan to the military, to DOD, without revealing the source of the threat information?

Mr. ALLEN. In my view, yes. Pursuing a suspected terrorist abroad, there are a lot of ways to do that and there is a lot of information. Clearly sources and methods on how this information involving Major Hasan was collected is very crucial. But in my view, that information should have been absolutely made available in its fullest, as required, to the appropriate authorities who have security clearances at the level required within the Department of Defense.

This was not the first time we have let compartmentation, restricted handling as we called it at the CIA, result in casualties or contribute to casualties. And we, in my view, cannot afford to do this. The JTTF model, in my view, needs to be looked at again. It may not be the right model for the 21st Century and where we are today with the growth of extremism here in our country.

So I think your point is well taken. My opinion is that this should not have been a problem, and an individual representing the Department of Defense—and I spent some years in the Office of the Secretary of Defense so I know what it is like—should have had the system high clearances and accesses so that this could have been pursued appropriately with intelligence and security authorities within the Department of the Army.

Senator COLLINS. Thank you.

Mr. Mudd, I was intrigued by your discussion of where do we go from here because that is really important to be our focus. Should we rethink the very structure of the JTTFs? You talked about having people trained together. I thought that was an excellent idea. But do we have this backwards? I mean, perhaps should it be that we are embedding FBI agents in the fusion centers more or with big-city police departments? Do we have the structure right? And, Mr. Rascoff, I am going to ask you the same question.

Mr. MUDD. Mr. Rascoff, please just say what I say, OK? And then we will be OK. [Laughter.]

I would ask the question a bit differently, if I could. There is a difference between a success in investigative activity out of a relatively small Joint Task Force, and I think anybody in the national security arena, if they had seen this picture 10 years ago, if they said the biggest tragedy we will face—I know it is brutal, but there are 13 people dead, people in this country would have said, "You are nuts." So investigatively I think many people would say this

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has been successful when we have a point target that comes into the sites, ensuring that point target—that is, a case—does not explode something in a shopping mall.

The question we have, to get back to where I started, is: How do you take the mass of a revolutionary movement in this country, a bunch of people, angry kids in cities like we saw here with the Virginian kids going to train in Pakistan. We have seen it up and down the East Coast and the West Coast. I think the question should be not whether we reconsider the JTTFs. It is a good investigative organ. I think we ought to agnostically go and talk to the International Association of Chiefs of Police, fusion centers, and say: Forget about investigations. If we are trying to sort through the massive data—it might be organized crime data because that is a big problem or child porn data, which is the most troubling thing I saw at the FBI. How do we go and not just investigate—JTTFs are pretty good at that—but collectively sort through this and train to sort through this and get around now an apparatus where you have fusion centers that all have their own approaches, you have JTTFs, and you have major city departments that have their own capabilities that are most remarkable, which is at NYPD. I would get away from critiquing the JTTFs, I would say, and just agnostically and say how do we hunt needles in haystacks and how do we do it more efficiently.

Senator COLLINS. Thank you. Mr. Rascoff.

Mr. RASCOFF. I would tend to agree that the conversation ought to——

Senator COLLINS. Did you have any choice? [Laughter.]

Mr. RASCOFF. I would tend to agree that we ought to be thinking not just about tweaks to the institution of the JTTF, but Senator Collins, following your question, we ought to be thinking more comprehensively about the possibility of needing new kinds of institutions and new models for marrying up Federal and local know-how in this area. And it occurs to me that one kind of union that we ought to be thinking seriously about is a union between analysts within the FBI and seasoned veteran local law enforcement officials. What particular form that union takes, I do not know. I could imagine it being lodged within the JTTF. I could imagine it taking a new form altogether. But I think the concept that is important is somehow fusing the knowledge that is reposed within our local police departments already—we do not have to re-create that knowledge—and making sure that the FBI has the benefit of that knowledge by virtue of its kind of analytic talent.

Senator COLLINS. I know my time has expired. Just one final comment. We still have a lot of cultural barriers to overcome here, and even if we change the structure, if we do not change the willingness to disseminate and analyze information and continue the work that Director Robert Mueller is doing in transforming the FBI, then there is this tendency to still just keep the information closely held. And that was one of the problems here. Thank you.

Chairman LIEBERMAN. Thank you, Senator Collins.

It is a pleasure for the first time call on Senator Johnson for questioning.

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OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman and Senator Collins. I certainly appreciate your earlier warm welcome, and I just want to let you know I realize how important the work is of this Committee—so I requested to be on this Committee. The defense of our homeland is a top priority of our Nation, so I look forward to working with you.

I would like to offer my condolences to the victims and the families of the victims. I hope we all understand that the men and women that step up to the plate and defend our Nation are the finest among us. And, again, I am eternally grateful.

General Keane, I would like to start the questioning with you. First of all, thank you for your service, sir. You mentioned in your earlier testimony that it would be an act of moral courage to step forward. Can you explain what you meant by that?

General KEANE. Well, what I was saying is that, in the absence of clear policy guidance about this ideology and what it stands for, and the fact that it is associated with a religion, people draw away from it. What we need is policy guidance that removes the fact that you have to have an act of moral courage to do something about it. A soldier who sees this kind of ideology manifesting itself in speech, who is informed, trained, and educated on it, has an obligation to report it. That should be unequivocal. That is not true today. There is no guidance like that today. What the soldier does know and what all leaders know is that anything against the good order and discipline of an organization, whether it is misbehavior, conduct, speech, etc., something should be done about that.

But because of this ideology and the complexity of it, we need education and training on it, just as we did on something in this country that was known for hundreds of years dealing with race and racial extremism. We published a pamphlet in the 1990s on that subject because we were invaded by skinheads inside the military who were using the military for their own purposes to gain training, etc. And we had never confronted that before specifically. And we conducted training throughout the entire chain of command, from soldier to general, on what this racial extremism was, what its manifestation was, and what we would do about it. And anybody who saw it or heard it had an obligation to report it. That is what I mean. Take that burden off of the soldier, the sergeant, or the officer. Make it an obligation to report it and it is a duty to report it, and give them the tools to understand it.

Senator JOHNSON. You said the officers were probably uncomfortable. Was there something more going on there, though? Was there a fear of reprisal and harm to their future careers? Is there that thing going through the military?

General KEANE. I would suspect that the association of Islamist extremism with a religion is part of the problem, and that is why the education and training is necessary to clearly delineate what it is, and that we are separating the ideology from this great religion of the world, and unburdening the people in terms of the confrontation in dealing with it. I think that is certainly part of the issue here in terms—you have to scratch your head and say why, after repeated occurrences of this kind of expression, something was not done about it.

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Understand this, Senator. This is the U.S. military, we trump people's rights when they take the oath to the Constitution. You do not have the right to free speech. You do not have the right to speak against the chain of command. You do not have the right to speak against the President of the United States. We can take action against that. You do not have the right to privacy. You do not have the right to assemble with groups of other people when you feel like it. Those things are denied service people because what comes first is the mission and the good order and discipline of an organization to be able to perform effectively, to be able to accomplish that mission. So everybody who has taken an oath understands that. And yet we are still unwilling to confront that behavior and that speech.

Senator JOHNSON. Have there been military careers ruined because people step forward and complain against somebody that it might be politically incorrect to complain about?

General KEANE. I have not seen it. I mean, in the organizations that I have been associated with all of my life, if we have somebody that does not reflect the values and character of the organization, we do something about it and counsel them, if we can. If you cannot correct that behavior, you are probably going to separate that person. That is the reality of it.

Senator JOHNSON. You can see I am just puzzled why nobody reported it.

Mr. Mudd, I was very interested in your comment about the Internet and the gap—I believe what you were talking about is the gap between what you would like to do and what you are allowed to do. Can you speak to that and tell me what you mean?

Mr. MUDD. Sure. I would characterize it maybe not "like to" but "could do." Again, I talk to a lot of security service colleagues around the world, and a lot are more aggressive than we are. The Internet is sort of a stateless entity, but we are probably more conservative than most security organizations in how we deal with it.

What I am saying is if you are looking at a situation like radicalization on the Internet, you find a note of radicalization—clearly we have that out of the Arabian Peninsula in this case. You might say to yourself, OK, I want to conduct activity to look for words of violence to sort through these tens of thousands of people who might be in contact with this individual, and then start to neck it down. I am most interested in people who are also pinging other known Web sites and the frequency with which they are pinging those Web sites. All these are indicators. You might say I want to know people who travel overseas, in particular to places I am worried about. Let me name Pakistan and Yemen as two places I would be deeply concerned about.

I mean, I could go on and on about it, but the point is think about what I just said. That is a good way to boil down an ocean over time to a cup and then to a drop. None of those is a Federal violation, and some are directly involved in free speech to conduct preventive intelligence operations in the United States.

Let me close with one point. I was re-reading this morning the Church Committee reports from the 1970s. They were very critical of the domestic intelligence architecture for being preventive and looking at things that were not Federal violations. So you are talk-

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ing about why the military might be a little nervous. I am telling you, the people who live in my business know where we are going to be in a year when we go down this road. We are going to be in front of another committee.

I will close on a personal note. I was involved at CIA operations between 2002 and 2005 that were supported by the Department of Justice, briefed to the Congress, and told by the White House this is the policy of the United States; and I lost a job over it because I could not get in front of this Committee for a confirmation hearing. That is the way this town works. And, by the way, my life is better because of it. [Laughter.]

But my point to illustrate this personally is that this town changes frequently. Unless you provide guidance, people are going to say, "I ain't getting kicked a second time by the mule, because the first time I learned my lesson."

Senator JOHNSON. Is it guidance or is it legislation that is required?

Mr. MUDD. That is a good question. I do not know. I am not a believer in overlegislating, so I would probably say get the work done on the analysis and see whether guidance is clear enough. If there is something in black and white on a piece of paper that is going to give people a level of comfort that they are not going to get attacked in a year or two because they made a mistake—and there are going to be mistakes, because you are going to go from 10,000 to one, and the 200, when you are getting near the end of that neck, you are going to say, I have a right to get on that Web site. I want to see through a Freedom of Information Act (FOIA) request why you are looking at me, and I have a lawyer now.

Senator JOHNSON. Thank you.

Chairman LIEBERMAN. Thanks, Senator Johnson. Excellent questions.

There is a vote going off in about 5 minutes. Maybe we each can ask one question. At least I have one I would like to ask, which is: One of the big takeaways from the report, apart from the infuriating specifics, was this question of how do we develop a broader counter-homegrown radicalization strategy to prevent the needles from appearing in the haystack? Or if they do, how do we find them before they hurt somebody? And this obviously involves law enforcement and intelligence, but presumably goes beyond that. There is not an easy way at this point in our governmental apparatus to organize this. I just wanted to quickly invite any of you, do you have any thoughts about how we might achieve the establishment of this kind of counter-radicalization strategy in our country? Mr. Allen.

Mr. ALLEN. Yes, Mr. Chairman, and I think this is extremely hard and is going to take time. But I think we have to begin. We formed a Director of National Intelligence in the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). You all made further legislation, the 9/11 Commission Recommendations Implementation Act. There is a lot there that can and should be done, starting at the very local level and involving Federal, State, and local.

We do not have, as I said in my written statement, a national intelligence collection plan that relates to domestic terrorism.

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Chairman LIEBERMAN. A very important point.

Mr. ALLEN. We do not have the minimal essential needs on what we should be collecting within the law and authorities. I started an experiment over at Homeland Security as the Under Secretary—and Mr. Mudd may be right; he was better off not to spend 3 years doing what I tried to do—to develop the minimal essential requirements. We did a prototype, went out and talked to five fusion centers and with local police, and we developed a beginning set of what really do you want, not what comes down but what as a partner do we require with local law enforcement, with the fusion centers, and with the Joint Terrorism Task Forces. So there has to be a unified approach.

There are a lot of authorities there. What I would like to see from the Administration and from the Director of National Intelligence, as well as the Department of Homeland Security and, of course, the Department of Justice, all involved in building a unified intelligence architecture for domestic terrorism. We are not there. We have pieces of it, but it is not unified. I meet with informed law enforcement officers, former FBI officials, with the informal group that is led by a RAND Corporation specialist, and we have talked about this at length. And I believe your Committee is well aware of this.

But we are in the early stages of this. We need to move on. There is a sense of urgency, it seems to me, given the fact that we are talking about not a handful but perhaps dozens of young people who could be influenced—Americans, American born or naturalized Americans, legally permitted Americans—who are going to engage in extremism and terrorist acts if we do not start working this as a unified approach in a domestic intelligence enterprise. And, very regrettably, we are not nearly where we should be.

Chairman LIEBERMAN. I want to yield to Senator Collins in a minute. Mr. Rascoff, do you have a thought?

Mr. RASCOFF. What I would like to add to Mr. Allen's observation, Mr. Chairman, is this: I think we ought to be thinking about two groups of institutional actors that historically have not really played a role in the national security business. I think under the banner of a kind of whole-of-government approach, we ought to be thinking about Federal agencies that are not really part of our national security team, departments like the Department of Education, which has recently begun to kind of dip its toe in the water in the area of counter-radicalization. The Department of Education and other welfare-state type agencies will have a critical role to play.

The second group I would like to mention are grass-roots organizations, local schools, local religious organizations. These sorts of non-governmental organizations who are close to the ground, I think, are going to have a critical role to play. So counter-radicalization has to come from a White House strategy. There has to be leadership from the top. But I think we need to see a new range of institutional actors in Federal Government and local actors, specifically local non-governmental actors, getting into the business.

Chairman LIEBERMAN. Thanks. Very helpful. Let me yield to Senator Collins.

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Senator COLLINS. Thank you, Mr. Chairman.

Senator Brown was hoping to return and obviously has not been able to and I am sure will be submitting some questions for the record. But I just want the General, in particular, to know that he intended to ask about officer performance evaluations and to express his concern, which I also share, that it seems inconceivable to us that Major Hasan received these glowing performance evaluations, which the FBI relied on in part to terminate its review, despite his troubling and erratic personal behavior, but also evidence that he was not a very good physician. As you quoted one of his superior officers as saying to the people at Fort Hood, "You are getting our worst."

And that whole area I believe that our Committee or the Armed Services Committee does need to pursue. And I suspect that there is a problem with grade inflation, for lack of a better term, in these evaluations, because I know personally that whenever we have a detailee from the military and it comes to the end of that person's time with us, my staff always says that I have to give them the highest evaluations, or it will hurt their career, even if they were not as good as previous officers.

So I think there is something wrong with the evaluation system if it allowed Major Hasan to be promoted time and time again in the face of increasingly erratic and troubling behavior and also poor performance. So on behalf of Senator Brown and myself, I wanted to express those views.

Let me just end by thanking all of you for being here today. I told the Chairman that I thought that this was the best possible panel that we could have had, and that each of you added so much. You all have served in public life and have done so much to help secure our country. I am grateful for that. And, again, I want to close by thanking the family members and the sergeant and his wife for being here. You are why we pursued this investigation, and I want to once again assure you that we realize that our job is not finished.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks very much, Senator Collins. Senator Johnson.

Senator JOHNSON. Just a final thought. As the new kid on the block here, I just wanted to say this was extremely helpful, very informative, and I just want to thank all four of you for your service. And, again, the victims and their families, thank you.

Chairman LIEBERMAN. Thanks, Senator. I would just echo what Senator Collins has said. You have been a really excellent panel, both insightful and you have made some specific recommendations, which we will follow up on.

The bottom line here is that the results of our investigation were both deeply troubling and really infuriating. And Senator Collins and I are intent that this report not just stay on the shelf. The fascinating thing to us was that the key Federal agencies involved, about whom we were critical in the report, essentially said when the report was issued, that the report makes some good points and that they are working on it.

Sometimes that is the pathway to nothing else happening, and this is just too important, as the testimony of the four of you has

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made clear. So we are going to stay on this until we are sure that the awful gaps that have been revealed in policy and behavior in the report are closed and that the problems that resulted are, to the best of our ability, solved.

The record of the hearing will remain open for 15 days for additional questions and answers. Again, I thank the four witnesses. I thank the families. We are going to have you back. Your reward for coming—your punishment for coming today is that we are going to invite you back and have the honor of listening to your testimony on this matter.

With that, the hearing is adjourned.

[Whereupon, at 12:12 p.m., the Committee was adjourned.]

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APPENDIX

United States Senate
Committee on Homeland Security and Governmental Affairs
Chairman Joseph I. Lieberman, ID-Conn.

Opening Statement of Chairman Joseph Lieberman
"A Ticking Time Bomb:
Counterterrorism Lessons From the U.S. Government's Failure to Prevent the Fort Hood Attack"
Homeland Security and Governmental Affairs Committee
February 15, 2011

Good morning. Two weeks ago, Senator Collins and I issued a report based on our investigation into the Fort Hood massacre that left 13 innocent people dead and 32 others wounded. Our report – entitled "A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack" – found that the attack was preventable. The Department of Defense (DoD) missed several opportunities to reprimand and discharge Army Major Nidal Hasan for his growing embrace of violent Islamist extremism, and the FBI neglected to investigate him thoroughly after it learned he –a member of the United States Armed Forces--was communicating with a suspected terrorist already under FBI investigation.

More broadly, our investigation uncovered a troubling lack of awareness among some government officials about violent Islamist extremism, the ideology that inspires it, its signs and manifestations, and how to confront it. Today, the Homeland Security and Governmental Affairs Committee will hear reactions to our report's findings and recommendations and discuss how our government must proceed if it is to prevent future homegrown terrorism and the loss of innocent American life at the hands of violent Islamist extremists.

I want to take a moment to recognize, welcome, and honor several members of the audience who lost loved ones at Fort Hood and one who was wounded, himself.

Kerry Cahill and Keely Vanacker, the daughters of the late Michael Cahill traveled to Washington from Texas and Louisiana to be at our hearing today. Angela Rivera, the wife of the late Major Eduardo Caraveo, is here from Woodbridge, Virginia, with her mother and sister. Charlotte Warman, the stepdaughter of the late Lieutenant Colonel Juanita Warman, is here from Bethesda, Maryland. And Sergeant Alonzo M. Lunsford is here with his wife. Sergeant Lunsford was shot five times on that tragic day, and miraculously survived.
We are deeply sorry for your losses and hope that we can honor the memory of those you have lost, and all the Fort Hood victims by instituting reforms to prevent the next "ticking time bomb" from destroying more innocent lives.

We have two of the federal government's most experienced counterterrorism experts as witnesses today. Charlie Allen was the first Under Secretary of Homeland Security for Intelligence and Analysis and Chief Intelligence Officer and before that had been a top counterterrorism official at the CIA. Phil Mudd is a former CIA analyst and was the FBI's first deputy director for national security.

Our discussion of flaws within the military will be informed by the testimony of retired Vice Chief of Staff of the U.S. Army and four-star General John Keane. Samuel Rascoff - Assistant Professor of Law at the New York University School of Law and former director of the New York Police Department's intelligence analysis unit - brings the local government and academic perspectives to the discussion. Thank you all for making the time to be with us today.

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When we launched our investigation of Fort Hood in November of 2009, our purpose was to determine what the federal government knew about Hasan's activities in the years and months before the shooting so that we could close whatever security gaps existed and try to prevent a future attack.

What was so infuriating about our investigation was that Hasan's superiors in the Army knew of his provocative, violent, and anti-American statements and, instead of discharging him, promoted him, and sanitized his personnel records to twist his radicalization into a virtue.

And the FBI knew Hasan was communicating with a suspected terrorist already under investigation. But the Bureau never contacted the Army about Hasan. Instead, the FBI conducted a superficial inquiry that concluded Hasan's communications with the suspected terrorist amounted to academic research.

These failures point to systemic problems within the military and the nation's domestic counterterrorism structures. The DoD, for example, still doesn't specifically address violent Islamist extremism in its policies and procedures, even though it is violent Islamist extremism that the Armed Forces have been at war with in Iraq, Afghanistan, and elsewhere in the world. Our investigation concluded that the FBI has not completed its transformation from an organization that investigates crimes to one that uses and produces intelligence to counter terrorism. Nor has the FBI yet fully found the right balance between its headquarter's need to integrate the work of its field offices and the autonomous nature of those field offices.

The shortcomings within DoD can be remedied with stronger policies and better training about violent Islamist extremism, as we recommend in our report. Although the FBI has made substantial progress since 9/11, which is indicated by several successes in stopping terrorists in our country, the Ft. Hood case makes clear that the FBI needs to accelerate its transformation into America's lead domestic counterterrorism organization by increasing the use of intelligence analysts and taking other steps we recommend in our report.

If we are to defeat our enemy, we must know and understand that enemy. Violent Islamist extremism is our enemy, and government officials, as well as ordinary citizens must accept that fact and work to defeat it. That is the best way to isolate the enemy and to distinquish these Islamist terrorists from the vast majority of peace-loving Muslim-Americans who abhor violence.

Despite the remarkable efforts by America's military, intelligence, and law enforcement agencies to fight terrorism since September 11, 2001, violent Islamist extremism continues to draw converts, and those converts increasingly include Americans.

Ten years after 9/11our government must understand the ideology behind violent Islamist extremism and develop a more comprehensive national strategy with defined agency roles and responsibilities to prevent counter its spread.

I look forward to the testimony of our witnesses today and the discussion that will follow. Thank you.

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Prepared Statement of Ranking Member
Senator Susan M. Collins

"A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack"

February 15, 2011

I join Senator Lieberman in welcoming Sergeant Lunsford, who was wounded in the Fort Hood terrorist attack, and the family and friends of others who lost their lives.

Thank you for being here. You have our sincerest sympathy for your losses. Throughout our investigation, we have kept you and the loved ones you lost in our thoughts.

One half day. About four hours. This was the amount of time that the Washington Joint Terrorism Task Force (JTTF) spent determining whether a military officer in communication with a known terrorist suspect amounted to a national security threat. Underlying threat information was not shared with the Department of Defense. Additional investigative steps were not taken, even when the JTTF responsible for the lead called the investigation "slim" and pressed for more action.

This hasty decision to close the investigation cost the government its last, best chance to identify the violent radicalization of Major Nidal Hasan . . . the last, best chance to potentially prevent the November 2009 massacre at Fort Hood.

But well before this failure by the FBI, DoD had enough information regarding Hasan's violent radicalization to have disciplined or discharged him under existing personnel and extremism policies. Hasan's extremist actions at Walter Reed were well known to supervisors and colleagues. His poor medical performance also was evident. Yet DoD took no action – laying the foundation for the FBI's cursory investigation which relied, in part, on Hasan's inadequate and misleading officer evaluations.

Our report's conclusion is alarming: DoD and the FBI collectively had sufficient information to have detected Major Hasan's radicalization to violent Islamist extremism, but they failed to act effectively on the many red flags signaling that he had become a potential threat.

This Committee has been investigating the Fort Hood attack since it happened more than a year ago. But the report we released almost two weeks ago is informed by a broader set of experiences: from our more than four-year investigation of homegrown terrorism to our efforts to pass comprehensive intelligence reforms following the September 11th attacks.

That is why it is so disturbing to see some of the same information sharing and coordination failures that led to the 9/11 attacks show up again in the inadequate investigation of Hasan before the Fort Hood attack.

An array of failures by both DoD and the FBI undermined efforts to identify Hasan as a threat. Detecting homegrown terrorists, particularly lone wolves like Hasan, is an enormous challenge under the best of circumstances. Nevertheless, we cannot allow systematic flaws like those revealed in our report to make this urgent challenge even more difficult.

Almost 10 years after 9/11, our report shows that more progress must be made to ensure intelligence and law enforcement officials communicate and collaborate effectively.

Our investigative report details deficiencies in DoD personnel practices and threat awareness. Despite some progress and the vision and leadership of Director Mueller, our report also reveals an FBI culture that is reluctant to share threat information or coordinate investigations with outside agencies, and, as a consequence, is underprepared to respond to the homegrown terrorist threat.

Among the several findings and recommendations in our report, there are four key observations that I would like to highlight:

1. *The Administration refuses to acknowledge that violent Islamist extremism is the ideology that fuels attacks.*

In homeland security strategies and policy guidance modified in the wake of the Fort Hood attack, the Administration still has been unwilling to identify violent Islamist extremism as the basis for the homegrown terrorist threat. For example, DoD's updated personnel policies speak merely of "workplace" violence - failing to specifically confront the violent Islamist extremism that inspired the Fort Hood attack. This stands in stark contrast to past DoD policies that directly addressed such threats as gang-related activity and white supremacy.

To understand a threat and counter it, we must identify our enemy. We must not shy away from making this distinction. Doing so could allow potentially violent actors to cloak their activities as acceptable behavior, or worse, expose those lawfully exercising their rights to unwarranted investigative intrusions.

2. *The FBI cannot go it alone, and its Joint Terrorism Task Forces cannot become another intelligence stovepipe.*

The JTTFs are an effective *model* for coordinating equities across law enforcement and the intelligence community and all levels of government. Indeed, good work by JTTFs has helped preempt attacks in the United States. But hard working law enforcement and intelligence officials should succeed *because* the JTTF system supports their coordinated efforts, not in spite of

flaws in JTTF operations that could undermine them.

Too often JTTFs are seen primarily as augmenting FBI efforts. Task force officers detailed from outside the FBI are not given clear guidance on how and when to share information with their home agencies. Moreover, as occurred in the Hasan case, the investigative and operational interests of other entities are often not considered once the FBI has made its decision regarding whether information shows a threat or not.

3. *Detecting and disrupting homegrown terrorism require sustained leadership from the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence and active coordination across federal, state, and local lines.*

Homegrown threats can evolve rapidly and provide few investigative leads between radicalization and attack.

Although the government had the information needed to further investigate Hasan, no single entity pulled this information together to take action.

To help identify future homegrown threats, including from lone wolves like Hasan, we must coordinate carefully at all levels of government and ensure that possible threat information obtained by one component is shared effectively with the entity in the best position to take action against the threat. Co-location can enable effective interagency coordination, but it is not a proxy for that coordination.

4. *The United States Government must develop and implement a strategy to confront the violent Islamist ideology that fuels terrorism.*

To effectively prevent terrorism, the government must directly counter the ideology that supports it. We cannot simply rely on law enforcement and intelligence tools to disrupt the threat.

Identifying factors that lead to violent radicalization, understanding behaviors that could be indicators of radicalization to violence, and engaging to stop the violent radicalization process are all vital components of a comprehensive counterterrorism strategy. But the government's efforts in this regard are nascent.

Almost 10 years after 9/11 and despite clear progress at reform, we continue to see the need for improvements in our counterterrorism efforts, from information sharing to operational coordination. The Administration must use the Committee's report and the memory of the Fort Hood massacre and recommit to the collaborative principles Chairman Lieberman and I set forth in our 2004 intelligence reform law. The families of the victims deserve no less than our steadfast commitment to that goal.

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The Honorable Charles E. Allen
Former Under Secretary for Intelligence and Analysis, DHS,
and Assistant DCI for Collection, CIA

Testimony on
"A Ticking Time Bomb: Counterterrorism Lessons
from the U.S. Government's Failure to Prevent the Fort Hood Attack"

Before the
United States Senate
Committee on Homeland Security and Governmental Affairs

15 February 2011

Chairman Lieberman, Ranking Member Collins, and Distinguished Committee members, I am honored to speak again to this Committee. I also want to acknowledge the presence at this hearing of Ms. Kerry Cahill and Ms. Keely Vanacker, whose father, Micahel Cahill, a Department of Defense civilian who was murdered at Fort Hood. I retired in April 2009 from government service after fifty-one years of work in intelligence. I am proud of the years that I was able to serve my country, and I hope that I can provide some insights on the vital issues that will be covered in today's hearing.

The focus of today's hearing is on the murder of twelve service members and one DoD civilian employee at Fort Hood, Texas, by Major Nidal Malik Hasan, a US Army officer and psychiatrist. A central issue of the hearing, however, is the potential in this country for the growth of violent ideological Islamist extremism. I commend the Committee's objective: straight-forward treatment of ideological Islamic extremism and the potential for it to increase.

The Ideology of Violent Islamist Extremism and Homegrown Radicalization

I found the section of the Committee's Special Report on violent ideological Islamic extremism to be in accord with views that I have held since I began working on al Qa'ida in 1998 as the Assistant Director of Central Intelligence for Collection at CIA. The report carefully and correctly delineates the ideology of violent Islamist extremism—that of al Qa'ida, its affiliates, and those inspired by the ideology—from belief in the religion of Islam and its practice.

I am concerned, however, by details in the report on the extraordinary deference given to Major Hasan by his superiors as he repeatedly persisted in studying "violent Islamist extremism" in ways that suggested that he endorsed extremism under some circumstances including the use of suicide operations. I have no direct knowledge of the facts relating to Major Hasan other than what I have read in the press and in this Committee's report so I will not comment further on the oversight of Major Hasan by his superiors, other than to note that "political correctness" at times seemed to prevail over common sense.

The United States—with global allies—successfully continue their relentless efforts to disrupt, dismantle, defeat, and destroy al Qa'ida leadership in the Federally Administered Tribal Areas (FATA) of Pakistan and affiliated networks globally. This effort has achieved significant success: half of al Qa'ida's central leadership has been captured or killed and a number of affiliated extremist networks are deeply damaged or destroyed. No large-scale in-bound terrorist attack has occurred in the United States since 9/11. Many extremist plots have been uncovered and foiled as result of both foreign and domestic intelligence and investigative efforts. However battered its leadership, al Qa'ida remains determined to conduct attacks against the United States that will result in mass casualties, damage US critical infrastructure, and—above all—inflict permanent damage to the psyche of the American people.

One new factor, however, has come to the fore—a surge in homegrown extremism here in the West, both in Europe and in North America. The growth of radicalization in the United States, especially among Muslim youth, in 2009 and 2010 has set off "alarm bells" and prompted calls for greater action against violent Islamic extremism. According to a RAND Corporation study published in 2010, there were 46 publicly reported cases of radicalization and recruitment to jihadist terrorism in the United

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States between 11 September 2001 and the end of 2009. Only 125 persons were identified in the 46 cases. Importantly, however, 13 of these cases occurred in 2009, up from an average of about four cases a year from 2002 to 2008. While the figures do not include hundreds of others who may be or have been under investigations, the number of individuals charged with involvement in terrorism over the last ten years is quite small. But the growth of cases over the last two years is disturbing. According to statistics in the Committee's report "from May 2009 to November 2010, there were 22 different homegrown plots, contrasted with 21 such plots from September 2001 to May 2009." A sample of recent arrests shows deadly intent, for example:

- The arrest on 26 November 2010 of Mohamed Osman Mohamud in Portland, Oregon, for attempting to detonate what he thought was a car bomb at a Christmas tree-lighting ceremony; and,
- The arrest of Antonio Martinez, also known as Mohammed Hussein, in Baltimore for conspiring with individuals, whom he believed were fellow terrorists, to detonate a vehicle filled with explosives parked outside of an armed forces recruiting center.

Both of these cases were FBI "stings," but these cases and others are remarkably similar. The individuals were self-inspired and self-motivated; they were not directed from al Qa'ida "central" or from al Qa'ida in the Arabian Peninsula (AQAP). The persons charged were all US citizens or held legal immigrations status. The central theme of each plot involved placing explosives in areas that would cause significant casualties to innocent Americans. The two events are stark reminders of the potent threat posed by homegrown radicalization.

Western Europe is a primary area where homegrown terrorism, encouraged or inspired by al Qa'ida, has grown as well in recent years. There have been a number of plots involving individuals who have become radicalized, some of whom reportedly were preparing to stage Mumbai-style attacking in urban areas. The fear of another Mumbai-type attack in Europe prompted the Department of State to issue "a travel alert" last October, warning of possible attacks on Europe's transportation systems and tourist attractions. We are familiar with the numerous Islamic networks that have been mapped by security services in the United Kingdom and the large number of extremists who are deemed as potentially capable of committing acts of violence. What is new are the recent events on the continent. Early in December 2010, an Iraqi-born Swede blew himself up in central Stockholm, injuring two bystanders in the country's first major terrorist act in years. In November, police arrested eleven suspects in Belgium. In late December 2010 five men were arrested in Denmark and Sweden who were plotting a terrorist attack using weapons. Danish Security and Intelligence Service officers stated that the arrests came after an extensive investigation undertaken with the Swedish Security Service.

British authorities arrested nine men in December 2010 on terrorism charges, stating that the individuals found inspiration and bomb-making instructions in al Qa'ida in the Arabian Peninsula's (AQAP's) INSPIRE on-line electronic journal. INSPIRE, as the Committee's report explains, is an electronic journal written in easy to understand English as opposed to the heavily ideological statements normally found on jihadist websites. INSPIRE appears to emanate from the leadership of Anwar al-Aulaqi, the US-born extremist cleric and AQAP operative of Yemeni parents. This electronic

magazine has the potential to trigger young and alienated Muslims to commit acts of violence here in North America—Canada as well as the United States.

Again, your report points out, one cannot overstate the power of the Internet in fueling the growth of radicalization in the United States. The spread of Salafist Internet sites is providing religious justification for attacks that are increasingly aggressive and espouse violent anti-Western rhetoric and actions by local groups. The Internet is the primary media by which al Qa'ida markets its messages on literally hundreds of websites, commanding Muslims to either kill or support the killing of US citizens to defend Islam against the United States. Although hiding out in the wilds of Yemen, al- Aulaqi's voice is still heard. On 9 November 2010, he issued a new video in which his message to Muslims was direct and simple—"kill Americans."

In assessing the threat within the United States, we must keep our perspective while carefully gauging future trends. The Pew Research Center pointed out in a major study in May 2007 that American Muslims overwhelmingly are decidedly American in outlook, values, and attitudes. They believe that hard work pays off in US society. This belief is reflected in Muslim American income and education levels, which generally mirror those of the general public. Moreover, according to this report, Muslim Americans by nearly a two-to-one margin do not see a conflict between being a devout Muslim and living in a modern society.

My concerns, however, are over a tiny minority of Muslims, a number of whom are converts to Islam and who remain strongly linked with Islamic countries overseas where extremist groups are flourishing. Many of these newer immigrants have arrived in the United States over the last fifteen to twenty years as refugees and asylum seekers. Some have become strongly attracted to anti-Western and especially anti-US forces in their countries of origin. The tensions may be reflected in the belief held by many in Muslim countries that "the United States is at war with Islam." Al Qa'ida continues to benefit from the broader narrative that "the West" is attacking Islam, despite the fact that the overwhelming majority of innocents killed by al Qa'ida or affiliates since 9/11 have been Muslim.

This affinity with violent groups abroad is reflected, for example, in a number of immigrants from Somalia, who have arrived in substantial numbers in the United States since the early 1990s when we intervened under the aegis of the United Nations to alleviate a major humanitarian crisis. Somali immigrants coming to the United States have found assimilation difficult. Many retain significant family and clan linkages to Somalia, where a civil war continues to rage between Al Shabaab and the UN-backed Transitional National Government (TNG). A small number of first-generation of Somali youth, now naturalized Americans, have found their way back to Somalia to take up arms for al Shabaab, which continues in its attempts to crush the TNG. We have reason for equal concern about second-generation Somalis, naturally born American citizens, some of whom also appear influenced by the same Imams that influenced the first generation.

To date, the self-radicalized cells detected in the United States have lacked the level of sophistication, experience, and access to resources of terrorist cells overseas. Their efforts, when disrupted, largely have been in the nascent phase and law enforcement authorities were able to take

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advantage of poor operational tradecraft. Even when the act of terrorism has not been detected, the efforts have fortunately been amateurish in most cases, such as the Time Square attempted bombing last May. However, the growing use of the Internet to identify and connect throughout the world offers opportunities to build relationships and to gain expertise that previously were available only in overseas training camps. It is likely that individual cells will use information on destructive tactics that are widely available on the Internet to boost their destructive capabilities.

Committee's Findings and Recommendations on the Fort Hood Attack

My comments on the Fort Hood murders are not based on direct knowledge of the event, given that I left government six months before it occurred. But my views on terrorism and government efforts to combat it are based on experience gained over many years of work on counterterrorism, first at CIA and then as the Under Secretary for Intelligence and Analysis at DHS. First, I agree strongly with the Committee's report in praising the work of the military, the FBI, and intelligence agencies in disrupting and preventing "in-bound" attacks from al Qa'ida and its associates; I worked as a senior government official on this threat. We have not had a successful al Qa'ida or affiliate attack here in the United States since 9/11; this is a remarkable record and reflects the dedicated work of tens of thousands of Americans in intelligence, law enforcement, and defense . Many plots, as the Committee notes, have been disrupted and individuals arrested.

But I also strongly believe the Committee is accurate in its statement that there is "the need for a more comprehensive and coordinated approach to counter radicalization and homegrown terrorism across all agencies ,including federal, state, and local entities, which are critical to keeping our country safe." It is here that I wish to direct my remarks because on a broader scale, I believe this complex issue must be addressed if we are to counter successfully longer-term radicalization in the United States. Fault lines across the federal, state, and local governments remain on information sharing and building trust among counterterrorism authorities and, until we make substantial further improvement in integrating our efforts and developing trust, we will continue to have risk in countering terrorism, especially that emanating from Islamic extremists.

Over the last several years, we have talked about "an integrated national intelligence enterprise" but we are far from one on which we have firm resolution. A national enterprise would involve not just information sharing but also increased intelligence collection and analysis in accordance with federal, state, and local authorities and laws. There is, for example, no unified national intelligence collection plan or even a recognized set of national intelligence requirements relating to domestic terrorism. Moreover, we do not have a current in-depth, national intelligence estimate on domestic terrorist threats. The FBI's National Security Branch, DHS' Office of Intelligence and Analysis, and state and local law enforcement all have major responsibilities in countering radicalization and in ferreting out extremist cells. Over all, they have done an outstanding job but their work is far from integrated—there are still too many seams.

Federal Law Enforcement

The FBI is the country's primary domestic intelligence agency and has the responsibility to prevent and investigate acts of terrorism. It operates today radically different from where it was on 9/11. It has formed a National Security Branch with an Intelligence Directorate at FBI Headquarters that focuses on counterterrorism. It has created Field Intelligence Groups (FIGs) whose mission is to analyze raw intelligence and share it with the Intelligence Community and local law enforcement. There is a FIG in each of the FBI's 56 field offices. In addition, there are over a hundred Joint Terrorism Task Forces (JTTFs), which focuses full-time on preventing attacks and conducting counterterrorism investigations and are staffed by FBI agents and employees from other federal, state, and local agencies. Immigration and Customs Enforcement, for example, has over 200 personnel positioned within JTTFs. JTTFs operate at the Top Secret/Special Compartmented Information (TS/SCI) classification level.

A frequent criticism of the FBI's domestic intelligence efforts is that it remains "case oriented" and finds it difficult to collect intelligence where there is not a case for prosecution. The Bureau rejects this characterization. Director Muller has committed the FBI to becoming an intelligence-driven organization when it comes to countering counterterrorism. Discussions that I have had with prominent law enforcement officials at the local level suggest that the Bureau's transformation is still incomplete. The FBI's reluctance to fully embrace local law enforcement authorities continues to be a source of friction. In my view, local police departments also need to lean forward to partner with the FBI and to pass on information they have that could lead to terrorism investigations. This is a two-way street that works far better than it did a few years ago but one that will require "constant gardening" on the part of both parties.

DHS Intelligence

DHS intelligence is vital to countering domestic terrorism, but it is still in an early stage of development. With several hundred analysts and with contractor support, it is preparing analytic assessments on terrorist developments, threats relating to the use of weapons of mass destruction, protection of US critical infrastructure, and finally radicalization. It produces analytic intelligence threat assessments for the Department and for state and local governments. As this Committee knows, It is a vital link between the Intelligence Community and local authorities, but its role and mission is only gradually being defined. Its sharing of intelligence through to fusion centers, now numbering 72, is vital. The number of intelligence reports flowing from DHS to the fusion centers and to local law enforcement is impressive and frequently serves to inform on terrorist threats and terrorist tactics, techniques, and methods. DHS can harvest the products produced by the fusion centers and local police departments but it does not direct the collection of that intelligence, and its links with local police departments is far from comprehensive. A great responsibility of DHS is to raise the capabilities and quality of the intelligence analysts in the fusion centers; currently, many fusion centers analysts have had little or no analytic tradecraft training. DHS intelligence is working this issue but its efforts need to be linked directly to DHS grant funds administered elsewhere in the Department. DHS intelligence has greatly enhanced its relationship with the FBI's National Security Branch, and many joint intelligence assessments are produced that go to state and local governments and law enforcement.

Fusion Centers/Local Police Departments

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If we are to combat domestic terrorism, both state fusion centers and local police will have to be viewed as vital to our counterterrorism efforts. Fusion centers vary greatly in their focus and capabilities; they principally are concerned with threats and issues relating to their local community or region; created at the state and city level in response to 9/11, they have morphed in many cases into "all threats, all hazards centers," yet terrorism remains a focus of their endeavors. Some fusion centers are very mature and have significant capabilities. Others are in nascent stages of development. Many fusion center personnel have little experience or training in intelligence. Some endeavor to collect intelligence relating to terrorism, others are not pro-active. Others, however, not only work hard to share intelligence but also collaborate with local law enforcement to collect terrorism-related intelligence on extremist activities in their communities. They all, to one extent or the other, conduct open-source intelligence, harvest local information, and assist in analysis. With some state and local governments under fiscal pressure, budget cuts to the centers are inevitable. A number of fusion centers will have difficult surviving without substantial federal grant funds. They do have the opportunity to grow in sophistication and become more directly involved in ferreting out possible homegrown terrorism. As the fusion centers federal partner, DHS has a strong responsibility to work with the fusion centers to strengthen their intelligence gathering and analytic capabilities; training of fusion center personnel should be one of DHS' highest priorities.

Role of Local Police Departments

Local police departments are not yet utilized effectively as part of the overall national intelligence effort, even though they are extraordinarily well-positioned to combat homegrown terrorism. Their ethnic composition provides them with access to locally diverse populations. They know their towns and cities and are responsive to their city councils. Many local police departments, however, lack the human capital to keep abreast of what is happening in their own communities. Some collect intelligence and have intelligence units; many officers in these units, however, lack training in intelligence and work primarily as law enforcement officers. Police intelligence efforts are not coordinated, either nationally or laterally. When local police departments acquire information that warrants investigation involving potential terrorism, they can enlist the FBI through the JTTFs, although that often means abdicating the leader in investigations. But local police departments can investigate suspicious activities that do not meet the thresholds of JTTFs—the "green shoots" that are still short of imminent criminal cases. Like fusion centers, local police departments are not fully used in combating terrorism and, above all, local police are better positioned than federal authorities to conduct community policing—reaching out to local communities and diasporas. The intent would be not intelligence but to build trust with diverse local communities.

Conclusion and Recommendations

We now have compelling evidence that a small number of Americans or legally permitted residents are embracing an ideology of violent Islamic extremism. A number of plots have been detected and disrupted, preventing the murder of innocent Americans. Countering these threats effectively will require continued improvement to US intelligence and law enforcement activities as well as strategies to counter violent Islamic ideology which, to a large degree, must come primarily from local

communities. I have never believed that the answer to countering extremism lies in Washington. Based on the Committee's detailed research and findings, it is evident that there were serious mistakes made that might have prevented in the murders at Fort Hood.

- The Department of Defense does not yet have a doctrine or strategy for dealing effectively with the potential for Islamic extremism in the military services, although it clearly is moving to meet this challenge, while ensuring military personnel have full freedom of religious worship, regardless of faith. Given its history of resolving challenging issues, there is every reason to believe that DoD will develop the doctrine and strategies required; it can never, however, allow "political correctness" to override the development and implementation of a comprehensive strategy for dealing with potential violent extremism among its ranks.
- Both DoD and the FBI had sufficient information between them—if acted upon—to have taken actions to prevent the attack by Major Hassan, but problems of security clearance levels and information sharing precluded either from having a total view of the potential threat posed by Major Nidal. The DoD officer assigned to one of the JTTFs never had access to all of the sensitive information involving Major Hasan's communications with a "suspected terrorist." Communications by any US military personnel, officer or enlisted, with a terrorist should have set off alarm bells in both the Bureau and DoD. Having many years working closely with the military and for several years directly for three-star military officer, I can personally attest that the US military always endeavors to hold itself to the highest standards.
- Protection of highly sensitive sources and methods is fundamental to the US Intelligence Community, including sensitive intelligence sources of the FBI. Nonetheless, it is crucial that personnel assigned to JTTFs from other agencies such as DoD have "systems high" clearances if needed to perform their jobs effectively. There have been other cases of failure in information sharing and excessive compartmentation that have contributed to casualties in the struggle against terrorism.
- The FBI, under the strong leadership of Director Mueller, is changing the Bureau into an agency that is responsive to national intelligence security priorities, and above all, to the threat of terrorism. The progress made is remarkable, not only in developing a new model for counterterrorism operations but in changing the Bureau's culture. Yet the transformation is incomplete. The FBI has approximately 2,600 intelligence analysts, but they are not fully integrated with the special agents and are still not utilized to the extent needed in anticipating potential acts of terrorism. I have every expectation that the current transformation will continue, accelerated by the events at Fort Hood. Nonetheless, the Bureau will have to demonstrate further that it is moving from its historic case-driven model to one that embraces intelligence as its leading edge.
- The JTTFs need to be more effective in their interactions among themselves and, in my view, the National Security Branch of the FBI needs to be fully cognizant of any potential terrorism leads that become more than "green shoots." The JTTFs decentralized model should be examined to ensure that FBI Headquarters' counterterrorism leaders are more directly involved in potential terrorism leads that could pose risks and the need for more intelligence collection.

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In addition to the above comments on the findings of the Fort Hood Special Report, I would like to offer the following thoughts for the Committee's consideration. These are my thoughts, though informed by individuals whom I respect, and address areas that need further exploration if we are to counter extremism, while always ensuring that laws relating to privacy, civil liberties, and civil rights are honored.

- With the direct support of the DNI, define what "an integrated national intelligence enterprise" is and how analysis and collection can be enhanced, in accordance with federal, state, and local authorities and laws.
- Under the aegis of the DNI, develop national intelligence requirements relating to domestic terrorism; determine what are the priority needs of federal, state, and local authorities within the limits imposed by privacy, civil rights, and civil liberties of all Americans. In my view, DHS intelligence should undertake this effort with its federal, state, and local partners.
- Under the DNI and with assistance from DHS and the FBI, prepare a current in-depth, national intelligence estimate on domestic threats, with special emphasis on the growth of radicalization within the United States.

Finally, assuming we are serious in addressing the growth of radicalization in the homeland, it is crucial that we do this objectively and with a clear vision of the potential risks of intruding on the civil rights and liberties of all Americans; this cannot be permitted to occur. I do not see more legislation as necessary here; government at the federal, state, and local levels have all of the authorities needed under existing legislation to combat homegrown terrorism. It is now up to the Congress and the Administration to determine how to proceed. I would like to add one word of strong caution, however. Neither defense nor intelligence nor law enforcement will forever prevent all attacks upon our country; the odds are simply against it. But, as a society, we must show resiliency in the face of such attacks. Resilient societies respond and recover and only grow stronger when attacked. We must be that type of society.

Charles E. Allen

A Ticking Time Bomb:
Counterterrorism Lessons from the U.S. Government's
Failure to Prevent the Fort Hood Attack

Written Testimony of
General Jack Keane, USA, Retired
Former Vice Chief of Staff of the U.S. Army

Hearing Before the
Senate Committee on Homeland Security and Governmental Affairs

February 15, 2011
10:30 a.m.

Dirksen Senate Office Building
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Chairman Lieberman, Ranking Member Collins, distinguished members of the Committee, thank you for inviting me to testify today about the most significant threat to the security of the American people that I have seen in my lifetime—radical, violent Islamist extremism. I commend this Committee, and the leadership of Senators Lieberman and Collins, for their ongoing work in identifying this dangerous ideology and developing ways to protect against it.

The most recent work of this Committee on this challenge to our national security is its investigative report on the Fort Hood massacre that took place on November 5, 2009. That report puts the key issue front and center and confirms what many of us feared after the attack. Self-radicalized violent Islamist extremists are not just here in America, they have penetrated the U.S. military, which is one of the last places you would expect to find people so violently opposed to this country and its citizens.

I would like to discuss my two reactions to this much needed and comprehensive report. First, I am shocked and stunned by what this report reveals about the failure of the Department of Defense (DOD) to come to grips with violent Islamist extremism and the danger it presents to our troops. Second, I wholeheartedly endorse the report's recommendations for reform in DOD to better protect against this threat.

I will start with my first reaction – just how unacceptable the military's failure to deal properly with Major Hasan's radicalization to violent Islamist extremism was. I reach this conclusion with great sadness. I was proud to serve in the Army, and, while I did, I was involved in helping the military devise policies to protect against racial extremism that turned deadly. And I know the military is full of people at all ranks who are dedicated to protection of the men and women in service. But this time, some of those people – including Hasan's superiors and colleagues – failed to do what was needed to root out a dangerous extremist.

I agree with the report's conclusion that Hasan's open displays of violent Islamist extremism was a violation of military rules calling for good order and discipline. I'll list some of the obvious signs that Hasan should have been discharged that are mentioned in the report:

Hasan's ideology conflicted with standard military obligations, and his repeated statements that he could not support combat against enemies of this country because they shared his religious beliefs demonstrated that he did not belong in the United States military.

It is hard to imagine why Hasan was not removed when, after one of his superiors tried to convince him to leave the military, his displays of violent Islamist extremism worsened. While he was a resident at Walter Reed Army Hospital and a fellow at the military's medical graduate school, Hasan dedicated three projects to the motivations for Islamist extremism instead of medical subjects or psychiatric issues.

Here is a list of things Hasan said and did that, when you add them up, shows he was an extremist who had no place in our armed services:

- He made three off-topic presentations about violent Islamist extremism when he was supposed to be making medical presentations as an Army doctor.
- He gave a class presentation promoting the false argument that U.S. military operations are not based on legitimate security considerations, but instead are a war against Islam.

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- The same class presentation was so supportive of Islamist extremism that it was stopped immediately by the instructor when the class of military officers erupted in opposition to Hasan because they thought he was justifying suicide bombers.
- He proposed to give a research survey to Muslim U.S. soldiers which implicitly questioned their loyalty, and actually included a question that asked if they thought they were expected to help enemies of the U.S. because they are Muslims.
- He told several classmates that he thought *Shari'ah* law takes precedence over the U.S. Constitution, despite the fact that as an officer he took an oath to protect the Constitution.
- He stated three times in writing that Muslims in the U.S. military were a risk of fratricide.

One time his class presentation was so alarming that his classmates, who were all officers, erupted in protest because they thought Hasan was endorsing the views of Islamist extremists and justifying suicide bombers. The instructor and a classmate who were there that day both called Hasan "a ticking time bomb". The saddest and most frightening fact is that Hasan's written presentations warned that Muslim-Americans in the military who had become radicalized to violent Islamist extremism were at risk of killing fellow soldiers. He put it in writing and that should have been a sign that he might put it into practice.

I want to caution here that I know that our military includes thousands of brave and patriotic Muslim-Americans who serve this country with honor. Some have given their lives in service to our country. When Hasan concluded that Muslim-Americans might commit fratricide, he was not talking about them, but he was giving a warning about himself. As the report states, Hasan's extremism was not a secret. The officer who assigned him to Fort Hood told commanders there, "You're getting our worst".

What should have Hasan' military superiors done? They should have been able to put the information together and conclude that Hasan believed the same things that the violent Islamist extremist enemies of this country believe, and that meant he should have been out of the military.

But instead of removing Hasan, his superiors promoted him, graduated him from his residency and fellowship, assigned him to Fort Hood and even approved him for deployment to the conflict in Afghanistan. Instead of moving Hasan out, his military commanders moved him up. This is exactly the opposite of what responsible officers should have done.

This brings me to another critical problem revealed in the report—that the military personnel evaluation system broke down when it came to Hasan. I was again shocked to learn from the report that even though Hasan was a poor performer, ranked in the bottom quarter of his class, his evaluations made him sound like a superstar.

During the period when his radicalization to extremism was so visible that it literally stopped a class, he received excellent performance evaluations and was enthusiastically recommended for promotion. Perhaps the most troubling aspect of this is that Hasan's obsession with Islamist extremism—which was so alarming that it should have gotten him thrown out of the Army—was described as a strength in his evaluations.

The report describes a series of reasons given by the military for failing to deal properly with Hasan. I don't find any of the reasons credible. A pair of related reasons is that some of Hasan's superiors believed his views were not problematic and others actually believed he

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provided valuable insight into Islamist extremism. This was a terrible misjudgment, because the truth was that Hasan's views were problematic precisely because he was an extremist. It is hard to understand why senior officers did not see that.

There were other more mundane administrative reasons why Hasan was retained and advanced. For example, he was passed on to the fellowship because he was the only applicant for his slot and those involved felt they might lose the fellowship unless it was given to Hasan. When others objected to Hasan getting the fellowship after the fact, he was kept because it was too much trouble to rescind the fellowship once it was offered. For another example, Hasan was assigned to Fort Hood (even though there were concerns about his ability), because some thought that base was so large and well staffed that there would be many Army psychiatrists around Hasan to monitor and report on his work.

All this attention to small bureaucratic matters show that superiors could not see the big picture—Hasan was a dangerous extremist who should not have been in the military at all.

So why did Hasan's superiors fail to take the action that was necessary? That brings me to my second reaction to the investigative report, which is my agreement with the report's recommendations about changing military policies and training to identify the threat of violent Islamist extremism among service members and to require that it be reported and dealt with.

When I testified at a hearing before this Committee at the beginning of its investigation, I said this: "It should not be an act of moral courage for a soldier to identify a fellow soldier who is displaying extremist behavior, it should be an obligation." That is as true today as it was then. Unfortunately, the report reveals that the military to this day still does not have policies and training which identify what violent Islamist extremism is and what our men and women should do when they see it.

I know that a lot of good people in the military have reviewed the Fort Hood attack to determine lessons learned, and some of their work and recommendations do move us forward. But we have to directly address the exact threat we face exactly, and that threat is violent Islamist extremism. Over a year after the Fort Hood attack, this direct and honest step still has not been taken by the military. Instead, the military avoids labeling our enemy for what it is, rather subsuming it under ambiguous terms such as "extremism" or trying to call it something completely different such as "workplace violence." That is not acceptable, because it leaves our service members vulnerable to more attacks from these extremists.

The military's unwillingness to confront the threat of Islamist extremism directly is all the more puzzling and out of character because in the past, the military has moved swiftly to respond to threats. During the Cold War the military enacted and implemented sophisticated subversion and espionage policies to deal with the ideology and tactics of our enemies. When racism and gang violence infiltrated our armed services, the military moved promptly put in place policies and training designed to clearly inform service members on exactly what was prohibited and instructed them to report service members whose words or conduct indicated that they may be dangerous. That sort of clarity in policy in training is needed now for the threat we are faced with now—violent Islamist extremism.

Clarity is all the more important here because of the complexity of dealing with someone, like Hasan, who commingles dangerous extremism with religion. Unless service members clearly understand the difference between legitimate religious observance and dangerous extremism,

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everyone in the military is in an unfair position. It is unfair and ineffective to place service members who have not been trained to identify Islamist extremists in a position where they have to decide if someone is an Islamist extremist. The reason is that service members are understandably reluctant to interfere with the practice of religion and that they are, rightly, trained by the military to respect religious observance. But that should never mean that violent Islamist extremism should be tolerated. The DOD's failure to identify the enemy clearly causes service members at all ranks to avoid dealing with extremists properly, just as they avoided the need to deal with Hasan.

The lack of clarity is also deeply unfair to the thousands of Muslims who serve honorably in the U.S. military. If service members clearly understand the difference between their religion, and the dangerous radicalism of violent Islamist extremism, the patriotic Muslims in our armed services will be protected against unwarranted suspicion. In fact, it was just that sort of awful, untrue stereotype about Muslim soldiers that Hasan himself believed and promoted in his statements and projects. The best way to defeat that stereotype is to educate our service members about the difference between the legitimate, peaceful observance of Islam, which is respected and protected, and the violent Islamist extremism which should lead to reporting, discharge and law enforcement intervention.
I endorse the changes that this report recommends because they do what needs to be done to fix the problems I have just described. They are necessary to make – and they are not hard to make.

First, military policies regarding religious discrimination and religious accommodation should make clear that violent Islamist extremism is not permitted and is not the same thing as the protected, peaceful practice of religion. This change would establish the important distinction that was not understood by those who failed to deal with Hasan.

Second, currently existing military policies on extremism should be modified to state explicitly that Islamist extremism is one form of extremism that is not allowed.

Third, service members should be trained and educated about violent Islamist extremism.

And fourth, protections against violent Islamist extremism need to be enforced. There needs to be an expectation in the military that, when you see a fellow service member exhibiting signs of violent Islamist extremism, you report it, and if you are a commander and you find out about it, you take action. Perhaps the right action for the commander is further investigation, perhaps the right action is discipline, perhaps the right action is counseling if the soldier in question is not radicalized too deeply, perhaps the right action is discharge, and perhaps the right action is immediate reporting to intelligence or law enforcement if the threat of harm is imminent. But it is right to act and wrong to ignore this problem, and military policies and training need to reflect that.

I know from my experience that the changes this report recommends could be made and implemented in a month if DOD chose to do so. That sort of urgency is necessary because our men and women in the military are vulnerable to a known danger and because DOD has an equal responsibility to protect its thousands of brave and patriotic Muslim-American service members from unwarranted suspicion by colleagues who have never be trained about what violent Islamist extremism is and how it differs from the peaceful exercise of Islam.

I welcome this Committee's hard work to protect them and hope that DOD will act immediately to follow the recommendations in the investigative report.

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Prepared Statement of Philip Mudd
Committee on Homeland Security and Governmental Affairs
15 February 2011

The Fort Hood shootings highlight the evolution of the terror threat during the past decade, from operations directed by a central al-Qa'ida organization in South Asia to independent attacks conducted by individuals or clusters inspired by al-Qa'ida's message. The threat picture we faced nearly a decade ago was focused on this centrally-driven group, and the threats we were most concerned about included plots devised by the 9/11 organizers (with al-Qa'ida senior figure Khalid Shaykh Mohammed as a key architect). The intelligence that helped disrupt those plots included not only classic forms of intelligence collection, from human and technical sources, but also extensive, detailed, and critical knowledge acquired from senior al-Qa'ida detainees.

As we approach the ten-year anniversary of the 9/11 attacks, the threat we confront is more diffuse, with individuals who have never met an al-Qa'ida member nonetheless carrying on the al-Qa'ida revolution in this country. Al-Qa'ida is not now and never was primarily a terrorist organization; instead, the group saw attacks as a way to inspire others in a global revolutionary wave to think and act as al-Qa'ida members, driven by al-Qa'ida ideology but not directed by al-Qa'ida operators.

The key to this 21st century revolution is the Internet, which provides an avenue for the transmission of images (Abu Ghurayb), preachers (Anwar Awlaki), publications (inspire), and chatrooms in which future jihadists meet virtually to discuss what they see and hear. And to radicalize each other. Many, probably most, of our budding jihadists are not initially inspired by the Internet. Instead, they meet other like-minded individuals in clusters, and as these clusters of potential radicals talk among themselves, the Internet serves as an accelerant in the radicalization process.

Traditional intelligence methods -- human and technical penetration of a clearly-defined collection target -- are not well-suited to find these individuals or small clusters of people; they do not have clear links to a hierarchy of terror. What they often do have in common, however, are linkages to sources of Internet radicalization. Nadal Hassan represents another example of this phenomenon.

The challenge of using Internet connectivity to find potential terror suspects raises, of course, questions about how security services can both protect the public by preventing acts of violence while ensuring that citizens have the right to free speech. Given al-Qa'ida's success in sparking a global movement of believers well beyond the core of al-Qa'ida members who committed the attacks of 9/11, questions about how to find individual violent radicals in the pool of individuals who are interested in radicalism is a subject worth discussing. If we accept that we cannot use traditional means of

intelligence to find these individuals, can we find ways to employ other means without violating the fundamental rights of a free society?

Among the questions we might consider as we discuss this problem include:

- What kinds of activities might we look for as we consider how to study Internet activity by potential jihadists?
- What kinds of problems might arise if federal security services expand their use of Internet tools?
- Are there counter-messaging opportunities federal agencies might use to work against radicalization on the Internet?
- How might partners around the world help in this effort?

The timing of this hearing is important. Successes against al-Qa'ida's central organization have helped diminish the strategic threat from the tribal areas of Pakistan, though the threat from al-Qa'ida is not close to eroded. Meanwhile, individual violent radicals in Europe and North America have shown increasingly during the past few years that they are the new wave of the global movement al-Qa'ida envisioned when its leaders organized the group two decades ago.

In the coming years, these new, leaderless jihadists will be difficult to find. And they will be successful, in this country and in Europe. Before this movement expands, engaging in a conversation about how to counter these jihadists is both timely and relevant. Thank you for inviting me to participate.

"A Ticking Time Bomb: Counterterrorism Lessons From the U.S. Government's Failure to Prevent the Fort Hood Attack"

Senate Committee on Homeland Security and Governmental Affairs

Tuesday, February 15, 2011

Dirksen Senate Office Building, Room SD-342

Written Statement Submitted by

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Chairman Lieberman, Senator Collins, and distinguished members of the Senate Homeland Security and Governmental Affairs Committee. I am honored for the opportunity to testify today about aspects of the important Report[1] that the Committee recently issued examining the failures that led to the Fort Hood tragedy and making structural recommendations to ensure that such an incident will not be repeated. And I am humbled to be addressing you in the presence of friends and relatives of the brave women and men who lost their lives on that awful day.

My goal this morning is to elaborate on some of the Report's findings, with an eye to making constructive suggestions about how to move forward. Specifically, I intend to offer my thoughts on three aspects of the Report: (1) certain challenges to the achievement of meaningful "jointness" on the Joint Terrorism Task Force (JTTF) (2) the proper role of the Federal Bureau of Investigation (FBI) as well as local and other federal officials as part of a larger counter-terrorism architecture designed to understand and combat a dynamic threat that increasingly includes a "homegrown" dimension; and (3) some preliminary thoughts on the organization of counter-radicalization efforts and on some lessons learned from the British experiment with domestic counter-radicalization.

All of these topics figure prominently in my research and scholarship as a law professor focused on issues of intelligence and counter-terrorism. My analysis is also informed by my practical experience as the founding head of the New York City Police Department's intelligence analysis arm and as a current member of the Direcor's Advisory Board at the National Counterterrrorism Center (NCTC). As an official in New York City, collaborating with FBI officials day to day – and sometimes night to night – one could not help but be impressed by their dedication and professionalism. As an academic, my knowledge of the FBI and my appreciation for its critical role in keeping the country safe have deepened. Whatever critical observations that follow reflect my considered judgments about how best to improve our counter-terrorism efforts going forward, building on the many remarkable successes that the FBI, NCTC, and many other federal and local and state institutions have achieved.

I. "Jointness" and the JTTF

It is axiomatic in the post-9/11 world that "jointness" is a critical feature of counter-terrorism.[2] A generation before that – before the 9/11 Commission identified a lack of

[1] *See* Joseph I. Lieberman, Chairman & Susan M. Collins, Ranking Member, U S Senate Committee on Homeland Security and Governmental Affairs, *Special Report: A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack*, (Feb 2011), *available at* http://hsgac.senate.gov/public/_files/Fort_Hood/FortHoodReport.pdf. Throughout this statement I refer simply to the "Report."

[2] It should be noted that jointness does not exhaust the universe of possible productive relationships between various institutional actors. The office that I helped create at the NYPD was part of the Department's Intelligence Division, whose very existence was, in a sense, predicated on the idea that inter-agency competition (alongside jointness) might produce the best overall counter-terrorism regime. As an NYPD colleague with extensive experience in intelligence matters liked to put it, "there is no intelligence sharing, only intelligence trading."

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information sharing between agencies as a contributing factor to the attacks – the JTTF already stood for the recognition that counter-terrorism requires close collaboration between a wide variety of federal and sub-national actors.[3] But as the Report reveals, the precise meaning of jointness at the JTTF remains elusive.

Broadly speaking, jointness on the JTTF could mean something very robust – in which case the role of detailees from local government and other federal agencies would amount to "agenda setting" – injecting their own distinctive perspectives on the terrorist threat and the means to combat it. Or it could mean something more modest – with detailees contributing at the margins to the efficacy of an otherwise FBI-driven enterprise. In my view, this second, more modest view, prevails in practice, for a number of interrelated reasons.

First, JTTFs operate within the core competence of the FBI. The JTTF is the place where FBI agents apply their most fundamental know-how (the investigation of federal crime) to what has become the organization's priority issue (terrorism). Thus, it is unsurprising that the FBI asserts its preeminence in this area in relation to JTTF detailees. Second, with the exception of unique offices (such as in New York City), JTTFs are dominated by FBI personnel. Third, and related, detailees to JTTFs (especially state and local personnel) may be functionally "federalized," losing touch both with the professional sensibilities and priorities they had cultivated in their home agencies and (over time) with their ability to reach back into those organizations to serve as effective go-betweens.[4] To some degree, this process is inevitable. After all, detailees work on FBI systems in support of FBI investigations. It also may be that certain local detailees to JTTFs "go native." As veteran counter-terrorism official (and former NYPD Deputy Commissioner) Mike Sheehan has written, describing the allure of federally-issued cars and cell phones, "the perks at FBI are just too good for most cops to resist."[5] At the same time, access to classified information on the JTTF may make it more difficult for local officials to interact meaningfully with their home offices.[6] More generally, detailees may be pressed into the service of the JTTF's day-to-day mission, and come to be viewed by management not solely

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[3] See, e.g., Joe Valiquette & J. Peter Donald, *The Early Years: Celebrating 30 Years and the Beginning of New York's Joint Terrorism Task Force*, FBI (Nov. 29, 2010), http://www.fbi.gov/newyork/stories/the-early-years/the-early-years/ (observing that the New York JTTF began in April 1980 as a collaboration between the FBI and NYPD and quoting FBI Director Mueller to the effect that "The New York JTTF was the first of its kind, and today, it remains among the very best of its kind. It has long been the 'gold standard' by which other JTTFs are modeled.").

[4] See Samuel J. Rascoff, *The Law of Homegrown (Counter) Terrorism*, 88 TEX. L. REV. 1715, 1743 (2010)

[5] *See* MICHAEL SHEEHAN, CRUSH THE CELL: HOW TO DEFEAT TERRORISM WITHOUT TERRORIZING OURSELVES 176 (2008).

[6] The Report adds an ironic twist, noting how certain detailees have been deprived of key access to data on the JTTFs. *See Report* at 73. These detailees live (or have lived – the Report notes progress in solving this particular problem) in a kind of limbo, not quite treated as equals in the JTTF and at the same time not easily able to interact with their home agencies.

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(or even mainly) as liaisons to home agencies or as the bearers of a unique set of investigative skills, but as additional personnel to augment a habitually strapped staff.[7]

None of this is to deny the obvious: that the presence of local and federal detailees on JTTFs continues to have tangible benefits for our national security. For example, having police officers on the task force plainly enhances the ability of FBI investigators (who, after all, frequently have careers that take them from one part of the country to the next every few years) to navigate a new city, and having immediate access to an Immigration and Customs Enforcement (ICE) detailee obviously contributes to the sophistication of JTTF interviews in certain contexts. But these sorts of benefits are hard to quantify in systemic terms and are qualified by a concept of jointness in which detailees operate as junior partners in an FBI-dominated environment.[8]

II. Intelligence and Homegrown Terrorism

If the absence of robust jointness on the JTTF represents a strategic problem, it is one that is contained. That is because, as mentioned above, the investigatory focus of the JTTF plays to the core institutional strengths of the FBI as a law enforcement agency. Even without robust local and other federal participation, JTTFs are positioned to discharge this vital mission. But the same cannot necessarily be said when it comes to the intelligence mission of the FBI, a mission that is now central to the organization's counter-terrorism function.

The story of the FBI's transformation from a law enforcement agency to one that also collects and makes sense of its own intelligence (especially relative to the domestic aspects of terrorism) is, by now, familiar. As the Report emphasizes by noting the ongoing uncertainty that attends the meaning of the FBI's being "intelligence-driven," that transformation remains incompletely realized. This problem has deep historical roots, for the post-9/11 challenge of embracing an intelligence mission does not represent a break with the agency's past, so much as the latest chapter in an evolving story that has taken place over the century that the FBI has been in business. Periods of enthusiasm for intelligence gathering untethered to criminal predication (the years during and immediately following World War I, for example, or the well-documented excesses of the 1960s and 1970s)

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[7] To take one striking example, the celebrated journalist and playwright Larry Wright tells of a visit that two JTTF members paid to his Austin, Texas home to investigate certain calls that had been placed from the residence to overseas phone numbers of interest. One was an FBI agent, the other a JTTF detailee from the Food and Drug Administration (FDA) who was, in Wright's telling, visibly anxious at the prospect of being sent out to investigate a terrorism lead that had no connection to the distinctive competence of the FDA. Lawrence Wright, *My Trip to Al Qaeda* (HBO television broadcast Sept. 7, 2010), *available at* http://www.hbo.com/documentaries/my-trip-to-al-qaeda/index html.

[8] Furthermore, there may be instances where this sort of ad hoc jointness not only does not meaningfully add to, but in fact actively detracts from, the overall effectiveness of the national security mission. For an FBI agent to assume that a detailee from this or that home agency represents an entire government bureaucracy may invite a false sense of security. The Report serves as a cautionary illustration of precisely this point. *See Report* at 70-73.

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historically gave way to decisions to prioritize the law enforcement function of the FBI. By reinstating the "criminal standard" Attorneys General Harlan Fiske Stone (in 1924) and Edward Levi in (1976) effectively (if temporarily) ended the FBI's participation in the intelligence business. As the Report rightly emphasizes, the effect of the most-recently issued Attorney General's Guidelines (by Judge Mukasey in 2008) as well as the FBI's internal Domestic Investigations and Operations Guide is to return the FBI to the mission of gathering intelligence by reference to the existence of threats, rather than solely as an incident to the investiation of alleged criminality.[9]

This latest return to intelligence gathering is especially pertinent when it comes to understanding the emerging and still imperfectly understood phenomenon of homegrown terrorism. Without intelligence, it is impossible to assess properly the degree to which homegrown terrorism is on the rise in the United States. The FBI and its leadership, of course, clearly understand this imperative. But as the Report observes, and my academic and practical experience confirms, the FBI has not yet surmounted the significant organizational challenges of creating an intelligence capability sufficient to the task at hand.

First, as the Report makes plain, the task of integrating the work of intelligence analysis into the FBI's counter-terrorism mission remains incomplete. Analysis is arguably the signal difference between traditional investigation, which is reactive to leads, and intelligence, which involves an iterative dialogue between analysts and collectors.[10] As I discovered when Police Commissioner Kelly assigned me the task of creating and running an intelligence analysis unit, fostering the conditions under which high-caliber analysts can succeed in an office culture that is naturally suspicious of "desk-jockeys" is a major challenge. (In a sense the FBI, like the NYPD, has it harder than the CIA in this regard. When it comes to overseas intelligence, analysts and collectors are separated by oceans. In the domestic arena, they are separated by cubicles.) But it is a necessary goal if the transformation to an intelligence agency is to be accomplished. As the Report highlights, this critical benchmark remains unattained.

Second, the distinctive perspectives and capacities of state and local officials have not been sufficiently leveraged as part of the FBI's intelligence mission. The FBI's commitment to intelligence is embodied by its strategy of "domain management." As the FBI's 2011 National Information Sharing Strategy describes it, "[d]omain awareness describes the landscape in which the FBI carries out its daily mission while providing context and a more-informed sense of the environment in which the threat conducts its activities."[11] That more informed sense of the environment – critical to taking the measure of the ground-up processes that give rise to homegrown terrorism – is precisely where local agencies brim over with expertise. Police officers possess this knowledge by virtue of their expansive mission, their (frequently lifelong) familiarity with the terrain in which they

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[9] *See generally* Samuel J. Rascoff, *Domesticating Intelligence*, 83 S. CAL. L. REV. 575 (2010).

[10] Certain intelligence analysts may be embedded on investigative squads, in which case they are probably best thought of as participants in the traditional law enforcement mission of the FBI.

[11] FBI, NATIONAL INFORMATION SHARING STRATEGY 5 (2011), *available at* http://www.fbi.gov/stats-services/publications/national-information-sharing-strategy-1/national-information-sharing-strategy-2011.

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operate, and their intimate working relationships with and in their communities. Indeed, as I have argued elsewhere, police do not gather intelligence about communities so much as effectively "co-produce" intelligence with communities.[12]

However much jointness is prized in connection with the FBI's terrorism investigatory work, it ought to figure much more prominently with respect to its intelligence mission. The role of locals in the intelligence arena[13] ought to come closer to the ideal of "robust jointness" discussed above, both because of the relative newness of the intelligence mission to the FBI, and owing to the relative strengths possessed by state and local police officers in this area. Tapping into the pre-existing knowledge of local officials on issues related to "domain management" would help avoid the potentially costly duplication of effort. As my fellow witness Phil Mudd recently pointed out, insofar as intelligence is concerned with coming to understand "unknowns," it is "a really inefficient way to use resources."[14]

The job of fashioning a sound counter-terrorism architecture that leverages the distinctive capacities of federal and local officials is not the sole responsibility of the FBI. The Department of Homeland Security (DHS) also has a role to play,[15] even if it remains unclear how DHS-led Fusion Centers will be integrated into a larger domestic counter-terrorism framework.[16] In short, there is still much work to be done by the FBI as well as its federal and local partners to conceptualize and implement meaningful jointness in the intelligence area.

III. Counter-Radicalization

The Report appropriately identifies the need for greater attention to counter-radicalization at home. As the British Home Office puts it, describing a counter-radicalization program that has served as an important inspiration for contemporary American efforts, "We need to prevent people from supporting violent extremism or becoming terrorists in the first place." Taking as my starting point the Report's call for greater attention to counter-radicalization as part of a larger strategy of addressing homegrown terrorism, and based on my ongoing research into American and British approaches to counter-radicalization, some early lessons can be teased out. Specifically, a successful counter-radicalization strategy must be attuned to questions about government authority and legitimacy in this area, concerns about the role that security plays in defining governmental attitudes towards Muslim citizens (and vice versa) and debates about what

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[12] *See* Samuel. J. Rascoff, *The Law of Homegrown (Counter) Terrorism*, 88 TEX. L. REV 1715 (2010).

[13] There is currently no equivalent to the JTTF on intelligence matters.

[14] *Frontline: Are We Safer?* (PBS television broadcast Dec. 1, 2011), *available at* http://www.pbs.org/wgbh/pages/frontline/are-we-safer/interviews/philip-mudd.html (interviewing Phillip Mudd).

[15] So does the NCTC's Interagency Threat Assessment and Coordination Group (ITACG).

[16] *See, e.g.*, JOHN ROLLINS, CONG. RESEARCH SERV., ORDER CODE RL34070, FUSION CENTERS: ISSUES AND OPTIONS FOR CONGRESS (2008), *available at* www.fas.org/sgp/crs/intel/RL34070.pdf.

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sorts of groups ought to serve as government interlocutors. As discussed below, in addition to these issues which have been prominent in debates about the British Prevent strategy, practicing counter-radicalization inside the United States raises its own distinctive policy and legal issues.

1. Organizing for Counter-Radicalization

The Report offers a sound blueprint for how to think about organizing American counter-radicalization efforts in a serious way. The White House must supply overall strategic leadership and direction, the NCTC ought to continue its critical role in providing coordination of disparate stakeholders, and implementation ought to be decentralized, allowing the full gamut of governmental and non-governmental actors to take the lead on different aspects of counter-radicalization. Specifically, three sets of "non-traditional" actors must be involved in the implementation of counter-radicalization if it is to be a success.

First, successful counter-radicalization requires a "whole-of-government" approach.[17] This means going beyond traditional security and law enforcement-focused agencies and enlisting the participation of institutional actors that have historically not been part of the national security apparatus – the Department of Education, for example. Second, state and local officials have a critical role to play here. While there is no agreed-upon definition of "radicalization," there is consensus that patterns of radicalization vary widely across the country. To be successful, counter-radicalization efforts must be attentive to variety at the local level. This sort of sensitivity to context is precisely the sort of ground-level knowledge traditionally possessed by local government. Third, and most important, the bulk of the heavy lifting in this area must be shouldered by non-governmental actors: communities, organizations, and individual leaders who take it upon themselves to make a difference. As discussed in greater detail below, an approach to counter-radicalization that puts communities at the center is more likely to succeed and to endure.

2. Lessons from Prevent

Conversations about American counter-radicalization are dominated by the analogy to the United Kingdom, and specifically to the so-called Prevent strategy. This is understandable, in view of the sophistication and dynamism that the Prevent leadership has brought to this enormously knotty and delicate area. Prevent has been a lightning rod for critics of different stripes from its inception, and its proper orientation continues to be contested.[18] In his recent speech to the Munich Security Conference, Prime Minister David Cameron signaled a different approach to counter-radicalization from the one that British

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[17] *See Nine Years After 9/11: Confronting the Terrorist Threat to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 111th Cong. (2010) (statement of Michael Leiter, Director of the National Counterterrorism Center), *available at* http://www.nctc.gov/press_room/speeches/2010-09-22D-NCTC-Leiter-Testimony-SHSGAC-Hearing.pdf.

[18] *See* Home Office, *Review of the Prevent Strategy*, *available at* http://www.homeoffice.gov.uk/counter-terrorism/review-of-prevent-strategy/ (observing that "the current Prevent strategy is not as effective as it could be").

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officials have been pursuing for roughly the last five years.[19] This approach would emphasize the government's role in advocating on behalf of core British values (notably, tolerance and commitment to the rule of law) rather than supporting certain Islamic teachings and institutions as an antidote to violent extremism.[20]

Notwithstanding the criticisms that have been mounted against the strategy – or in fact, precisely because of them – Prevent supplies a useful starting place for thinking about some of the challenges that may lie ahead and that ought to inform choices that are made about how to craft an American counter-radicalization program.

a. Effectiveness

First, and most fundamentally, Prevent has been criticized by a wide range of officials and commentators for failing to achieve its stated strategic goal – and possibly even exacerbating the problem it attempts to solve.[21] Two reasons have been put forward most frequently. First is that governments are simply not adept at performing counter-radicalization. An initiative like Prevent requires immense amounts of insight into the radicalization process in order to succeed. Even if the right sort of expertise were marshaled, there is certainly no saying that the government could calibrate its interventions effectively. As Professor Scott Atran has recently cautioned, "appeals to moderate Islam are about as irrelevant as older people appealing to adolescents to moderate their music or clothes."[22]

The second reason why the government may fail at counter-radicalization has to do with the messenger, not the message. The problem here is that the government may lack credibility within the Islamic community.[23] Evidence suggests that proximity to the government – being identified with one of its counter-radicalization programs – may undermine the credibility of the actor or group in question. As a Parliamentary Report critical of Prevent recently put it, the problem of government efficacy at counter-radicalization "is exacerbated by the possible risk that any organisation endorsed by Government or local authorities—however 'radical'—stands to lose its credibility once 'approved' by the authorities."[24]

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[19] *See* David Cameron, U.K. Prime Minister, Speech at Munich Security Conference (Feb. 5, 2011), *available at* http://www.number10.gov.uk/news/speeches-and-transcripts/2011/02/pms-speech-at-munich-security-conference-60293.

[20] *See* Rachel Briggs, *Community Engagement for Counterterrorism: Lessons from the United Kingdom*, 86 INT'L AFF. 971 (2010).

[21] *See* David Stevens, *In Extremis: A Self-Defeating Element in the "Preventing Violent Extremism" Strategy*, 80 POL. Q. 517, 518 (2009) ("[T]his arm of PVE is, at best, barking up the wrong tree, at worst, [it is] fueling extremism ").

[22] *See* Scott Atran, *The Romance of Terror*, GUARDIAN, July 19, 2010, *available at* http://www.guardian.co.uk/commentisfree/belief/2010/jul/19/terrorism-radical-religion.

[23] *See* Stephen J. Schulhofer et. al, *American Policing at a Crossroads* (NYU Sch. of Law, Public Law Research Paper No. 10-55, Aug 23, 2010).

[24] *See* COMMUNITIES AND LOCAL GOV'T COMM., PREVENTING VIOLENT EXTREMISM, 2009-2010, H.C. 65, *available at* http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/6502.htm.

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b. Securitization

A second lesson of Prevent is that government must be sensitive to concerns about the tendency of counter-radicalization to effect a fundamental transformation in the relationship between Muslim citizens and the state – what is commonly referred to as "securitization."[25] A related worry, which is itself connected to the whole-of-government approach discussed above, has to do with the penetration of security-minded approaches among government officials who are not experienced in this area. As one scholar has recently put it, "organizations traditionally geared towards countering terrorism and the culture of secrecy that this engenders find themselves forced to operate with agencies and ministries geared towards social work, which by its very nature is far more open."[26]

c. "Shared Values"

A third fault line that has been exposed by Prevent is the manner in which counter-radicalization raises difficult questions about the groups with whom the government ought to be engaging. Some have expressed the view – apparently now endorsed by the Prime Minister – that only those groups which strongly embody core values ought to be potential government interlocutors.[27] As a recent study puts it, "traditional Salafist ambivalence on such crucial subjects as Jihadists' condoning of suicide terrorism has called this avenue of counter-radicalization into question."[28] Meanwhile others take the position that counter-radicalization must enlist the support

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[25] *See* PREVENTING VIOLENT EXTREMISM REPORT, *supra* note 24, at 53 (mentioning public discomfort with the increasingly security-based relationship between law enforcement and public services). American aspects of this phenomenon were discussed at a recent Congressional hearing on homegrown terrorism. *See Working with Communities To Disrupt Terror Plots: Hearing Before the Subcomm. on Intelligence, Information Sharing and Terrorism Risk Assessment of the H. Comm. on Homeland Sec.*, 111th Cong. 29-30 (2010) (statement of Rep. Jane Harman, Chairwoman, H Comm. on Intelligence, Information Sharing and Terrorism Risk Assessment) ("Mr. Elibiary, you used some words that got my attention -- securitizing the relationship with minority communities or disparate communities, you said, is counterproductive . . . I don't think any of us is trying to securitize relationships. I think we're trying to build trust "); *see also id.* (statement of Mohammed Elibiary, President, The Freedom and Justice Foundation) ("The securitizing the relationship is when . the only conduit available currently for the community to engage with is to offer a tip.").

[26] *See* Raffaello Pantucci, *A Contest to Democracy? How the UK has Responded to the Current Terrorist Threat*, 17 DEMOCRATIZATION 251, 256-7 (2010). Pantucci goes on to express concern about the manner in which the expansion of Prevent beyond the traditional national security apparatus of the state had negative side effects, including "drafting of individuals who do not see (or wish to see) themselves as security agents into those sorts of roles." *Id.*

[27] A similar sort of debate has gone among American intellectuals, with Paul Berman expressing the view that Islam is fundamentally incompatible with political liberalism and Marc Lynch taking the position that the government must be willing to reach out to illiberal (and even anti-liberal) voices within the Islamic world in order to realize its security objectives. *See e.g.*, Marc Lynch, *Veiled Truths, The Rise of Political Islam in the West*, FOREIGN AFF., July/Aug. 2010.

[28] *See* THE RADICALIZATION OF DIASPORAS AND TERRORISM (Bruce Hoffman et al., eds., 2007), *available at* http://www.rand.org/pubs/conf_proceedings/2007/RAND_CF229.pdf.

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of more radical elements within the community, so long as their radicalism does not spill over into violence.[29]

3. Some Distinctively American Challenges

If Prevent supplies a useful starting place as well as a source of lessons learned for American counter-radicalization initiatives, there are certain distinctive features of American society and government that place limits on how much the British example can teach us. At the level of society, American Muslims are simultaneously more prosperous, better integrated and more culturally diverse than their British counterparts. This does not mean that it is inconceivable that radicalization will continue to take place here. Indeed, a leading terrorism expert recently suggested that the view "that the American 'melting pot' theory provided a 'fire wall' against the radicalization and recruitment of American citizens and residents" represents "wishful thinking."[30] But it does mean that devising and implementing a counter-radicalization program that works inside the United States necessarily entails custom tailoring efforts to suit the vibrancy and complexity of American Muslim life.

Concerning values and law, American norms are sufficiently different from British norms that aspects of Prevent, if imported into the American context, might threaten collision with certain basic rights. One such tension (the subject of a forthcoming academic article of mine) is with the First Amendment's Establishment Clause. That is because counter-radicalization may imply the "establishment" of what I refer to as "Official Islam" – a governmentally-sponsored or sanctioned account of "mainstream Islam" which is offered in place of radical doctrinal alternatives.[31] For the government to formulate (or to pick from among rival options[32]) and endorse a preferred conception of Islam[33] – in effect to play the role of Islamic theologian and missionary – raises potential concerns under the Establishment Clause doctrine that the Supreme Court has developed over the last sixty years. While it is certainly not clear how a court would come down in adjudicating the legality of various aspects of counter-radicalization, the overall effect of counter-

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[29] *See, e.g.*, Robert Lambert & Jonthan Githens-Mazer, *The Demonisation of British Islamism*, GUARDIAN, Apr. 1, 2009, *available at* http://www.guardian.co.uk/commentisfree/belief/2009/mar/31/religion-islam.

[30] *See The Evolving Nature of Terrorism: Nine Years after the Attacks: Hearing Before the H. Comm. on Homeland Sec.*, 111th Cong. (2010) (statement of Bruce Hoffman), *available at* http://www.bipartisanpolicy org/sites/default/files/Hoffman%20Testimony%20091510 pdf

[31] *See* LORENZO VIDINO, COUNTERING RADICALIZATION IN AMERICA: LESSONS FROM EUROPE, U.S. INST OF PEACE SPECIAL REP. NO. 262, at 11 (2010) (arguing that the United States "must be prepared to intervene in ideological and theological matters.").

[32] It is typical to refer to "civil wars" or "wars of ideas" within Islam. *See* Zeyno Baran, *Fighting the War of Ideas*, 84 FOREIGN AFF., Nov./Dec. 2005, 68, 68; Laurie Goodstein, *American Muslims Make Video to Rebut Militants*, N.Y TIMES, Aug. 1, 2010, at A23 ("The video is one indication that American Muslim leaders are increasingly engaging the war of ideas being waged within Islam.").

[33] *See, e.g.*, Michael Hirsh, *America's Blind Side*, NAT'L J., Oct. 20, 2010, *available at* http://nationaljournal.com/member/nationalsecurity/america-s-blind-side-20101030 ("[A]s long as America fails to develop a counter-narrative to radical Islamism, it will continue to play a game of global whack-a-mole as the culprits get closer to home.")

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radicalization might be to create a policy of Erastianism[34] – the assertion of governmental control over, and the active management of, a set of religious institutions and ideas.

IV. Conclusion

The Report admirably calls attention to a range of lessons that ought to be learned from the Fort Hood tragedy. I am particularly encouraged by the Report's – and the Committee's – emphasis on issues relating to the design and implementation of a domestic counter-terrorism architecture that is suited to the emerging threat environment. I would welcome the opportunity to participate in any way that the Committee might deem helpful and in the meantime I look forward to answering your questions. Thank you for your time.

[34] Erastianism is "so called after the sixteenth-century Swiss-German theologian Thomas Erastus, whose polemics against the ecclesiastical power of excommunication contained the seeds of the notion that the civil authority must control the Church." Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2189 (2003). *See* John H. Mansfield, *Promotion of Liberal Islam by the United States*, *in* ENEMY COMBATANTS, TERRORISM, AND ARMED CONFLICT LAW 85 (David K. Lennan ed., 2008) (viewing the American promotion of liberal Islam overseas as an example of Erastianism).

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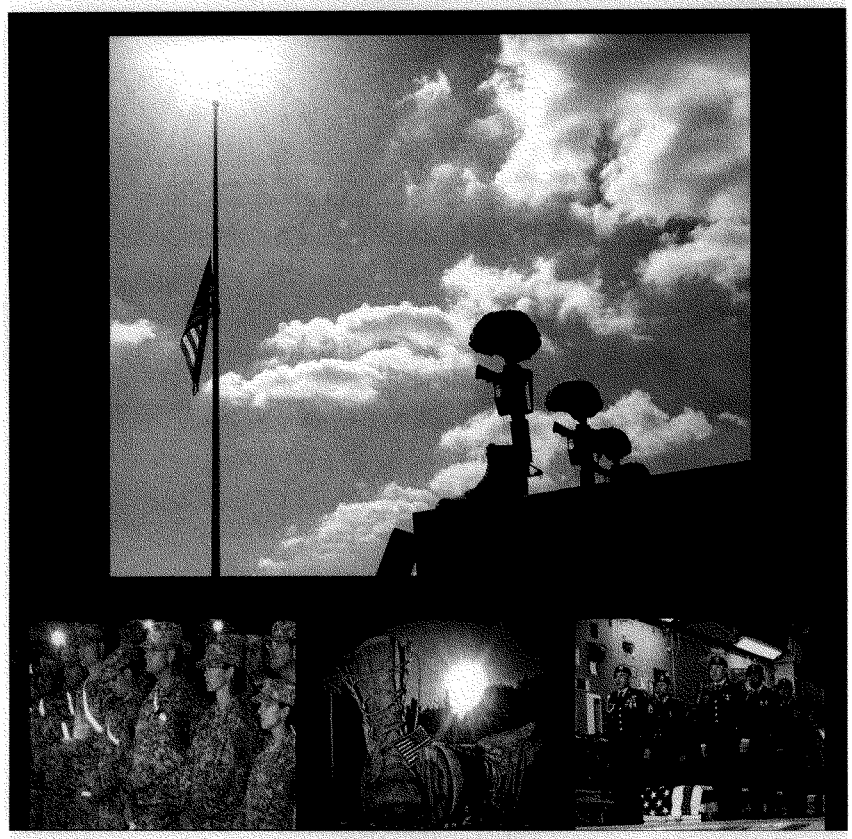
COUNTERTERRORISM LESSONS FROM THE U.S. GOVERNMENT'S FAILURE TO PREVENT THE FORT HOOD ATTACK



A Special Report by
Joseph I. Lieberman, Chairman
Susan M. Collins, Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs
Washington D.C. 20510
February 2011

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A SPECIAL REPORT BY
JOSEPH I. LIEBERMAN, CHAIRMAN
SUSAN M. COLLINS, RANKING MEMBER

UNITED STATES SENATE COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

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"A Ticking Time Bomb:"
Counterterrorism Lessons From
The U.S. Government's Failure To Prevent The Fort Hood Attack

By
Joseph I. Lieberman, Chairman
Susan M. Collins, Ranking Member
Committee On Homeland Security And Governmental Affairs
United States Senate

Full Table of Contents

EXECUTIVE SUMMARY 5

PART I: INTRODUCTION 13

Chapter I: Purpose Of The Investigation 15

Chapter II: The Ideology Of Violent Islamist Extremism And The Growth Of Homegrown Radicalization 17

A. The Ideological Principles, Radicalization Process, And Recruitment Narrative Of Violent Islamist Extremism 17

B. The Internet's Criticality For Radicalization To Violent Islamist Extremism, And The Diversification Of The Homegrown Terrorist Threat 18

C. The Role Of "Virtual Spiritual Sanctioners" Exemplified By Anwar al-Aulaqi 20

PART II: MAJOR HASAN'S RADICALIZATION TO VIOLENT ISLAMIST EXTREMISM AND THE STRING OF GOVERNMENT FAILURES TO INTERVENE AGAINST HIM PRIOR TO THE FORT HOOD ATTACK 23

Chapter III: "A Ticking Time Bomb:" DoD's Failure To Respond To Major Hasan's Public Displays Of Radicalization To Violent Islamist Extremism 27

Chapter IV. "That's Our Boy:" The FBI's Superficial Inquiry Into Major Hasan Prior To The Attack 35

PART III RECOMMENDATIONS FOR IMPROVING U.S. DEFENSES AGAINST VIOLENT ISLAMIST EXTREMISM 41

Chapter V Strengthening DoD Policies And Training To Prevent Radicalization Of Servicemembers To Violent Islamist Extremism 45

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VerDate Nov 24 2008 11:07 Nov 29, 2011 Jkt 066620 PO 00000 Frm 00065 Fmt 6601 Sfmt 6601 P:\DOCS\66620.TXT JOYCE
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A. Major Hasan Should Have Been Removed From Military Service Despite Deficiencies In Policy And Training Concerning Violent Islamist Extremism Among Servicemembers 45

B. DoD's Review Of The Fort Hood Attack And DoD's Follow Up To The Review Do Not Confront The Threat Of Violent Islamist Extremism Among Servicemembers Directly 47

C. DoD Should Update Its Policies And Training To Identify And Protect Against Violent Islamist Extremism Among Servicemembers 48

Chapter VI: Strengthening The FBI To Prevent Domestic Terrorist Attacks 51

A. FBI Transformation Begins After 9.11 52

B. The FBI's Inquiry Into Hasan Was Impeded By Division Among Its Field Offices, Insufficient Use Of Intelligence Analysis, And Outdated Tradecraft 55

1. The Hasan inquiry was plagued by disjunction between two field offices and the lack of coordination by FBI headquarters 55

2. The FBI's inquiry into Hasan failed to utilize intelligence analysts fully in order to drive the purpose of the investigation and assess Hasan's communications 61

3. The FBI did not update its tradecraft used in the investigation of the Suspected Terrorist, which contributed to the FBI's failure to understand the significance of Hasan's communications with that individual 64

C. The Inquiry Into Hasan Focused On The Narrow Question Of Whether He Was Engaged In Terrorist Activities And Not Whether He Was Radicalizing To Violent Islamist Extremism And Thus Could Become A Threat 66

D. Our Investigation Of The Hasan Case Raises Questions About Whether The Joint Terrorism Task Forces Have Become Fully Effective Interagency Coordination and Information-Sharing Mechanisms 67

1. DoD and the FBI disagree concerning which agency has the lead for counterterrorism investigations of servicemembers 67

H605-41331-79W7 with DISTILLER

VerDate Nov 24 2008 11:07 Nov 29, 2011 Jkt 066620 PO 00000 Frm 00066 Fmt 6601 Sfmt 6601 P:\DOCS\66620.TXT JOYCE

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2. DoD and the FBI disagree concerning the status of detailees to JTTFs as primary information-sharing channels of JTTF information back to DoD 70

3. FBI corrective action since the Fort Hood attack facilitates information-sharing with DoD but does not resolve the larger policy issues 72

4. The FBI's failure to link Hasan's first [REDACTED] communications to the Suspected Terrorist to his later ones stemmed in part from JTTF detailees' lack of access to key information, which suggests a major impediment to JTTFs' overall effectiveness 73

5. We are concerned that JTTFs are not fulfilling the FBI's vision of being interagency information-sharing and operational coordination mechanisms but rather may merely be appendages of the FBI 74

E. The FBI's Training Materials Contemporaneous To The Hasan Inquiry Did Not Adequately Cover The Ideology Of Violent Islamist Extremism 76

Chapter VII: The United States Needs A Comprehensive Approach To Countering The Threat Of Homegrown Terrorism 79

APPENDIX. COMPILATION OF FINDINGS AND RECOMMENDATIONS 83

H605-41331-79W7 with DISTILLER

VerDate Nov 24 2008 11:07 Nov 29, 2011 Jkt 066620 PO 00000 Frm 00067 Fmt 6601 Sfmt 6601 P:\DOCS\66620.TXT JOYCE

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EXECUTIVE SUMMARY

On November 5, 2009, a lone attacker strode into the deployment center at Fort Hood, Texas. Moments later, 13 Department of Defense (DoD) employees were dead and another 32 were wounded in the worst terrorist attack on U.S. soil since September 11, 2001.

The U.S. Senate Committee on Homeland Security and Governmental Affairs launched an investigation of the events preceding the attack with two purposes: (1) to assess the information that the U.S. Government possessed prior to the attack and the actions that it took or failed to take in response to that information; and (2) to identify steps necessary to protect the United States against future acts of terrorism by homegrown violent Islamist extremists. This investigation flows from the Committee's four-year, bipartisan review of the threat of violent Islamist extremism to our homeland which has included numerous briefings, hearings, consultations, and the publication of a staff report in 2008 concerning the internet and terrorism.

In our investigation of the Fort Hood attack, we have been cognizant of the record of success by DoD and the Federal Bureau of Investigation (FBI) in the ten years since 9/11. We recognize that detection and interdiction of lone wolf terrorists is one of the most difficult challenges facing our law enforcement and intelligence agencies. Every day, these agencies are presented with myriad leads that require the exercise of sound judgment to determine which to pursue and which to close out. Leaders must allocate their time, attention, and inherently limited resources on the highest priority cases. In addition, the individual accused of the Fort Hood attack, Army Major Nidal Malik Hasan, is a U.S. citizen. Even where there is evidence that a U.S. citizen may be radicalizing, the Constitution appropriately limits the actions that government can take.

In presenting our findings and recommendations below, we are grateful for the service given by our nation's military, law enforcement, and intelligence personnel. Our aim in this investigation was not to single out individual negligent judgment; such instances are for the agencies to deal with, as appropriate. Nor do we seek to second-guess reasonable judgments. Instead, we act under our Constitutional duty to oversee the Executive Branch's performance and thus to determine – independently from the Executive Branch's own assessment – what, if any, systemic issues are exposed by the Hasan case. The specific facts uncovered by the Committee's investigation necessarily led us to focus our key findings and recommendations on DoD and the FBI. But the Hasan case also evidences the need for a more comprehensive and coordinated approach to counterradicalization and homegrown terrorism across all agencies, including federal, state, and local entities, which are critical to keeping our country safe.

Our basic conclusion is as follows: Although neither DoD nor the FBI had specific information concerning the time, place, or nature of the attack, they collectively had sufficient information to have detected Hasan's radicalization to violent Islamist extremism but failed both to understand and to act on it. Our investigation found specific and systemic failures in the government's handling of the Hasan case and raises additional concerns about what may be broader systemic issues.

Both the FBI and DoD possessed information indicating Hasan's radicalization to violent Islamist extremism. And, to the FBI's credit, it flagged Hasan from among the chaff of

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intelligence collection for additional scrutiny. However, the FBI and DoD together failed to recognize and to link the information that they possessed about Hasan: (1) Hasan was a military officer who lived under a regimented system with strict officership and security standards, standards which his behavior during his military medical training violated; and (2) the government had [REDACTED] communications from Hasan to a suspected terrorist, [REDACTED], who was involved in anti-American activities and the subject of an unrelated FBI terrorism investigation. This individual will be referred to as the "Suspected Terrorist" in this report.[1] Although both the public and the private signs of Hasan's radicalization to violent Islamist extremism while on active duty were known to government officials, a string of failures prevented these officials from intervening against him prior to the attack.

- Evidence of Hasan's radicalization to violent Islamist extremism was on full display to his superiors and colleagues during his military medical training. An instructor and a colleague each referred to Hasan as a "ticking time bomb." Not only was no action taken to discipline or discharge him, but also his Officer Evaluation Reports sanitized his obsession with violent Islamist extremism into praiseworthy research on counterterrorism.

- FBI Joint Terrorism Task Forces (JTTFs) are units in FBI field offices that conduct counterterrorism investigations and are staffed by FBI agents and employees from other federal, state, and local agencies. A JTTF learned that Hasan was communicating with the Suspected Terrorist, flagged Hasan's initial [REDACTED] communications for further review, and passed them to a second JTTF for an inquiry. However, the ensuing inquiry failed to identify the totality of Hasan's communications and to inform Hasan's military chain of command and Army security officials of the fact that he was communicating with a suspected violent Islamist extremist – a shocking course of conduct for a U.S. military officer. Instead, the JTTF inquiry relied on Hasan's erroneous Officer Evaluation Reports and ultimately dismissed his communications as legitimate research.

- The JTTF that had reviewed the initial [REDACTED] communications dismissed the second JTTF's work as "slim" but eventually dropped the matter rather than cause a bureaucratic confrontation. The JTTFs now even dispute the extent to which they were in contact with each other in this case. Nonetheless, the JTTFs never raised the dispute to FBI headquarters for resolution, and entities in FBI headquarters responsible for coordination among field offices never acted. As a result, the FBI's inquiry into Hasan ended prematurely.

As noted, DoD possessed compelling evidence that Hasan embraced views so extreme that it should have disciplined him or discharged him from the military, but DoD failed to take action against him. Indeed, a number of policies on commanders' authority, extremism, and

[1] The redactions in this report were required by the Intelligence Community pursuant to Executive Branch classification policies and are the result of intensive negotiations spanning three months. We take issue with the extent of these redactions, some of which we believe are unjustified, but we have consented to them in order to produce this report in a timely manner.

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personnel gave supervisors in his chain of command the authority to take such actions. It is clear from this failure that DoD lacks the institutional culture, through updated policies and training, sufficient to inform commanders and all levels of servicemembers how to identify radicalization to violent Islamist extremism and to distinguish this ideology from the peaceful practice of Islam.

To address this failure, the Department of Defense should confront the threat of radicalization to violent Islamist extremism among servicemembers explicitly and directly and strengthen associated policies and training. DoD launched an extensive internal review after the Fort Hood attack by commissioning a review led by two former senior DoD officials (former Army Secretary Togo West and retired Chief of Naval Operations Admiral Vern Clark) and requiring multiple reviews across the Military Services of force protection and related issues. DoD has also instituted a regimented process for instituting and monitoring implementation of recommendations from these reviews, which included two memoranda from Secretary of Defense Robert Gates assessing and adopting particular recommendations from the West/Clark review. However, DoD – including Secretary Gates's memoranda – still has not specifically named the threat represented by the Fort Hood attack as what it is: violent Islamist extremism. Instead, DoD's approach subsumes this threat within workplace violence or undefined "violent extremism" more generally. DoD's failure to identify the threat of violent Islamist extremism explicitly and directly conflicts with DoD's history of directly confronting white supremacism and other threatening activity among servicemembers. DoD should revise its policies and training in order to confront the threat of violent Islamist extremism directly.

More specifically, DoD should update its policies on extremism and religious accommodation to ensure that violent Islamist extremism is not tolerated. DoD should also train servicemembers on violent Islamist extremism and how it differs from Islamic religious belief and practices. Without this improved guidance and training, the behavioral tendency among superiors could be to avoid proper application of the current general policies to situations involving violent Islamist extremism.

The 9/11 attacks led the FBI Director, Robert Mueller, to act to transform the FBI's institutional and operational architecture. He declared that the FBI's top priority would henceforth be preventing domestic terrorist attacks and that the FBI needed to become an intelligence-centric rather than purely law-enforcement-centric organization. The FBI has made substantial progress in transforming itself in these ways. The FBI is more focused on producing counterterrorism intelligence and more integrated than it had been. Its initiatives are headed in the right direction. To its credit, the FBI moved swiftly after the Fort Hood attack to conduct an internal review, identify gaps, and implement changes in response; the FBI also commissioned an outside review by former FBI Director and Director of Central Intelligence Judge William Webster. Nonetheless, our investigation finds that the Fort Hood attack is an indicator that the current status of the FBI's transformation to become intelligence-driven is incomplete and that the FBI faces internal challenges – which may include cultural barriers – that can frustrate the on-going institutional reforms. The FBI needs to accelerate its transformation.

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- In the Hasan case, two JTTFs (each located in a different field office) disputed the significance of Hasan's communications with the Suspected Terrorist and how vigorously he should be investigated. The JTTF that was less concerned about Hasan controlled the inquiry and ended it prematurely after an insufficient examination. Two key headquarters units – the Counterterrorism Division, the "National JTTF" (which was created specifically to be the hub among JTTFs), and the Directorate of Intelligence – were not made aware of the dispute. This unresolved conflict raises concerns that, despite the more assertive role that FBI headquarters now plays, especially since 9/11 in what historically has been a decentralized organization, field offices still prize and protect their autonomy from headquarters. FBI headquarters also does not have a written plan that articulates the division of labor and hierarchy of command-and-control authorities among its headquarters units, field offices, and the JTTFs. This issue must be addressed to ensure that headquarters establishes more effective strategic control of its field office operations.

- In the Hasan case, the FBI did not effectively utilize intelligence analysts who could have provided a different perspective given the evidence that it had. The FBI's inquiry focused narrowly on whether Hasan was engaged in terrorist activity – as opposed to whether he was radicalizing to violent Islamist extremism and whether this radicalization might pose counterintelligence or other threats (*e.g.*, Hasan might spy for the Taliban if he was deployed to Afghanistan). This critical mistake may have been avoided if intelligence analysts were appropriately engaged in the inquiry. Since 9/11, the FBI has increased its intelligence focus by creating a Directorate of Intelligence and Field Intelligence Groups in the field offices and hiring thousands of new and better qualified analysts. However, the FBI must ensure that these analysts are effectively utilized, including that they achieve significant stature in the FBI. The FBI must also ensure that all of its agents and analysts are trained to understand violent Islamist extremism.

- In the Hasan case, the FBI did not identify the need to update its tradecraft (*i.e.*, the methods and processes for conducting investigative or intelligence activities) regarding the processing and analysis of communications [REDACTED] until after the Fort Hood attack. This delay led to a failure to identify all of Hasan's communications with the Suspected Terrorist and the extent of the threat contained within them. The FBI has had numerous successes against homegrown terrorist cells and individuals since 9/11 that have saved countless American lives. However, the FBI should still ensure that all of its tradecraft is systemically examined so that flaws can be corrected prior to failures. The FBI leadership should continue to oversee this element of its transformation to a first-class, intelligence-driven counterterrorism organization.

- In the Hasan case, the JTTF model did not live up to the FBI's strong vision of JTTFs as an effective interagency information-sharing and operational coordination mechanism. JTTFs have been expanded significantly since 9/11 and are now the principal domestic federal operational arm for counterterrorism investigations and intelligence collection. They perform critically important homeland security functions and have produced numerous successes in disrupting and apprehending potential terrorists. However, the

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specific handling of the Hasan case, and systemic disputes between DoD and the FBI concerning JTTFs which remain unresolved, raise concerns that the JTTF model requires additional review and improvement in order for JTTFs to function as effectively as our nation requires.

We ask that DoD and the FBI review and respond to the concerns identified in this report on an urgent basis.

Finally, we request that the National Security Council and Homeland Security Council lead in the development of an integrated approach to law enforcement and intelligence domestically and a comprehensive national approach to countering homegrown radicalization to violent Islamist extremism. The threat of homegrown radicalization goes beyond the capabilities of the law enforcement, intelligence, and homeland security agencies and requires a response from a broad range of our government which will produce plans to translate and implement this comprehensive national approach into specific, coordinated, and measurable actions across the government and in cooperation with the Muslim-American community.

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PART I INTRODUCTION

I Purpose Of The Investigation.

On November 5, 2009, 13 Americans – 12 servicemembers and one civilian employee of DoD – were killed and 32 were wounded in an attack at the military base at Fort Hood, Texas. This tragedy was the deadliest terrorist attack within the United States since September 11, 2001. Major Nidal Malik Hasan, a U.S. Army officer and psychiatrist, was arrested and is standing trial for murder and other charges in military court-martial proceedings.

On November 8, 2009, the Senate Committee on Homeland Security and Governmental Affairs launched an investigation of the events preceding the attack pursuant to the Committee's authority under Rule XXV(k)(1) of the Standing Rules of the Senate, Section 101 of S. Res 445 (108th Congress), and Section 12 of S. Res. 73 (111th Congress). Our jurisdiction includes legislative authority concerning the organization and reorganization of the Executive Branch and investigative authority related to "the efficiency and economy of operations of all branches and functions of the Government with particular reference to . . . the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems."

President Barack Obama himself acknowledged the importance of a congressional investigation of the government's performance. As he said during his weekly radio address on November 14, 2009, "I know there will also be inquiries by Congress, and there should."[2]

The purpose of the Committee's investigation is two-fold: (1) to assess the information that the U.S. Government possessed prior to the attack and the actions that it took or failed to take in response to that information, and (2) to identify steps necessary to protect the United States against future acts of terrorism by homegrown violent Islamist extremists – that is, by terrorists radicalized largely within the United States to violent Islamist extremism.[3] Notably, our investigation has not examined Hasan's culpability for the attack or the facts of what happened during the attack, which are the subject of an Army court-martial proceeding.

This investigation into the Hasan case flows from our Committee's four-year, bipartisan review of the threat of violent Islamist extremism to our homeland. This work has included 14 hearings, numerous briefings from the Executive Branch on threat trends and specific plots, extensive and sustained consultations with non-government experts and former government officials, and the 2008 release of a staff report, *Violent Islamist Extremism, the Internet, and the Homegrown Terrorist Threat*, which argues that the internet's exploitation by terrorists would lead to an increase in homegrown terrorism. In addition, our assessment of the government's counterterrorism capabilities builds upon the Committee's leadership in enacting the Homeland Security Act of 2002 (which created the Department of Homeland Security) and the Committee's

[2] See http://www.whitehouse.gov/blog/2009/11/14/weekly-address-veterans-day-and-fort-hood. For a transcript of the address, see http://middleeast.about.com/od/document1/qt/obama-fort-hood.htm.

[3] The Congressional Research Service defines homegrown violent Islamist extremism as "terrorist activity or plots perpetrated within the United States or abroad by American citizens, legal permanent residents, or visitors radicalized [to violent Islamist extremism] largely within the United States." John Rollins, *American Jihadist Terrorism: Combatting a Complex Threat*, Congressional Research Service (2010).

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authorship of the Intelligence Reform and Terrorism Prevention Act of 2004 (which created the Director of National Intelligence and the National Counterterrorism Center).

This investigation has centered on the actions of DoD and the FBI with respect to Hasan. In examining DoD and FBI actions, we have been cognizant of DoD's and the FBI's record of success in the nine years since 9/11. The FBI, in partnership with other federal agencies and state and local law enforcement, has achieved dramatic successes in protecting the United States against homegrown terrorism. The men and women of DoD and the FBI have taken aggressive action to undermine the capabilities of foreign terrorist networks. These efforts, both at home and abroad, have made our nation safer. Nonetheless, the tactics of our terrorist adversaries continue to evolve, and our nation's counterterrorism efforts must continue to improve in order to deter, detect, and disrupt future terrorist attacks.

In conducting our review, we have been cognizant of three risks confronting every investigation of government performance, particularly those relating to intelligence and law enforcement activities. *First*, hindsight can obscure the ambiguity that officials faced at the time. To avoid this pitfall, we focused our investigation on what information was readily available to and actually considered by the key government personnel at the time and whether their actions were reasonable based on that information. *Second*, hindsight can obscure the competing priorities that officials faced. Accordingly, we sought to determine what priority they placed on the information that they possessed and how conflicts over priorities were resolved. *Third*, to avoid the temptation to hold individual personnel to unrealistic standards, our investigation has focused primarily on what, if any, systemic problems were exposed by the government's performance in this particular incident. Nonetheless, we expect DOD and the FBI to hold individual personnel accountable for performance deficiencies identified in this and other reports on the Hasan case.

The findings and recommendations of our investigation require that the report explain violent Islamist extremism and the signs of Hasan's radicalization to violent Islamist extremism. We provide that information in this report with the explicit intention of distinguishing violent Islamist extremism from the millions of Muslim-Americans and Muslims around the world who reject that ideology and practice their faith in peace. We acknowledge with gratitude the contributions of Muslim-Americans to this nation and the patriotism of Muslim-American servicemembers in defending our freedoms.

Furthermore, our report's findings and recommendations should not be construed as implying that the Executive Branch has learned nothing from the Fort Hood attack. In fact, President Obama ordered a review after the attack, the FBI instituted several systemic changes, and DoD has been engaged in an extensive review effort involving an independent panel, the Office of the Secretary of Defense, and the Military Services. Our conclusion is not that the Executive Branch has avoided learning lessons but rather there are more lessons to be learned and changes to be implemented.

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II The Ideology Of Violent Islamist Extremism And The Growth Of Homegrown Radicalization.

America's enemy today, just as it was seven years ago when the 9/11 Commission released its report, is not simply terrorism or a particular terrorist organization such as al Qaeda or its affiliates. The enemy is in fact the ideology of violent Islamist extremism – the ideology that inspired the attacks of 9/11 as well as a myriad of attacks large and small around the world prior to and after 9/11. As the 9/11 Commission report stated, we are not fighting "'terrorism,' some generic evil," and "our strategy must match our means to two ends: dismantling the al Qaeda network and prevailing in the longer term over the ideology that gives rise to Islamist terrorism."[1]

Despite the remarkable work of America's military, intelligence, and law enforcement agencies in preventing individual terrorist attacks, the ideology that inspired 9/11 and other attacks and plots around the world continues to motivate individuals to commit terrorism. The threat is exemplified by Omar Hammami, an American from a typical upbringing in Alabama who now fights for the violent Islamist extremist group al-Shabaab in Somalia and recruits Westerners to its cause in English over the internet. As Hammami said, "they can't blame it on poverty or any of that stuff'... They will have to realize that it's an ideology and it's a way of life that makes people change."[2]

A. The Ideological Principles, Radicalization Process, And Recruitment Narrative Of Violent Islamist Extremism.

The core principles of violent Islamist extremism are essentially as follows: A global state – or caliphate – should be created in which the most radical interpretation of *Shari'ah* (Islamic religious law) will be enforced by the government. Adherents to violent Islamist extremism should prioritize the global Islamist community – the *ummah* – ahead of the community and country in which they live. To accomplish these goals, violence is justified, including against the West generally, military personnel, and civilians. Muslims who oppose these principles and reject its perversion of the Islamic faith are also considered by violent Islamist extremists to be the enemy.

The process by which an individual transitions to a violent Islamist extremist is known as radicalization. Research into radicalization has continued to evolve as it becomes more prevalent, but experts have generally identified four phases of such radicalization.[6] *Pre-radicalization* is the period before the individuals begin their journey to violent Islamist extremism. They possess or acquire psychological or other precursors that underlie the individuals' eventual openness to this ideology. During *Self-Identification*, individuals

[1] National Commission on Terrorist Attacks Upon the United States, *9/11 Commission Report* (2004), at 363. The 9/11 Commission used the term "Islamist terrorism" – what this report calls "violent Islamist extremism" – to describe the most radical manifestation of Islamism or Islamist ideology.

[2] "The Jihadist Next Door", *The New York Times* (January 31, 2010).

[6] This framework is adapted from a publicly available description of the radicalization process by the New York Police Department's ("NYPD") Intelligence Division. New York Police Department, *Radicalization in the West: The Homegrown Threat* (2007).

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experience a crisis or have a grievance – whether social, economic, political, or personal – that triggers a "cognitive" opening that compels them to search for answers to their grievances.[7] During *Indoctrination*, individuals adopt violent Islamist extremist ideology and begin to see the world as a struggle against the West. Finally, they reach the *Violence* stage in which they accept their individual duty to commit violence, seek training, and plan attacks.[8]

Individuals often enter the radicalization process after being exposed to a common recruitment narrative. The narrative's main thrust is that the West, led by the United States, is engaged in a war against Islam.[9] Purveyors of the narrative are particularly effective in tying the narrative to personal, local, or regional grievances – in other words, in convincing aggrieved individuals that their grievances result from the West being at war with Islam and that these individuals must rise up to defend Islam via terrorist activity.

B. The Internet's Criticality For Radicalization To Violent Islamist Extremism, And The Diversification Of The Homegrown Terrorist Threat.

In the past, face-to-face interactions were essential for violent Islamist extremist groups to identify followers and to facilitate the radicalization process. However, face-to-face interactions have begun to be replaced by the internet as the primary means by which violent Islamist extremism has spread globally. Al Qaeda and other violent Islamist extremists recognized the potency of the internet after 9/11 when they created a relatively structured, online media campaign that targeted western audiences. Over time, violent Islamist extremists have continued to evolve and improve their ability to use the Web to broadcast the ideology. Their violent propaganda has spread from password protected forums to include "mainstream" sites. The Committee's 2008 staff report concluded that the threat of homegrown terrorism inspired by violent Islamist extremist ideology would increase due to the focused online efforts of that ideology's adherents and how individuals were using the internet to access this propaganda.[10] Indeed, the incidence of homegrown terrorism has increased significantly in the past two years as compared to the years since 9/11. From May 2009 to November 2010, there were 22 different homegrown plots, contrasted with 21 such plots from September 2001 to May 2009.[11]

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[7] *Id.*

[8] Mitchell D. Silber, Director of Intelligence Analysis, New York City Police Department, *Statement before the Senate Homeland Security and Governmental Affairs Committee* (November 19, 2009).

[9] The importance of the narrative in the recruitment and radicalization of homegrown violent Islamist extremists cannot be understated. An American recruit to violent Islamist extremism is unlikely to have read or fully understood the ideological writings of Sayid Qutb, Yousef al-Ayyiri, or Abdullah Azzam, but the narrative is easier for such an individual to comprehend. The narrative provides a way to explain contemporary events through the lens of the ideology and to motivate potential adherents to take action.

[10] Senate Committee on Homeland Security and Governmental Affairs, Majority and Minority Staff Report, *Violent Islamist Extremism, the Internet, and the Homegrown Terrorist Threat*, (May 8, 2008).

[11] *American Jihadist Terrorism: Combating a Complex Threat*, Appendix A. Many of these plots are recounted elsewhere in this report, particularly the list of cases in which Anwar al-Aulaqi's literature played a role. Cases not mentioned elsewhere in this report include the apprehension of Hosam Smadi (plot to blow up a Dallas skyscraper, 2009) and Michael Finton (alleged plot to blow up a Federal building in Illinois, 2009). Since 9/11, only two plots resulted in American casualties domestically (the attack by Carlos Beldsoe and the Fort Hood attack).

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The homegrown terrorist threat also has become "diversified" in two ways, which has helped cause the number of attacks to reach its current peak over the last two years.[12]

First, the need for interaction between individual terrorists and outside groups is evolving. Individual plotters are identifying with an increasingly varied number of foreign terrorist organizations or may no longer need to be tied directly to outside groups. The threat can come from al-Qaeda (in September 2009, Najibullah Zazi was allegedly under al-Qaeda's direction when planning suicide attacks on New York City transit systems);[13] al-Qaeda affiliates (in 2008 and 2009, at least 20 young men from the United States joined al-Shabaab in Somalia including Shirwa Ahmed, the first known American suicide bomber); al-Qaeda's ideological allies (in May 2010, Faisal Shahzad, a U.S. citizen who had received training from Tehrik-i-Taliban Pakistan,[14] attempted to set off a vehicle-based explosive device in Times Square); homegrown groups (in July 2009, seven individuals allegedly attempted to receive training overseas and plan attacks on the homeland, including a small-arms assault on the Marine base in Quantico, Virginia);[15] and individual homegrown terrorists or "lone wolves" (in June 2009, Carlos Bledsoe, a self-described follower of al-Qaeda in the Arabian Peninsula (AQAP),[16] allegedly killed one soldier and wounded a second outside of a recruiting station in Little Rock, Arkansas).

As the Committee warned in its 2008 report, lone wolf terrorists present a unique problem for law enforcement and intelligence agencies.[17] These lone actors, inspired by violent Islamist extremist ideology, plan attacks without specific guidance from foreign terrorist organizations. Because much of their radicalization process is isolated from others, lone wolves are less likely to come to the attention of law enforcement and intelligence agencies.[18] From September 11th until the Fort Hood attack occurred, the only attack on the homeland that resulted in deaths was perpetrated by a lone actor Carlos Bledsoe.

Second, the threat is diverse because there continues to exist no single profile of violent Islamist extremists, especially in the United States where individuals from various backgrounds have gravitated to violent Islamist extremism.[19] Nor is there a general time frame over which the process of radicalization to violent Islamist extremism occurs, although the internet has almost certainly accelerated the radicalization process over the past couple of years.[20] Indeed, as a result of the internet and other variables, the time frame between the beginning of radicalization

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[12] Michael Leiter, Director, National Counterterrorism Center, *Statement before the Senate Homeland Security and Governmental Affairs Committee* (September 22, 2010).
[13] *U.S. v. Medunjanin, Naseer, El Shukrijumah, Rehman, Lnu*, Superseding Indictment (July 7, 2010).
[14] *U.S. v. Shahzad*, Sentencing Memorandum (September 29, 2010).
[15] *U.S. v. Boyd*, Indictment (July 22, 2009).
[16] Carlos Bledsoe, Letter to Judge Herbert Wright (January 14, 2010)
[17] Senate Committee on Homeland Security and Governmental Affairs, Majority and Minority Staff Report, *Violent Islamist Extremism, the Internet, and the Homegrown Threat*, (May 8, 2008).
[18] *Id.*
[19] Peter Bergen and Bruce Hoffman, *Assessing the Terrorist Threat* (Bipartisan Policy Center, September 10, 2010).
[20] Garry Reid, Deputy Assistant Secretary of Defense, Special Operations and Combating Terrorism, *Statement before the Senate Armed Service Subcommittee on Emerging Threats and Capabilities* (March 10, 2010).

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and the onset of terrorist activity has decreased substantially, further exacerbating the challenge to law enforcement and intelligence agencies to detect and disrupt attacks.

C. The Role Of "Virtual Spiritual Sanctioners" Exemplified By Anwar al-Aulaqi.

Proceeding in the radicalization process from the level of *Self-Identification* to the levels of *Indoctrination* and *Violence* has been made easier by "virtual spiritual sanctioners."[21] These individuals provide a false sense of religious justification for an act of terrorism over the internet. Though many individuals around the globe have become purveyors of violent Islamist extremism, a foremost example of a "virtual spiritual sanctioner" is Anwar al-Aulaqi, a U.S. citizen now operating from Yemen.[22] In 2008, then-Department of Homeland Security Undersecretary for Intelligence and Analysis Charlie Allen stated publicly, "Another example of al Qaeda reach into the Homeland is U.S. citizen, al Qaeda supporter, and former spiritual leader to three of the September 11th hijackers Anwar al-Aulaqi – who targets U.S. Muslims with radical online lectures encouraging terrorist attacks from his new home in Yemen."[23]

Al-Aulaqi's role as an online provocateur of homegrown terrorism has been well known to the U.S. Government, including the FBI:

- Over four years prior[24] to the Fort Hood attack, Mahmud Brent, a man who admitted to attending a Lashkar-e-Taiba training camp in Pakistan was found with "audiotapes of lectures by Anwar Al-Awlaki."[25]

- Nearly three years prior[26] to the Fort Hood attack, six individuals planned to attack Fort Dix, New Jersey, and to kill "as many soldiers as possible."[27] The FBI arrested the group in May 2007. According to expert testimony at the trial, al-Aulaqi's lecture explaining *Constants on the Path to Jihad* was a cornerstone of their radicalization to violent Islamist extremism.[28]

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[21] Mitchell D. Silber, Director of Intelligence Analysis, New York City Police Department, *Statement before the Senate Homeland Security and Governmental Affairs Committee* (November 19, 2009).

[22] Other examples of virtual spiritual sanctioners include the Jamaican citizen Abdullah el-Faisal, Australian Feiz Mohammad, and American Samir Khan

[23] Charles E. Allen, Undersecretary for Intelligence and Analysis /Chief Intelligence Officer, Keynote Address at GEOINT Conference (October 28, 2008), available at http://www.dhs.gov/xnews/speeches/sp_1225377634961.shtm.

[24] *U.S. v. Mahmud Faqiq Brent*, Sentencing Memorandum (July 23, 2007). The al-Aulaqi audiotapes were found in a FBI search of Brent's residence on August 4, 2005. In addition, the sentencing memorandum cites the 9/11 Commission that describes al-Aulaqi as the "spiritual advisor to two of the September 11 hijackers."

[25] *Id*

[26] Evan F. Kohlmann, Expert Report II, *U.S. v. Mohamad Ibrahim Shnewer et al* (September 2008). The recorded conversations between Shain Duka and another individual regarding al-Aulaqi took place on March 9, 2007.

[27] Department of Justice, *Five Radical Islamists Charged with Planning Attack on Fort Dix Army Base in New Jersey* (May 8, 2007).

[28] Evan F. Kohlmann, Expert Report II, *U.S. v. Mohamad Ibrahim Shnewer et al* (September 2008)

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- Nearly a year and a half[29] prior to the Fort Hood attack, U.S. citizen Barry Bujol was allegedly seeking al-Aulaqi's advice and counsel on how to join a terrorist organization. In June 2009, the FBI arrested him for attempting to provide material support to AQAP. Bujol had emailed al-Aulaqi requesting assistance on "jihad" and wanting to help the "mujahideen," and in response al-Aulaqi sent his *44 Ways of Supporting Jihad*. Bujol believed that al-Aulaqi's email would attest to his bona fides to AQAP.[30]

- A year and three months[31] prior to the Fort Hood attack, Hysen Sherifi, one of seven men in North Carolina charged in a plot to attack the Marine base in Quantico, Virginia, allegedly told an informant that he was going "to send [the informant] more books on Islam and jihad and that one of the books was '44 Ways to Help the Mujihadin' by Anwar Aleki [*sic*]."[32]

- Four months prior to the Fort Hood attack,[33] in a case investigated by the FBI's Washington Field Office, U.S. citizen Zachary Chesser reached out to al-Aulaqi through al-Aulaqi's Web site for spiritual guidance and solicited al-Aulaqi's recommendations on his desire to join al-Shabaab in Somalia. In charging documents against Chesser, the FBI noted that "various Islamic terrorists were in contact with Aulaqi before engaging in terrorist acts." Chesser explained to investigators that "Aulaqi inspires people to pursue jihad."[34] He watched online videos and listened to digitized lectures "almost obsessively" including those by his favorite spiritual leader, al-Aulaqi. Al-Aulaqi responded to two of Chesser's messages.

Al-Aulaqi's role as a virtual spiritual sanctioner in U.S. terrorism cases has continued since the Fort Hood attack.[35] Furthermore, al-Aulaqi has taken an operational role in terrorist plots including, but not limited to, the Christmas Day attack by Umar Faruk Abdulmutallab.[36]

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[29] *U.S. v. Barry Bujol*, Application for Search Warrant (May 28, 2010), Affidavit of TFO Sean McCarroll, FBI JTTF. According to the search warrant, Bujol began his communication with al-Aulaqi in "mid-2008."

[30] *Id.*

[31] *U.S. v. Hysen Sherifi, et al.*, Application for Search Warrant (July 27, 2009). According to the search warrant, the conversation between Sherifi and the informant occurred on February 7, 2009.

[32] *Id.* The search warrant continues, "Sherifi translated the book and put it on a website and he told [the informant] that translating is one of the 44 ways to help the Mujihadin."

[33] *U.S. v. Zachary Chesser*, Application for Search Warrant (July 21, 2010), Affidavit of FBI Special Agent Mary Brandt Kinder. According to the FBI Affidavit, "a court-ordered search of Chesser's email account zchesser@gmu.edu, revealed that on July 13, 2009, Chesser contacted Anwar Awlaki directly through Awlaki's email address."

[34] *Id.*

[35] *U.S. v. Alessa, Almonte*, Criminal Complaint (June 4, 2010), *U.S. v. Shaker Masri*, Criminal Complaint (August 3, 2010), *U.S. v. Paul Rockwood*, Sentencing Memorandum, (August 16, 2010), *U.S. v. Abdel Shehadeh*, Complaint in Support of Arrest Warrant (October 21, 2010), *U.S. v. Farooque Ahmed*, Search and Seizure (October 26, 2010), *U.S. v. Antonio Martinez*, Criminal Complaint (December 8, 2010).

[36] Janet Napolitano, Secretary of Department of Homeland Security, *Statement before the Senate Homeland Security and Governmental Affairs Committee* (September 22, 2010); Michael Leiter, Director, National Counterterrorism Center, *Statement before the Senate Homeland Security and Governmental Affairs Committee* (September 22, 2010).

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PART II: MAJOR HASAN'S RADICALIZATION TO VIOLENT ISLAMIST EXTREMISM AND THE STRING OF GOVERNMENT FAILURES TO INTERVENE AGAINST HIM PRIOR TO THE FORT HOOD ATTACK

Both the public and the private signs of Hasan's radicalization to violent Islamist extremism while on active duty were known to government officials, but a string of failures prevented these officials from intervening against him. His radicalization was well known during his military medical training to his superiors and colleagues, but no action was taken to discipline or discharge him. In fact, signs of his radicalization to violent Islamist extremism that troubled many of his superiors and colleagues were sanitized in his Officer Evaluation Reports into praise of his supposed research on violent Islamist extremism. Hasan's radicalization to violent Islamist extremism subsequently [REDACTED] engaged in communication with the Suspected Terrorist [REDACTED] that were clearly out of bounds for a military officer. The ensuing JTTF inquiry, however, was only aware of his initial [REDACTED] communications (despite the fact that the FBI had obtained information on subsequent communications prior to the attack) and was conducted superficially – dismissing these first [REDACTED] communications as benign because of the misleading Officer Evaluation Reports praising his research.

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III. "A Ticking Time Bomb:" DoD's Failure To Respond To Major Hasan's Public Displays Of Radicalization To Violent Islamist Extremism.

Major Nidal Hasan's public displays of radicalization toward violent Islamist extremism during his medical residency and post-residency fellowship were clear and led two officers to describe him as a "ticking time bomb."[37]

Born in Arlington, Virginia, in 1970, he graduated from Virginia Tech with an engineering degree in 1992 and began active duty with the U.S. Army in 1995. In 1997, he entered medical school at the Uniformed Services University of the Health Sciences ("USUHS"), the Military Services' leading educational institution for medical professionals, and graduated in 2003. From 2003 to 2007, Hasan was a resident in the psychiatric program at Walter Reed Army Medical Center, and from 2007 to 2009 he was a fellow in a post-residency graduate program at USUHS. During his medical residency and post-residency fellowship, his views were no secret to his superiors and colleagues, and he showed clear evidence of escalating radicalization to violent Islamist extremism. Witnesses reported that Hasan expressed support in open class presentations for many of the principles of violent Islamist extremism, and this support is reflected in written academic papers Hasan prepared during this time frame.

That conduct disturbed many of his superiors and colleagues, yet no action was taken against him. In fact, his Officer Evaluation Reports were uniformly positive and even described his exploration of violent Islamist extremism as something praiseworthy and useful to U.S. counterterrorism efforts. Notwithstanding his manifestations of violent Islamist extremism and his concomitant poor performance as a psychiatrist, Hasan was not removed from the military but instead was promoted to the rank of major in May 2009 and eventually ordered to be deployed to Afghanistan in the fall of 2009

Many servicemembers have deeply held religious views (whether Christian, Jewish, Muslim, Hindu, or Buddhist), but such views are not a cause for concern. The issue that must be countered is the adoption of radical ideology that is a corruption of religion and leads to intolerance or violence or is detrimental to military operations. An individual who embraces violent Islamist extremist ideology clearly is unfit to serve in the U.S. military.[38] What follows is a summary of the key facts regarding Hasan's deepening embrace of violent Islamist extremism and DoD's failure to respond.

During the investigation, Committee staff was briefed by DoD about relevant military policies and procedures. These briefings will be referenced by the name of the briefer. In addition, DoD provided three Hasan-specific briefings to HSGAC staff. Two of these briefings provided the contents of 30 interviews of witnesses conducted by the DoD Criminal Investigative Division (CID) and the FBI in November 2009 immediately after the Fort Hood attack. Those briefings will be referenced as "CID-FBI Briefing, Witness " and "CID-FBI Briefing 2, Witness ". The third Hasan-specific briefing provided the contents of 34 interviews that were carried out by the staff conducting the DoD internal review, headed by former Secretary of the Army Togo West and Admiral Vern Clark (ret.), the former Chief of Naval Operations, which led to the *Protecting the Force* report and separate DoD Hasan Annex. That briefing will be referenced as "Panel Review Briefing, Witness ".

[37] Panel Review Briefing, Witness 14 and Witness 19.

[38] Kelly R. Buck et al, *Screening for Potential Terrorists in the Enlisted Military Accessions Process*, Defense Personnel Security Research Center (April 2005), at 6-7.

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While Hasan's evident radicalization to violent Islamist extremism occurred gradually and escalated over time, the fact that he obviously had strong religious views that created conflicts with his military service manifested during the early part of his residency (2003-2006). One classmate told investigators that Hasan openly questioned whether he could engage in combat against other Muslims.[39] During the third year of his residency, Hasan's conflicts with service obligations ripened to the point that one of his supervisors tried twice to convince him to leave the military. The first time, Hasan's superior told him, "I don't think you and the military will fit," and offered Hasan "a way out" to "just say goodbye."[40] Later, after that adviser and Hasan unsuccessfully explored whether Hasan qualified for conscientious objector status, that supervisor again tried to convince Hasan to resign.[41]

The next two years were the final year of Hasan's Walter Reed residency and the first year of his USUHS fellowship (2006-2008), and it was then that his radicalization to violent Islamist extremism came into plain view. In the last month of his residency, he chose to fulfill an academic requirement to make a scholarly presentation on psychiatric issues by giving an off-topic lecture on violent Islamist extremism.[42] The presentation was a requirement for graduation from the residency, commonly referred to at Walter Reed as "Grand Rounds."[43] Hasan's draft presentation consisted almost entirely of references to the Koran, without a single mention of a medical or psychiatric term.[44] Hasan's draft also presented extremist interpretations of the Koran as supporting grave physical harm and killing of non-Muslims.[45] He even suggested that revenge might be a defense for the terrorist attacks of September 11, 2001.[46] Hasan's superiors warned him that he needed to revise the presentation if he wanted to graduate[47] and concluded that it was "not scientific," "not scholarly," and a mere "recitation of the Koran" that "might be perceived as proselytizing."[48]

At about the same time, the Psychiatric Residency Program Director, who was one of the superiors who reviewed the draft Grand Rounds presentation, questioned whether Hasan was fit to graduate.[49] He thought Hasan was "very lazy" and "a religious fanatic."[50] Ultimately, Hasan improved the presentation sufficiently to receive credit, although a review of the PowerPoint

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[39] Panel Review Briefing, Witness 2
[40] *Id.*, Witness 27.
[41] *Id.*
[42] *Id.*, Witness 20
[43] *Id.*
[44] *Using the Koran to Understand Muslims and the Establishment of an Islamic State*, DoD Production, Stamp DoD 000973-001020 ("Draft Presentation") Documents that were produced by DoD to HSGAC during the investigation are cited as "DoD Production, Stamp DoD #"
[45] *Id.*
[46] *Id.*, Stamp DoD 001016.
[47] Memorandum for CPT Nidal Hasan, Re "Scholarly Project," From Program Director, NCC Psychiatry Residency Training (May 21, 2007), Hasan DoD File, Stamp 20091202-127. Documents from Hasan's personnel, training and credentials files, which were made available by DoD for HSGAC review, but which were not kept or retained by HSGAC, are cited as "Hasan DoD File, Stamp #".
[48] Panel Review Briefing, Witness 17
[49] CID-FBI Briefing, Witness 20
[50] *Id.*

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presentation and a video of the event shows that it was still essentially a collection of Koranic verses with minimal scholarly content.[51] According to the Program Director, a major reason that his presentation was acceptable was because standards for such presentations did not yet exist.[52] He graduated despite the Program Director's reservations.

The most chilling feature of both the draft and final presentation was that Hasan stated that one of the risks of having Muslim-Americans in the military was the possibility of fratricidal murder of fellow servicemembers.

Hasan advanced to a two-year fellowship at USUHS. As a threshold matter, had established procedures been followed, he would not have been accepted into the fellowship. According to the Army Surgeon General, fellowships are typically reserved for elite medical professionals.[53] Officers involved in the fellowship selection process recounted that Hasan was offered a fellowship because he was the only Army applicant and the Army did not want to risk losing that fellowship if it was not filled.[54] Hasan confided to a colleague that he applied for the fellowship to avoid a combat deployment in a Muslim country; one of Hasan's supervisors realized that he had the wrong motivation for applying and warned against accepting him.[55]

Hasan's radicalization became unmistakable almost immediately into the fellowship, and it became clear that Hasan embraced violent Islamist extremist ideology to such an extent that he had lost a sense of the conduct expected of a military officer. Classmates – who were military officers, some outranking Hasan – described him as having "fixed radical beliefs about fundamentalist Islam" that he shared "at every possible opportunity" or as having irrational beliefs.[56]

Less than a month into the fellowship, in August 2007, Hasan gave another off-topic presentation on a violent Islamist extremist subject instead of on a health care subject. This time, Hasan's presentation was so controversial that the instructor had to stop it after just two minutes when the class erupted in protest to Hasan's views. The presentation was entitled, *Is the War on Terror a War on Islam: An Islamic Perspective?* Hasan's proposal for this presentation promoted this troubling thesis: that U.S. military operations are a war against Islam rather than based on non-religious security considerations.[57] Hasan's presentation accorded with the narrative of violent Islamist extremism that the West is at war with Islam. Hasan's paper was full of empathetic and supportive recitation of other violent Islamist extremist views, including defense of Osama bin Laden, slanted historical accounts blaming the United States for problems in the Middle East, and arguments that anger at the United States is justifiable.[58] Several

[51] Draft Presentation, Stamp DoD 001018; Powerpoint presentation, *The Koranic World View as it Relates to Muslims in the U.S. Military*, at 13, 50

[52] Panel Review Briefing, Witness 20

[53] Schoomaker Briefing

[54] Panel Review Briefing, Witness 9 and Witness 20

[55] *Id.*, Witness 2 and Witness 27; CID/FBI Briefing, Witness 2

[56] *Id.*, Witness 25.

[57] Nidal Hasan, *Is the War on Terror a War on Islam: An Islamic Perspective?*, DoD Production, Stamp DoD 20100205-466

[58] *Id.*, at 1-3

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colleagues who witnessed the presentation described Hasan as justifying suicide bombers. These colleagues were so alarmed and offended by what they described as his "dysfunctional ideology" and "extremist views" that they interrupted the presentation to the point where the instructor chose to stop it.[59] The instructor who stopped the presentation said that Hasan was sweating, quite nervous, and agitated after being confronted by the class.[60]

Hasan's promotion of violent Islamist extremist beliefs continued after the presentation. One classmate said that Hasan supported suicide bombings in another class.[61] He told several classmates that his religion took precedence over the U.S. Constitution he swore to support and defend as a U.S. military officer. It is critically important to view Hasan's statements in the context of all of his conduct. His statement was not part of an abstract discussion on the relationship between duty to religion and duty to country, nor was it framed within the context of faith-based following of the military directive that servicemembers not follow illegal orders. Rather, Hasan's statements about the primacy of religious law occurred as he was supporting a violent extremist interpretation of Islam and suggesting that this radical ideology justified opposition to U.S. policy and could lead to fratricide in the ranks. Perhaps for this reason, Hasan's comments on his loyalty to religious law, which he made more than once, were so disturbing to his colleagues that they reported Hasan to superiors.[62]

Later in the fellowship, Hasan pursued another academic project in the ambit of violent Islamist extremism.[63] Hasan's written proposal for this project framed it in clinical terms, namely as a research study of whether Muslims in military service had religious conflicts. It was perceived as less controversial than his prior presentations. Nonetheless, it was the third project in the span of a year that Hasan dedicated to violent Islamist extremist views. Moreover, Hasan proposed to give Muslim soldiers a survey which implicitly questioned their loyalty and was slanted to favor the violent Islamist extremist views he had previously expressed. In one question, Hasan wanted to ask whether the religion of Islam creates an expectation that Muslim soldiers would help enemies of the United States in Iraq and Afghanistan.[64] And again, Hasan raised the ominous possibility of fratricide by Muslim-American servicemembers against fellow servicemembers as a central reason for his survey.[65]

In sum, Hasan engaged in the following conduct in front of or as reported to his superiors within little more than one year:

- Making three off-topic presentations on violent Islamist extremist topics instead of medical subjects.

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[59] Panel Review Briefing, Witness 19; CID-FBI Briefing, Witness 10 and Witness 25.
[60] Panel Review Briefing, Witness 19.
[61] *Id.*, Witness 14
[62] CID-FBI Briefing, Witness 10, Witness 14, and Witness 25.
[63] Nidal Hasan, *Religious Conflicts Among US Muslim Soldiers*, June 2008, DoD Production, Stamp DoD 20100205-469
[64] *Id.*, at 23
[65] *Id.*, at 3

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- Giving a class presentation perceived as so supportive of violent Islamist extremist conflict against the United States that it was almost immediately stopped by an instructor after classmates erupted in opposition to Hasan's views.

- Justifying suicide bombings in class at least twice, according to the accounts of classmates.

- Suggesting in writing in his proposals for presentations that some actions of Osama bin Laden may be justified.

- Telling several classmates that his religion took precedence over the U.S. Constitution he swore a military oath to support and defend.

- Stating three times in writing that Muslim-Americans in the military could be prone to fratricide.

Despite Hasan's overt displays of radicalization to violent Islamist extremism, Hasan's superiors failed to discipline him, refer him to counterintelligence officials, or seek to discharge him. One of the officers who reported Hasan to superiors opined that Hasan was permitted to remain in service because of "political correctness" and ignorance of religious practices.[66] That officer added that he believed that concern about potential discrimination complaints stopped some individuals from challenging Hasan.[67] We are concerned that exactly such worries about "political correctness" inhibited Hasan's superiors and colleagues who were deeply troubled by his behavior from taking the actions against him that could have prevented the attack at Fort Hood. However, none of the superiors cited "political correctness" as the reason for not acting against Hasan. Instead, the reasons given for their failure to act varied and included:

- A belief that Hasan's ideological views were not problematic or were at least understandable: Several of Hasan's superiors were simply not concerned with his views. One superior concluded that he was devoutly religious but not an extremist,[68] adding that he was not alarmed by his religious expressions because similar expressions of other religions would be accepted.[69] Another superior thought that his religion was part of his identity and that Hasan's inner conflict concerning military operations in Muslim countries was an understandable internal reaction by a servicemember to combat against that servicemember's co-religionists.[70]

- Academic freedom and absence of academic standards: Hasan was given a passing mark for his Grand Rounds project in his residency despite the fact that some of his superiors believed it virtually ignored legitimate psychiatric issues and was unscientific in its

[66] Panel Review Briefing, Witness 14.
[67] *Id.*
[68] *Id.*, Witness 3.
[69] *Id.*
[70] *Id.*

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analysis.[71] His superiors offered the following reasons for giving Hasan academic credit for the presentation: (1) it fit within broad parameters of academic freedom to study subjects of choice,[72] (2) he presented a controversial subject with thoughtfulness and reflection,[73] (3) there were no set standards for judging such projects,[74] (4) spirituality was part of mental health,[75] and (5) although it was not among the best projects, it was good enough to pass.[76]

- A desire to preserve the USUHS fellowship by filling it with an Army applicant: According to officers involved in the fellowship selection process, Hasan was admitted to the USUHS fellowship because (1) he was the only Army candidate for the position he sought,[77] (2) the fellowship director was concerned that the fellowship would be terminated if it went unfilled,[78] (3) he received recommendations from senior officials,[79] and (4) it would have been problematic to rescind the fellowship offer once Hasan was accepted.[80]

- A belief that Hasan provided understanding of violent Islamist extremism as well as the culture and belief of Islam: Some of Hasan's superiors thought that his controversial projects on violent Islamist extremism were constructive. A senior Walter Reed official concluded that Hasan's Grand Rounds presentation addressed "a controversial topic with a degree of thoughtfulness and a degree of reflection that . . . was evenhanded."[81] One superior regarded Hasan's proposed USUHS survey on Muslim servicemembers' conflicts as a challenging but legitimate public health project that contributed to cultural understanding.[82] Even Hasan's final Program Director at the Walter Reed residency, who questioned whether Hasan should be permitted to advance, felt that "Hasan was a unique individual who could help understand Muslim culture and beliefs."[83]

- A belief that Hasan could perform adequately in an installation with other psychiatrists to assist him: Hasan was assigned to Fort Hood in part because some superiors thought it would be best to place him at a large base where there would be many psychiatrists to

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Resident Evaluations for Psychiatry Scholarly Activity Oral Presentation, June 20 2007 Nidal Hasan, M.D., Hasan DoD File, Stamp 26100224-490R-488R; Email, Subject *Re: Hasan Scholarly Project (UNCLASSIFIED)* (June 22, 2007), DoD Production, DoD Stamp 20091202-307; Email, Subject *Re: Hasan Scholarly Project (UNCLASSIFIED)* (June 21, 2007), DoD Production Stamp 20091202-309.

[72] Panel Review Briefing, Witness 3.

[73] *Id.*

[74] *Id.*, Witness 20.

[75] *Id.*

[76] *Id.*, Witness 2.

[77] *Id.*, Witness 3 and Witness 20.

[78] *Id.*, Witness 3.

[79] *Id.*, Witness 9.

[80] *Id.*, Witness 3.

[81] *Id.*

[82] *Id.*, Witness 9, Witness 13.

[83] *Id.*, Witness 20.

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monitor and report on his performance,[84] and in part because he seemed motivated to do patient care which was needed at Fort Hood.[85]

Hasan was a chronic poor performer during his residency and fellowship. The program directors overseeing him at Walter Reed and USUHS both ranked him in the bottom 25 percent.[86] He was placed on probation and remediation and often failed to meet basic job expectations such as showing up for work and being available when he was the physician on call.

Yet Hasan received evaluations that flatly misstated his actual performance. Hasan was described in the evaluations as a star officer, recommended for promotion to major, whose research on violent Islamist extremism would assist U.S. counterterrorism efforts.

- His Officer Evaluation Report for July 2007 to June 2008 described Hasan as "among the better disaster and psychiatry fellows to have completed the MPH at the Uniformed Services University."[87] The report described how Hasan had "focused his efforts on illuminating the role of culture and Islamic faith within the Global War on Terrorism" and that his "work in this area has extraordinary potential to inform national policy and military strategy."[88] The report also stated, "His unique interests have captured the interest and attention of peers and mentors alike."[89]

- His Officer Evaluation Report for July 2008 to June 2009 gave him passing marks for all seven Army Values and all 15 Leadership Attributes.[90] "Islamic studies" was listed under the category of "unique skills" Hasan possessed.[91] The evaluation commented on Hasan's "keen interest in Islamic culture and faith and his shown capacity to contribute to our psychological understanding of Islamic nationalism and how it may relate to events of national security and Army interest in the Middle East and Asia."[92]

These evaluations bore no resemblance to the real Hasan, a barely competent psychiatrist whose radicalization toward violent Islamist extremism alarmed his colleagues and his superiors. The lone negative mark in the evaluations was the result of Hasan failing to take a physical training test.[93] Other than that, there is not a single criticism or negative comment of Hasan in those evaluations.

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[84] *Id.*, Witness 3.
[85] *Id.*, Witness 9
[86] *Id.*, Witness 20 and Witness 9.
[87] *Officer Evaluation Report, Nidal Hasan*, covering period from July 1, 2007-June 30, 2008, Hasan DoD File, Stamp 20100108-331
[88] *Id.*
[89] *Id.*
[90] *Officer Efficiency Report, Nidal Hasan*, covering period from July 1, 2008-June 30, 2009 (July 1, 2009), Hasan DoD File, Stamp 20100108-330
[91] *Id.*
[92] *Id.*
[93] *Id.*

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Thus, despite his overt displays of radicalization to violent Islamist extremism and his poor performance, Hasan was repeatedly advanced instead of being discharged from the military. He graduated from the residency in 2007, was enrolled in the fellowship that same year, received his promotion to major in 2008, was assigned to Fort Hood later that year, and ultimately was selected for deployment to Afghanistan in October 2009 – all by officers who had knowledge of his poor performance and expressions of violent Islamist extremism. Hasan had stated that he was comfortable with a deployment to Afghanistan as opposed to Iraq.[94] The same officer who assigned Hasan to Fort Hood – and who witnessed at least one of Hasan's expressions of violent Islamist extremist radicalization at USUHS and was aware that there were serious concerns about Hasan – made the decision to deploy Hasan to Afghanistan.[95] In other words, despite Hasan's history of radicalization to violent Islamist extremism, Hasan was scheduled for deployment to provide psychiatric care under stressful conditions in a combat zone in which the U.S. military is battling violent Islamist extremists.

In sum, the officers who kept Hasan in the military and moved him steadily along knew full well of his problematic behavior. As the officer who assigned Hasan to Fort Hood (and later decided to deploy Hasan to Afghanistan) admitted to an officer at Fort Hood, "you're getting our worst."[96] On November 5, 2009, 12 servicemembers and one civilian employee of DoD lost their lives because Hasan was still in the U.S. military.

[94] Panel Review Briefing, Witness 3.
[95] *Id.*, Witness 40 and Witness 21. One witness stated that the officer who ultimately made the deployment decision previously instructed a course at USUHS in which Major Hasan justified suicide bombings. *Id.*, Witness 14.
[96] *Id.*, Witness 21.

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IV. "That's Our Boy:" The FBI's Superficial Inquiry Into Major Hasan Prior To The Attack

Hasan's public displays of radicalization toward violent Islamist extremism while on active duty reached a crescendo during the first year of his fellowship, the 2007-2008 academic year, after which his public displays ended. Yet his radicalization continued [REDACTED] during the second year of his fellowship, the 2008-2009 academic year, as he began communicating with the subject of an unrelated terrorism investigation, the Suspected Terrorist, [REDACTED]

The Suspected Terrorist was well known to the FBI as the subject of several investigations, including investigations by FBI JTTFs. [REDACTED] The current, third investigation is led by the JTTF in the FBI's San Diego Field Office, [REDACTED]. JTTFs are units in FBI field offices that conduct counterterrorism investigations, with one in each of the FBI's 56 field offices.[97] JTTFs are staffed not only by FBI agents but also by government employees on detail ("detailees") from other federal agencies – such as agencies within DoD – and state and local governments.[98] After 9/11, preventing terrorism domestically became the FBI's top priority, and a major FBI initiative involved increasing the number of JTTFs from thirty-five on 9/11 to 106 in 2010.[99] The FBI also created a National JTTF in 2002 to "manage" the JTTF program, to coordinate between the JTTFs and FBI headquarters,[100] and to be a "point of fusion" for terrorism intelligence among JTTFs such as by coordinating terrorism projects involving JTTF intelligence collection.[101]

The San Diego JTTF was responsible for reviewing the [REDACTED]. Hasan's initial communication with the Suspected Terrorist sparked concern within the San Diego JTTF because it suggested that Hasan was affiliated with the U.S. military and sought the Suspected Terrorist's opinion [REDACTED]. DoD detailees at the San Diego JTTF checked a military personnel database and mistakenly concluded that Hasan was a military communications officer, not a military physician, by misreading "comm officer" in Hasan's military file as referring to a communications officer rather than a commissioned officer. For operational reasons, the San Diego JTTF decided not to disseminate Hasan's communications through normal intelligence channels [REDACTED]; instead, the San Diego JTTF decided to keep the information about Hasan solely within the JTTF structure. In the interim, the San Diego JTTF learned of another communication from Hasan to the Suspected Terrorist which should have raised counterintelligence concerns because it [REDACTED].

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[97] U.S. Department of Justice, Office of the Inspector General, *The Department of Justice's Terrorism Task Forces*, at 16.

[98] *Id.*, at 18. The FBI and other federal agencies refer to detailees to JTTFs as "task force officers."

[99] Federal Bureau of Investigation, *Protecting America Against Terrorist Attack: A Closer Look at Our Joint Terrorism Task Forces*, available at www.fbi.gov/page2/may09/jttfs_052809.html.

[100] Federal Bureau of Investigation, *Protecting America: National Joint Terrorism Task Force Wages War on Terror*, available at www.fbi.gov/page2/august08/njttf_081908.html.

[101] *The Department of Justice's Terrorism Task Forces*, at 21-2. *See* Federal Bureau of Investigation, *FBI Input to Intelligence Community "Calibration Report" Phase II* (October 5, 2004), at 7 ("The mission of the NJTTF is to enhance communication, coordination, and cooperation by acting as the hub of support for the JTTFs throughout the United States, providing a point of fusion for intelligence acquired in support of counterterrorism operations.")

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In lieu of sending a normal intelligence communication, the FBI agent at the San Diego JTTF [REDACTED] sent a detailed memorandum to the Washington, DC, JTTF on January 7, 2009. (Hasan was stationed at Walter Reed in Washington, DC, and therefore was in the investigative jurisdiction of the JTTF at the FBI's Washington, DC, Field Office.) The Washington JTTF had led the post-9/11 investigation into the Suspected Terrorist (the second of the three FBI investigations into that individual). Copies of that memorandum were also sent by that FBI agent to relevant agents in the FBI's headquarters-based Counterterrorism Division. The memorandum surveyed Suspected Terrorist's significance [REDACTED]. The memorandum included the content of Hasan's initial [REDACTED] communications and requested an inquiry into Hasan. The request was not a mandatory order for the Washington JTTF to investigate but rather a "discretionary lead," which was a type of lead that did not specify what if any actions the receiving JTTF should take. The FBI agent wrote in the memorandum that the communications would be problematic if Hasan indeed was a military communications officer.

On February 25, 2009 – more than six weeks after the January 7th memorandum from the San Diego JTTF – the FBI leadership at the Washington JTTF assigned the lead to a detailee from the Defense Criminal Investigative Service (DCIS). DCIS is the law enforcement arm of the DoD Office of the Inspector General, which is a semi-autonomous entity within DoD and responsible for investigating waste, fraud, and abuse such as in military procurements. DCIS is not a counterintelligence or counterterrorism agency. In contrast, each Military Service has its own counterintelligence agency or agencies, which also play a counterterrorism role. The Army, for example, has the Criminal Investigative Division for criminal matters and Army Intelligence and Security Command (including the 902nd Military Intelligence Group) for intelligence matters.[102]

The DCIS agent's FBI supervisor at the Washington JTTF did not specify any actions that the DCIS agent should take. The DCIS agent did not begin the inquiry until the last day of the standard ninety-day deadline for completing inquires based on discretionary leads. The inquiry was conducted, concluded, and summarized in a reply memorandum to the San Diego JTTF in four hours on a single day: May 27, 2009.

As later recounted in the reply memorandum to the San Diego JTTF, the Washington JTTF's focus was on whether Hasan was engaged in terrorist activities – not whether he was radicalizing to violent Islamist extremism. The DCIS agent in Washington queried the DoD personnel database and determined that Hasan was a military physician, not a communications officer. He also queried the FBI's investigative databases to determine whether Hasan had surfaced in any prior FBI counterterrorism or other investigations and found nothing. Finally, the DCIS agent obtained a series of routine personnel files from a DoD manpower center. These

[102] For a review of DOD's counterintelligence organizations, legal authorities, and oversight, see Michael J. Woods and William King, "An Assessment of the Evolution and Oversight of Defense Counterintelligence Activities," in *Journal of National Security Law and Policy* vol. 3 (2009), at 169. An examination of the efficacy of the Army's organizational division between investigating criminal conduct versus counterintelligence is outside the scope of this report. For an analysis of this "anomaly," see Merle V. Bickford, *The Organizational Anomaly of US Army Strategic Counterintelligence*, Thesis for the U.S. Army Command and General Staff College (2003).

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files included Hasan's annual Officer Evaluation Reports from 2004 to 2008. The Officer Evaluation Reports for 2007 and 2008 – the years in which Hasan's public displays of radicalization to violent Islamist extremism were most pronounced – praised his research concerning violent Islamist extremism as having potentially significant applicability to counterterrorism and recommended promotion to major. The records also indicated that Hasan was recently promoted to major. The only explicitly negative information in the files was Hasan's failure to pass fitness requirements. The DCIS agent believed it was relevant that Hasan had not tried to hide his identity [REDACTED] in his communications with the Suspected Terrorist, which the agent believed implied that the communications were legitimate research efforts.

The Washington JTTF's DCIS agent considered interviewing Hasan or his superiors and colleagues but decided not to do so for two reasons: First, the DCIS agent believed that, as the Hasan communications were an outgrowth of the San Diego JTTF's investigation of the Suspected Terrorist, the Washington JTTF needed to tread carefully to avoid disrupting that investigation [REDACTED]. The DCIS agent was concerned that interviews of Hasan's superiors and colleagues would cause that investigation to be revealed given that the DCIS agent believed that such officers would brief their superiors about the interviews. Second, the DCIS agent felt that interviews might jeopardize Hasan's career and thus potentially violate the requirement that FBI investigations use the "least intrusive means" possible.

The Washington JTTF's DCIS agent concluded that Hasan's communications were explained by the research described in the Officer Evaluation Reports into Islamic culture and beliefs regarding terrorism. He discussed his methodology, rationale for not conducting interviews, and conclusions with his FBI supervisor, who approved. Neither the DCIS agent nor the FBI supervisor contacted the San Diego JTTF to discuss and validate these concerns, and there is no indication that they considered [REDACTED]. There is no indication that the DCIS agent and the FBI supervisor consulted any other officials within the FBI on whether disseminating the information on Hasan or taking additional investigative steps such as interviews would be precluded by law [REDACTED] or the FBI's *Domestic Investigations Operations Guide*. The DCIS agent then sent a memorandum – approved by his FBI supervisor – back to the San Diego JTTF, with copies to relevant FBI headquarters-based Counterterrorism Division personnel, describing his investigative process and results.

The FBI agent in San Diego who had asked the Washington JTTF to conduct the inquiry found the Washington JTTF's work to be "slim." The FBI agent was critical that the DCIS agent had not probed more deeply into Hasan's background and had not interviewed Hasan's superiors and colleagues or Hasan himself. In fact, the FBI agent even thought that Hasan might be a confidential human source of the Washington JTTF given how superficial he believed the Washington JTTF's inquiry was. To avoid making the FBI "look like the heavy" vis-à-vis the DCIS agent, the FBI agent asked one of his DCIS detailee colleagues at the San Diego JTTF to contact the DCIS agent at the Washington JTTF in order to register concern. That DCIS agent in San Diego tried to contact the DCIS agent in Washington by telephone but eventually sent an email instead to register concerns about the depth of the inquiry and the lack of interviews. The DCIS agent in Washington relayed the San Diego JTTF's concerns to his FBI supervisor, who

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reiterated his approval of how the inquiry had been conducted including the decision not to interview Hasan's superiors and colleagues in order to avoid disclosing the San Diego JTTF's investigation of the Suspected Terrorist, [REDACTED]. Following this consultation, the DCIS agent in Washington responded by email and defended the decision not to interview Hasan or his superiors and colleagues in order to avoid revealing the investigation, [REDACTED]. The DCIS agent in Washington then asked the San Diego JTTF whether it could provide any evidence of terrorist links by Hasan or had requests for specific action.

A few days later, the FBI agent in San Diego talked again with the DCIS agent in San Diego and registered that he was upset with the Washington JTTF's response. The FBI agent asked him to place another call to the DCIS agent in Washington. The DCIS agent in San Diego claims that he did, although the DCIS agent in Washington denies that he received this call. (The FBI does not have records of telephone calls made from the San Diego JTTF.) The DCIS agent in San Diego recounts that he told the DCIS agent in Washington, "If the San Diego Division had received a lead like this on a similar Subject [*e g* , an Army officer communicating to a subject of a terrorism investigation], the San Diego Division would have at least opened an assessment and interviewed the Subject." Nor did the FBI agent at the San Diego JTTF – who was responsible for [REDACTED] analyzing the communications – express any concern to the Washington JTTF about interviews of Hasan's superiors and colleagues [REDACTED].

Neither the San Diego nor the Washington JTTFs linked Hasan's first [REDACTED] communications – the communications that triggered the San Diego JTTF's January 7th memorandum to the Washington JTTF – with the [REDACTED] subsequent communications between Hasan and the Suspected Terrorist [REDACTED]. Indeed, the San Diego JTTF did not realize that the additional communications [REDACTED], and the Washington JTTF never learned of any of them.

[REDACTED]. The [REDACTED] database is not open to queries by all FBI or JTTF detailee personnel but rather by such personnel whom the FBI deems need the access in order to perform their job duties. FBI personnel and JTTF detailees without database access could only access [REDACTED] information [REDACTED] if it was forwarded to them by someone with access [REDACTED].

- [REDACTED]. An analyst or agent looking at a communication would not automatically receive information concerning previous communications [REDACTED]. Instead, a communication could only be linked with previous communications [REDACTED] by agents' or analysts' memory or by the agents or analysts actively searching the database [REDACTED]. Thus the San Diego JTTF was prevented from easily linking Hasan's subsequent communications with his first [REDACTED] communications. In addition, the San Diego JTTF never linked Hasan's subsequent communications to his initial [REDACTED] communications either from memory or by actively running a database search under Hasan's name.

- The San Diego JTTF believed that the relevant investigators at the Washington JTTF had access to the [REDACTED] database and would check it for subsequent communications

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when conducting the inquiry into Hasan. Yet the DCIS agent at the Washington JTTF leading the inquiry into Hasan lacked access to the [REDACTED] database which contained [REDACTED] communications and in fact did not even know that the database existed. The DCIS agent expected that the San Diego JTTF or FBI headquarters would send him any additional communications, as had happened to him in previous investigations.

The FBI agent at the San Diego JTTF never conducted any searches of the FBI's [REDACTED] database to find whether any additional communications between Hasan and the Suspected Terrorist had been missed by the Washington JTTF (building on the FBI agent's assumption that the Washington JTTF had such access). The FBI agent did not revisit his decision not to send a normal FBI intelligence communication containing Hasan's first [REDACTED] communications to DoD. There is no indication that the FBI case agent in San Diego shared the Washington JTTF's concern that field interviews would compromise the ongoing investigation [REDACTED]. He did not, however, formally request that the Washington JTTF conduct a more thorough investigation of Hasan including interviews of his superiors and colleagues that would not require an explicit description of the FBI's investigation of the Suspected Terrorist, [REDACTED] (*e.g.*, by conducting field interviews under a pretext [REDACTED]; by using Army counterintelligence agents as a proxy [REDACTED]). Finally, the FBI agent did not elevate his concerns about the thoroughness of the Washington JTTF's efforts for resolution by FBI officials at more senior levels in the San Diego and Washington JTTFs or by the headquarters-based Counterterrorism Division or National JTTF.

Instead, the FBI's interest in Hasan ended. Hasan communicated with the Suspected Terrorist during the summer of 2009 [REDACTED], but the San Diego JTTF did not link any of the subsequent communications to Hasan's first [REDACTED] communications. Nor was the Washington JTTF provided with the additional communications. [REDACTED] months later – on November 5, 2009 – the attack at Fort Hood occurred, and Hasan was arrested at the scene. Shortly after the media began reporting on Hasan's attack at Fort Hood, the FBI agent told his DCIS colleague in San Diego, "You know who that is? That's our boy!"

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PART III: RECOMMENDATIONS FOR IMPROVING U.S. DEFENSES AGAINST VIOLENT ISLAMIST EXTREMISM

The FBI and DoD failed to recognize and to link the information that they possessed even though they had advantages with respect to Hasan as compared to other lone wolves: (1) Hasan was a military officer who lived under a regimented system with strict officership and security standards, and (2) the government had learned of communications from Hasan to the subject of an unrelated FBI terrorism investigation [REDACTED]. Although both the public and the private signs of Hasan's radicalization to violent Islamist extremism while on active duty were known to government officials, a string of failures prevented these officials from intervening against him.

Our investigation of the Fort Hood killings, together with evidence gathered in our four-year investigation of homegrown terrorism, lead us to be concerned about three sets of problems in our nation's defenses against homegrown terrorism. *First*, DoD has conducted an extensive internal review of lessons from the Fort Hood attack but needs to strengthen policies and training to identify the threat of violent Islamist extremism, which includes the radicalization process, and to prevent radicalization of servicemembers to violent Islamist extremism. *Second*, the FBI's transformation into an "intelligence-driven" domestic counterterrorism organization needs to be accelerated.[103] The FBI should ensure that its field offices are integrated, intelligence analysts are fully utilized, tradecraft is fully updated, and JTTFs fulfill the FBI's aspiration for them to become interagency information-sharing and operational coordination mechanisms. *Third*, the United States must develop a more proactive and comprehensive approach to detecting and countering the violent ideology that fuels homegrown terrorism.

[103] For FBI's aspiration to be a "threat-based, intelligence-driven national security organization," see e.g., FBI Frequently Asked Questions, available at http://www.fbi.gov/about-us/faqs.

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V. Strengthening DoD Policies And Training To Prevent Radicalization Of Servicemembers To Violent Islamist Extremism.

Hasan's case illustrates that servicemembers are not immune from radicalization to violent Islamist extremism. In fact, Hasan's radicalization toward violent Islamist extremism was so clear that he could and should have been removed from military service under policies then in force even though such policies addressed violent Islamist extremism only indirectly and imperfectly. As such, DoD needs to revise its personnel policies to ensure that they address radicalization to violent Islamist extremism clearly and provide its personnel with sufficient training concerning violent Islamist extremism and how it differs from the peaceful practice of Islam

A. Major Hasan Should Have Been Removed From Military Service Despite Deficiencies In Policy And Training Concerning Violent Islamist Extremism Among Servicemembers.

The failure to respond to Hasan's radicalization toward violent Islamist extremism was a failure of officer judgment As described earlier in this report, there was compelling evidence that Hasan embraced views so extreme that he did not belong in the military, and this evidence was more than enough for his superiors to have disciplined him and even to have removed him from service. Although Army policies did not address violent Islamist extremism specifically, Hasan's superiors had the authority to discipline or remove him from the military under general provisions of key policies governing command authority and officership. Concomitantly, the completion of officer evaluation reports that grossly distorted Hasan's competence as an officer concealed his deepening radicalization.

Hasan's exhibition of signs of violent Islamist extremism was incompatible with military service and access to classified or sensitive information according to DoD's own Defense Personnel Security Research Center. An April 2005 report by that Center, *Screening for Potential Terrorists in the Enlisted Military Accessions Process*, concluded that "the allegiance to the U.S. and the willingness to defend its Constitution must be questioned of anyone who materially supports or ideologically advocates the legitimacy of Militant Jihadism."[104] That report also stated that the "determination of participation in or support or advocacy of Militant Jihadist groups and their ideologies should be grounds for denial of acceptance into the Armed Forces of the U.S. and denial of access to classified or sensitive information."[105] Of course, Hasan was never disciplined or discharged nor had his Secret-level security clearance revoked despite his conduct.

There were several DoD and Army policies that gave Hasan's superiors the authority to discipline or discharge him.

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[104] Kelly R. Buck et al., *Screening for Potential Terrorists in the Enlisted Military Accessions Process*, Defense Personnel Security Research Center (April 2005), at 6-7

[105] *Id.*

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First, the Army policy on Command Authority[106] gives commanders broad authority to take action in response to "any . . . activities that the commander determines will adversely affect good order and discipline or morale within the command."[107] Extremist activities include "advocat[ing] . . . hatred or intolerance . . . [or] the use of force or violence or unlawful means to deprive individuals of their rights."[108] The policy lists "[p]rovoking speeches or gestures" as conduct violative of military laws that warrants action from commanders. Commanders' options under the policy include "[i]nvoluntary separation for unsatisfactory performance or misconduct, or for conduct deemed prejudicial to good order and discipline or morale."[109] Hasan's conduct fell within these categories of prohibited behavior because of his justifications for suicide bombings during his class presentations, his series of presentations on violent Islamist extremism, and the numerous complaints and disruptions that resulted from his actions. Moreover, Hasan's written work leaves little question that he was sympathetic with views antithetical to military service, and this alone should have precipitated decisive action.

Second, the version of DoD's policy on extremism, *Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces*,[110] in effect prior to the Fort Hood attack applied to Hasan. The policy primarily prohibited "active participation" in extremist organizations but also prohibited activities "in furtherance of the objectives of such organizations that are viewed by command to be detrimental to the good order, discipline, or mission accomplishment of the unit. . . ."[111] Hasan's statements that showed support for Osama Bin Laden and that accorded with violent Islamist extremism generally could legitimately have been viewed as furthering the objective of al-Qaeda and other violent Islamist extremist groups.

Based on this DoD policy against extremism, the Army issued an implementation policy, *Extremist Activities*,[112] in 1996 after the racially-motivated murder of an African-American couple by two Army soldiers. That implementation policy did not discuss violent Islamist extremism specifically, and the examples listed in it centered on white supremacist activities. However, similar to the underlying DoD policy, this Army implementation policy had a catch-all phrase stating that "commanders have the authority to prohibit military personnel from engaging in or participating in other activities that the commander determines will adversely affect good order and discipline or morale within the command."[113] Thus, although this implementation policy was not specific, its broad grant of command authority provided a basis to discipline Hasan for his conduct.

Third, Hasan's superiors had authority to discharge him from the Army under the policy concerning separation of officers. That policy, *Separation of Regular and Reserve Commissioned Officers*, governs the separation of officers and includes general standards of

[106] Army Regulation 600-20, *Army Command Policy*.
[107] *Id.*, Section 4-12c.
[108] *Id.*, Section 4-12a.
[109] *Id.*, Section 4-12d(2).
[110] DoD Directive 1325.6, *Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces* (issued October 1, 1996).
[111] *Id.*, Section 3.5.8.
[112] Army Pamphlet 600-15, *Extremist Activities*.
[113] *Id.*, Section 2-4.

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officership. The policy states that officers are to have the "special trust and confidence" of the President in "patriotism, valor, fidelity . . . ."[114] The policy goes on to state that it is DoD policy to "separate from military service those commissioned officers who will not or cannot . . . [m]aintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable military service . . . [or] [e]xercise the responsibility, fidelity, integrity or competence required of them."[115] Hasan's presentation charging the United States with a war on Islam, his statements indicating that loyalty to his religion took precedence over his sworn oath as a military officer to support and defend the Constitution, and his sympathy for violent Islamist extremists against whom U.S. forces are fighting meant he was subject to discharge under this policy.

Ultimately, although policies in existence at the time of Hasan's service were sufficient to support discipline and discharge of Hasan, it is clear that DoD lacks an institutional culture, through specific policies and training, sufficient to inform commanders and all levels of service how to identify radicalization to violent Islamist extremism and to distinguish this ideology from the peaceful practice of Islam. Present policies are vague, and we have no evidence that Major Hasan's supervisors and associates received training concerning the specific threat and indicators of violent Islamist extremism in the military.[116]

DoD policies and guidance provided his superiors with sufficient justification to discipline or discharge Hasan. Nonetheless, as the Hasan case indicates, without improved guidance the behavioral tendency among military superiors could be to avoid application of the policies and directives to evidence of radicalization to violent Islamist extremism – particularly because adherents to violent Islamist extremism may also commingle their ideological views with Islamic religious practices.

B. DoD's Review Of The Fort Hood Attack And DoD's Follow Up To The Review Do Not Confront The Threat Of Violent Islamist Extremism Among Servicemembers Directly.

DoD has examined its actions leading up to the attack and adopted policy changes across a wide range of areas as a result. Fifteen days after the Fort Hood attack, Secretary of Defense Robert Gates appointed an independent review panel led by former Secretary of the Army Togo West and the former Chief of Naval Operations, Admiral Vern Clark (ret.), to review the causes of the Fort Hood shootings.[117] The panel issued its report in January 2010, including a fifty-four page analysis of DoD's force protection and emergency response capabilities and a twenty-seven page annex concerning Hasan's conduct. The West/Clark review demonstrates, however, that DoD is reluctant to confront directly the threat of radicalization to violent Islamist extremism among servicemembers. DoD's review glosses over evidence of Hasan's radicalization to violent Islamist extremism and mutes the concerns and reports that were made by his superiors and colleagues who were alarmed.

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[114] DoD Instruction 1332.3, *Separation of Regular and Reserve Commissioned Officers*.
[115] *Id.*, Sections 4b, 4c
[116] McManigle Briefing, Schoomaker Briefing, Schneider Briefing.
[117] Report of the DoD Independent Review, *Protecting the Force: Lessons from Ft. Hood* (January 15, 2010) ("West Clark Report").

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As part of DoD's follow-up to the review, Secretary Gates instituted a process to examine the review's recommendations, issued two memoranda directing adoption of many of these recommendations, and created a methodical process to monitor implementation. Neither of Secretary Gates' two memoranda directing implementation of particular West/Clark recommendations mentions violent Islamist extremism explicitly. Both memoranda continue to downplay the unique threat of violent Islamist extremism by portraying it as a subset of a more general threat – either workplace violence or undefined "extremism" more generally. We remain concerned that DoD will not appropriately revise policies to address violent Islamist extremism among servicemembers and that DoD personnel will not be specifically trained concerning violent Islamist extremism.

We are concerned that DoD's failure to address violent Islamist extremism by its name signals to the bureaucracy as a whole that the subject is taboo and raises the potential that DoD's actions to confront radicalization to violent Islamist extremism will be inefficient and ineffective. DoD leadership's failure to identify the enemy as violent Islamist extremism explicitly has ripple effects for how the defense bureaucracy will handle this challenge. This problem was illustrated on November 9, 2010, when each Military Service issued its final report on their respective response to the Ft. Hood shootings and the DoD recommendations. None of the reports mentioned violent Islamist extremism or proposed changes in policy or procedure that would specifically educate servicemembers on how to identify violent Islamist extremism and what to do in response. This confirms our concern that DoD, by continuing to avoid the necessity of addressing violent Islamist extremism directly and without ambiguity, is sending a message to the entire military to do the same. It will be more difficult for the military to develop effective approaches to countering violent Islamist extremism if the identity and nature of the enemy cannot be labeled accurately.

C. DoD Should Update Its Policies And Training To Identify And Protect Against Violent Islamist Extremism Among Servicemembers.

We believe that the most significant change the military must make is to reform religious discrimination and other equal opportunity policies to distinguish violent Islamist extremism from legitimate, protected religious observance of Islam so that commanders will not be reluctant to deal with displays of violent Islamist extremism among servicemembers when radicalization occurs. (The West Clark review stressed the need for distinguishing between extremist activities and religious practice,[118] but to date DoD has not implemented this recommendation). Servicemembers at all ranks should receive specific training concerning the ideology and behaviors associated with violent Islamist extremism – and how they differ from the peaceful practice of Islam. To achieve this, the Army and the other Military Services should issue a pamphlet, as the Army did in 1996 after racial supremacism among servicemembers led to fatal attacks, that states explicitly that the prohibition on extremism includes violent Islamist extremism and explains violent Islamist extremist ideology and behavior.[119]

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[118] Report of the DoD Independent Review, *Protecting the Force: Lessons from Ft. Hood*, January 15, 2010, at 16-17.

[119] Army Pamphlet 600-15, *Extremist Activities*.

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Such specific policies and training are essential to protect the thousands of Muslim-Americans who serve honorably in the military from unwarranted suspicion arising from their religious practice. Failure by DoD to center policies on violent Islamist extremism and to focus training on distinguishing clearly between the peaceful practice of Islam and violent Islamist extremism could exacerbate that unwarranted suspicion. By contrast, specific policies and training will help servicemembers understand the real threat and thus protect the thousands of Muslim-American servicemembers serving our country. Not confronting violent Islamist extremism directly risks permitting any biases, ignorance, or suspicions to operate unchecked.

Finally, given the gross inaccuracy of Hasan's Officer Evaluation Reports, DoD should revise its policies and their implementation to ensure that personnel records accurately reflect concerns with violent Islamist extremism. Violent Islamist extremism has thus far been extremely rare in our military, but as we saw at Fort Hood it can cost dearly in lives. In other cases, it may compromise military operations.

Finding: DoD policies provided Hasan's superiors with sufficient authority to discipline or discharge him based on his conduct as witnessed by fellow servicemembers and his superiors. However, DoD lacked an institutional culture, through policies and training, sufficient to inform commanders and servicemembers on how to identify radicalization to violent Islamist extremism and to distinguish this ideology from the peaceful practice of Islam.

DoD avoided referencing violent Islamist extremism explicitly in the West/Clark inquiry into the Fort Hood attack or in the recommendations issued by DoD in response to the review. It will be more difficult for the military to develop effective approaches to countering violent Islamist extremism if the identity and nature of the enemy cannot be labeled accurately.

Recommendation: DoD leadership should identify the enemy as violent Islamist extremism explicitly and directly in order to enable DoD to confront it effectively and efficiently. DoD should reform religious discrimination and other equal opportunity policies to distinguish violent Islamist extremism from legitimate, protected religious observance of Islam so that commanders will not be reluctant to deal with displays of violent Islamist extremism among servicemembers and in order to protect the thousands of Muslim-American servicemembers from unwarranted suspicion. Servicemembers should receive specific training concerning the ideology and behaviors associated with violent Islamist extremism and how they differ from the peaceful practice of Islam. Finally, DoD should ensure that personnel evaluations are accurate with respect to any evidence of violent Islamist extremist behavior.

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VI. Strengthening The FBI To Prevent Domestic Terrorist Attacks.

The FBI has made significant strides since 9/11 in transforming itself into America's lead counterterrorism agency and an intelligence-driven organization to prevent terrorist attacks domestically, but it is clear from the Hasan case that the necessary transformation is incomplete. The Hasan case raises our concerns that the FBI headquarters exercised insufficient supervision and coordination of the FBI field offices and JTTFs and that the FBI has not utilized intelligence analysis as well as it could. The FBI's vision of JTTFs as being interagency information-sharing and operational coordination mechanisms is sound, but the Hasan case suggests that the JTTF model has not fulfilled the vision completely in practice. During our investigation of the Hasan case, we learned of a disagreement between the FBI and DoD regarding the JTTFs' functioning and that JTTF detailees lack access to key databases. As a result, we have concerns that the culture of JTTFs may be that they are FBI investigative entities, with detailees to JTTFs essentially serving as additional personnel to augment the FBI. The FBI should ensure that the JTTFs become full interagency information-sharing and operational coordination mechanisms. Otherwise, the JTTFs certainly will not achieve their full potential.

A critical fact discovered during our investigation which underlies these concerns is that neither the San Diego JTTF nor the Washington JTTF linked Hasan's first [REDACTED] communications – the communications that triggered the San Diego JTTF's January 7th memorandum to the Washington JTTF – with the subsequent [REDACTED] communications between Hasan and the Suspected Terrorist [REDACTED]. None of Hasan's communications indicated any overt plotting of terrorist attacks. A thorough investigation should have resulted even based on Hasan's initial communications, but even more so an analysis of the entirety of the communications, based on their content, certainly should have triggered a thorough investigation of Hasan including interviews of his superiors and colleagues. That intensive investigation would have significantly increased the likelihood that his communications would have been linked to his public displays of radicalization and would have caused him to lose his security clearance, been disciplined, and hopefully been discharged from the military. Instead, these communications were never linked, and the Washington JTTF investigation was concluded prematurely.

We note that this report is produced as the FBI begins to consider its next major leadership transition. Director Robert Mueller, who has led the FBI since shortly prior to the 9/11 attacks, is preparing to leave in September 2011 at the end of his statutorily fixed term of ten years. Director Mueller provided a bold vision for the FBI after 9/11 and instituted significant changes to achieve that vision. There is no question that the FBI has made substantial progress since 9/11 and has achieved many successes in countering terrorism as a result of his leadership. And change in any bureaucracy, and particularly a government bureaucracy steeped in a tradition that has produced numerous successes for a century, can unfortunately take significant time. But given the threat of homegrown terrorism that we face, we must be impatient for progress. We hope that our findings and recommendations will be particularly useful as Director Mueller seeks to reinforce the changes that he has instituted since 9/11 and when a new director sets priorities for the FBI for the next decade to achieve Director Mueller's complete vision.

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In sum, our conclusion is not that the FBI has made no significant progress in transformation. Rather, the Fort Hood attack was a warning that the FBI's transformation remains a work in progress and that the FBI must accelerate its transformation – particularly given the growing complexity and diversity of the homegrown terrorist threat. The challenges involve not just reforming or creating new institutions within the FBI but also ensuring that the FBI has the appropriate written policies and procedures, culture, and career incentives so that the new institutions operate as intended over the long term. In addition, to match Director Mueller's leadership, the FBI should ensure that a culture exists at all levels of the organization of continually assessing and improving current practices. We offer the following analysis in the spirit of working with the FBI to remedy its internal problems quickly and decisively so that its personnel can be as effective as they are dedicated.

A. FBI Transformation Begins After 9/11.

The FBI is the lead federal investigative agency for counterterrorism criminal investigations and intelligence collection within the United States.[120] The FBI's efforts against terrorism began decades before the 9/11 attacks, including against Puerto Rican separatist groups, white supremacist groups, and animal rights activists as well as violent Islamist extremists. The FBI's counterterrorism efforts included the prosecutions concerning the first World Trade Center bombing in 1993 and – as described by the 9/11 Commission – the "brilliant" investigation into the bombing of Pan American Flight 103 over Lockerbie, Scotland, in 1988.[121] The 9/11 attacks led the then-new FBI Director, Robert Mueller, to seek to transform the FBI's entire institutional and operational architecture.[122] Immediately following 9/11, Director Mueller declared that the FBI's top priority was preventing domestic terrorist attacks[123] and that the FBI needed to become an intelligence-centric rather than purely law-enforcement-centric organization. As Director Mueller stated, "Today, we are focused on prevention, not simply prosecution. We have shifted from detecting, deterring, and disrupting terrorist enterprises to detecting, penetrating, and dismantling such enterprises – part of the FBI's larger culture shift to a threat-driven intelligence and law enforcement agency."[124] And as stated by then-Attorney General Michael Mukasey in the *Attorney General's Guidelines for Domestic FBI Operations*, "The FBI is an intelligence agency, as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions."[125] As evidence of his prioritization of counterterrorism, Director Mueller declared that no counterterrorism lead or threat would go unaddressed.[126]

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[120] *See* 18 U.S.C. Section 2332b(f); 28 C.F.R. Section 0.85(l); Homeland Security Presidential Directive 5.
[121] *9/11 Commission*, at 75.
[122] For an overview of FBI reform, *see* Al Cumming, *Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress*, Report No. RL33033 (Congressional Research Service, August 16, 2005).
[123] Robert Mueller, Director, FBI, *Statement before the House Judiciary Committee* (May 20, 2009).
[124] Robert Mueller, Director, FBI, *Statement before the Senate Judiciary Committee* (March 5, 2008).
[125] Michael Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations* (2008), at 9.
[126] Federal Bureau of Investigation, *Counterterrorism Division Program Management*, Electronic Communication #66F-HQ-A1308701, December 25, 2002

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The 9/11 attacks and the Iraq War led to two major independent examinations of the FBI's counterterrorism capabilities, the 9/11 Commission and an Executive Branch commission appointed by President George W. Bush concerning intelligence and weapons of mass destruction. Both commissions were critical of the FBI's intelligence and counterterrorism capabilities, including that the FBI relegated intelligence analysts to second-tier status behind its agents and was dominated by agents who prioritized winning convictions and devalued intelligence collection.[127] Rather than recommending creation of a separate domestic intelligence service modeled loosely on Britain's MI5 agency, both commissions essentially recommended that the FBI create a so-called "agency within an agency" that would specialize in counterterrorism and related national security matters.[128]

As a result of Director Mueller's leadership and these outside commissions' recommendations, the FBI instituted a series of significant organizational changes designed to change the FBI into an intelligence-driven organization focused on preventing terrorism. To implement these changes, the FBI adopted a Strategy Management System based on the "Balanced Scorecard" commonly used in the corporate world and, with support from the prominent consulting company McKinsey & Co., created a Strategic Execution Team to execute organizational changes and to build support and momentum across the FBI.[129] As discussed in Chapter IV, the FBI significantly expanded its JTTFs to be the major FBI operational units in countering terrorism domestically. In addition, the FBI created a Directorate of Intelligence in its headquarters to produce intelligence analysis and to provide an institutional home for its analysts. In an effort to create this so-called "agency within an agency," the FBI created a National Security Branch at its headquarters composed of its Counterterrorism and Counterintelligence Divisions and the new Directorate of Intelligence.[130] The FBI also created a Field Intelligence Group at each of its field offices in order to provide intelligence analysis and support to agents.[131] Finally, in furtherance of its efforts against the homegrown terrorist threat, the FBI recently launched a program at its headquarters to coordinate the assessment of the nature and extent of this threat. This program integrates analysts and other experts from the Intelligence Community, including DoD, and uses information lawfully obtained from websites and other online communication platforms in order to initiate and direct investigations.

The FBI also reoriented its investigative processes to reflect its desire to generate intelligence and to prevent domestic terrorist attacks. To be sure, intelligence and law enforcement are not complete opposites: Just as intelligence is desirable in order to prevent an attack, law enforcement is also oriented toward preventing a criminal act by intercepting the conspirators before they perpetrate their intended crime and even by engaging in community

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[127] *9/11 Commission*, at 77; Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States* (March 31, 2005),at 331, 452 (hereinafter *Silberman-Robb Commission*).

[128] *9/11 Commission*, at 423-426; WMD Commission, at 30.

[129] Jan W. Rivkin, Michael Roberto, and Ranjay Gulati, *Federal Bureau of Investigation, 2009*, Harvard Business School, unpublished case study (May 18, 2010), at 1-3.

[130] Remarks by Sean Joyce, Executive Assistant Director, National Security Branch, Federal Bureau of Investigation, at a conference sponsored by the Bipartisan Policy Center (October 6, 2010).

[131] *Id*

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policing to make an area inhospitable to criminals. However, the challenge of melding intelligence and law enforcement involves two disciplines that have fundamental incompatibilities: Intelligence requires extrapolating from data to make conclusions and predictions, while law enforcement seeks to obtain evidence that will withstand scrutiny at trial. Also, intelligence may involve obtaining very specific information but may also involve amalgamating diverse data to spot trends, while law enforcement is generally case-specific.

Thus, when the FBI uses the term "intelligence-driven," the FBI cannot be referring simply to using intelligence as a trigger for law enforcement, investigative activity; the use of intelligence as a trigger for law enforcement should be a given. Instead, the point of being an "intelligence-driven" organization is that the production of intelligence is a preeminent objective, separate from whether a prosecution occurs, and that the collection and analysis of information are not tied to specific cases that are being investigated for prosecutorial purposes. As described in a Harvard Business School case study on the FBI:

> A critical aspect of [Director Mueller's] envisioned FBI was that it would be intelligence-led: Analysis would identify leading threats and vulnerabilities pertinent to each field office as well as gaps in the FBI's knowledge about those threats and vulnerabilities. FBI agents would then have to develop informants, collect data, conduct surveillance, and so on to fill the gaps. In many instances, analysts might direct the activities of special agents. An intelligence-led, threat-based FBI would try to reconcile tensions between intelligence and law enforcement by applying intelligence techniques to law enforcement activities. Some FBI officials saw this as a radical departure in practices. Others argued that the FBI had long operated in this way – for instance, in battling the … mafia in New York by identifying, infiltrating, and prosecuting five central crime families.[132]

One example of the FBI's reorientation to become intelligence-driven was enabling counterterrorism investigations to serve both intelligence and law enforcement purposes simultaneously. Prior to 9/11, the FBI classified its terrorism investigations as either criminal ([REDACTED]) or intelligence ([REDACTED]).[133] After 9/11, the FBI consolidated these two codes into a single code for counterterrorism investigation ([REDACTED]), which has as its primary purpose "developing intelligence regarding the subject or the threat."[134]

The most significant example of such reorientation was the creation by Attorney General Mukasey's 2008 *Attorney General's Guidelines for Domestic FBI Operations* of a three-tiered system for FBI investigations. That three-tiered system was then reflected in the FBI's issuance of a revised *Domestic Investigations Operations Guide* in December 2008. Previously, the FBI would not conduct investigative activity absent sufficient factual predication that a crime was

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[132] Jan W. Rivkin, Michael Roberto, and Ranjay Gulati, *Federal Bureau of Investigation, 2007* (Harvard Business School, unpublished case study, March 9, 2010), at 5-6.

[133] U.S. Department of Justice, Office of the Inspector General, *The Department of Justice's Terrorism Task Forces* Report No. I-2005-007 (2005), at 56.

[134] *Id.*

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being or had been committed. However, intelligence collection required that the FBI be able to assess the potential threat associated with an individual or situation even if it lacked sufficient factual predication to initiate an investigation of a specific crime.[135] As a result, the three-tiered system for FBI investigations begins with the least-intrusive "assessment," then progresses to a "preliminary investigation" in which more intrusive tools could be used, and finally permits a "full investigation" in which the full panoply of FBI investigative techniques (such as wiretapping) could be used. As discussed in the revised *Guide*, an "assessment" is permitted even when there is "no particular factual predication" that a crime is being committed and instead based on an "authorized purpose" such as "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence."[136] Also as discussed in the *Guide*, investigations or assessments are precluded – appropriately – "based solely on the exercise of First Amendment protected activities or on the race, ethnicity, national origin or religion of the subject."[137]

As discussed in Chapter II, the FBI has experienced successes in disrupting several serious plots even as the threat of homegrown violent Islamist extremism has risen sharply in recent years. The 2009 disruption of a terrorist plot by Najibullah Zazi is one of the most prominent examples of the FBI's successes against terrorist plots and according to the FBI is illustrative of its progress in becoming intelligence-driven. Based on a series of frantic communications from Zazi to his al Qaeda handler regarding bomb instructions, the FBI, working with other agencies, unraveled and prevented a massive attack on the New York City subway system. The coordination across federal, state, and local departments, led by two JTTFs, was excellent and unprecedented.

B. The FBI's Inquiry Into Hasan Was Impeded By Division Among Its Field Offices, Insufficient Use Of Intelligence Analysis, And Outdated Tradecraft.

The FBI has made substantial strides since 9/11 in reorganizing itself and reorienting its investigative processes to generate intelligence and ultimately to prevent domestic terrorist attacks. The FBI has been successful in disrupting many terrorist plots. However, the Fort Hood case suggests that the FBI's transformation to become an efficient and effective intelligence-driven organization focused on preventing domestic terrorist attacks is unfinished. The creation of new institutions within the FBI sometimes has not been accompanied by clear business processes that articulate these new institutions' responsibilities and authorities within the FBI. As a result, these new institutions may not have achieved the transformation of the FBI that was desired.

1. The Hasan inquiry was plagued by disjunction between two field offices and the lack of coordination by FBI headquarters.

Counterterrorism-related activities at FBI field offices are today more effectively managed and coordinated than they were on 9/11, but the Hasan case suggests that the FBI

[135] Briefing by a senior FBI attorney, July 2, 2010.
[136] *Id*
[137] Federal Bureau of Investigation, *Domestic Investigations Operations Guide* (December 16, 2008), at 39

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remains too divided among its 56 field offices and thus among the JTTFs (with each field office housing a JTTF). In the Hasan case, the San Diego and Washington JTTFs (located at the San Diego and Washington Field Offices, respectively) operated with a counterproductive degree of individual autonomy – that is, with inadequate coordination and communication. This situation was coupled with the FBI headquarters' and National JTTF's lack of involvement in resolving the dispute between these JTTFs. As a result, we are concerned that seams among multiple field offices, among JTTFs, and between operational and intelligence-related components may not be methodically identified and fixed by a central management structure.

Although headquartered in Washington, DC, the FBI's organizational center of gravity has predominantly been its field office structure, with fifty-six field offices spread throughout the United States and generally located in major cities. Each field office is headed by a Special Agent in Charge or, for some of the larger field offices, an Assistant Director in Charge. The FBI's decentralization among field offices dates back as far as Director J. Edgar Hoover, who led the FBI from 1924 to 1972.[138] Former Attorney General Richard Thornburgh described the FBI organization as "decentralized management of localized cases,"[139] and one noted expert in the U.S. national security system's organization commented, "It is fair to say that when the Cold War ended, the FBI was less a single agency than a system of fifty-six affiliated agencies, each of which set its own priorities, assigned its own personnel, ran its own cases, followed its own orders, and guarded its own information."[140] Field office autonomy was reinforced by Director Louis Freeh during his tenure from 1993 to just prior to 9/11, during which he decentralized operations, pushed headquarters staff to the field (a move praised at the time, as it included forcing individuals whose skills were eclipsed by the end of the Cold War to learn new operational skills), and caused the heads of the field offices to gain in power and independence.[141]

Field office autonomy made particular sense for law enforcement activities in which a field office would coordinate closely with prosecutors in the local U.S. Attorney's Office. Still, field office autonomy did impact even law enforcement activities; as the 9/11 Commission noted, "Field offices other than the specified office of origin [*i.e.*, the office responsible for a particular case] were often reluctant to spend much energy on matters over which they had no control and for which they received no credit."[142] Even more so, the high state of decentralization within the FBI was a major factor in the FBI's portion of the U.S. Government's failure to prevent the 9/11 attacks. This issue was highlighted by Congress's post-9/11 inquiry into the associated intelligence failures. As the Congressional Joint Inquiry concluded:

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[138] Amy Zegart, *Spying Blind, The CIA, the FBI, and the Origins of 9/11* (Princeton University Press, 2009), at 122-123 (hereinafter *Spying Blind*).
[139] *Id.*, at 123 (quoting Richard Thornburgh, Statement Before the House Committee on Appropriations, Subcommittee on Commerce, Justice, State, and the Judiciary (June 18, 2003), at 2). *See* Richard Posner, *Remaking Domestic Intelligence* (Hoover Institution Press, 2005), at 93 (describing "the autonomy of the field offices [as] a major obstacle to effective national security intelligence in the FBI").
[140] *Spying Blind*, at 123.
[141] *9/11 Commission*, at 76.
[142] *Id.*, at 74.

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> Numerous individuals told [the Joint Inquiry] that the FBI's 56 field offices enjoy a great deal of latitude in managing their work, consistent with the dynamic and reactive nature of its traditional law enforcement mission. In counterterrorism efforts, however, that flexibility apparently served to dilute the FBI's national focus on Bin Ladin and al Qaeda. Although the FBI made counterterrorism a "Tier One" priority, not all of its field offices responded consistently to this FBI Headquarters decision. The New York Field Office did make terrorism a high priority and was given substantial responsibility for the al Qaeda target following the first attack on the World Trade Center in 1993. However, many other FBI field offices were not focused on al Qaeda and had little understanding of the extent of the threat it posed within this country prior to September 11.[143]
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> In 1999, the FBI received reports that another terrorist organization was planning to send students to the United States for aviation training. The purpose of this training was unknown, but [terrorist] leaders viewed the plan as "particularly important" and reportedly approved open-ended funding for it. An operational unit in the Counterterrorism Section at [FBI] Headquarters instructed 24 field offices to pay close attention to Islamic students from the targeted country engaged in aviation training. ... There is no indication that field offices conducted any investigation after receiving the communication. ... The former chief of the operational unit involved in this project told the Joint Inquiry that he was not surprised by the apparent lack of vigorous investigative action by the field offices. The FBI's structure often prevented Headquarters from forcing field offices to take investigative action that they are unwilling to take. The FBI was so decentralized, he said, and Special Agents in Charge of field offices wielded such power that when field agents complained to a supervisor about a request from Headquarters, the latter would generally back down.[144]

Since 9/11, the FBI has made progress in seeking to improve coordination among its field offices within an overall strategic framework. For example, the FBI has forced priorities onto its field offices, ensuring the preeminence of counterterrorism, and rates them in terms of their knowledge of the threats in their respective domains. Organizationally, the FBI established four Executive Assistant Director positions to strengthen central management of the FBI. As previously mentioned, the FBI also mandated that field offices create Field Intelligence Groups to serve as the "lens through which field offices identify and evaluate threats"[145] and "the hub of the FBI's intelligence program."[146] FBI headquarters did not originally provide a template for

[143] Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, *Report of the U. S. Senate Select Committee on Intelligence and the U. S. House Permanent Select Committee on Intelligence, Together with Additional Views*, S. Rept. No. 107-351, H. Rept. 107-792, 107th Cong., 2d Sess. (December 2002), at 38-39.
[144] *Id.* at 334-335.
[145] Robert Mueller, Director, FBI, *Statement before the Senate Judiciary Committee* (March 5, 2008).
[146] Robert Mueller, Director, FBI, *Statement before the Senate Judiciary Committee* (January 20, 2010).

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these groups, leading each field office to create a different version, but the FBI eventually standardized these groups across the field offices.[147]

Although progress in achieving greater integration across field offices has been made, the lack of effective communication between the San Diego and Washington JTTFs is evidence that the two field offices operate in a climate in which field office autonomy is still prized. The San Diego JTTF characterized the lead on Hasan as "discretionary" to the Washington JTTF but did not provide clear guidance for how the Washington JTTF should proceed. No one from the San Diego JTTF followed up with the Washington JTTF to discuss the original memorandum or the progress of the Washington JTTF's inquiry into Hasan. Simultaneously, no one from the Washington JTTF reached back to the San Diego JTTF to discuss the lead and to seek any further information or clarification. Such a clarification of the San Diego JTTF's request for an inquiry was particularly appropriate given that, as the San Diego JTTF noted in its memorandum, Hasan's communications did not indicate any overt terrorist activity. Since the Fort Hood attack, the FBI has abolished the term "discretionary lead" due to its ambiguity; instead, a communication from one field office to another states whether it is for either "information only" or "action required."[148] Still, even if the San Diego JTTF's communication to the Washington JTTF had called for mandatory action and not used the vague "discretionary lead," the San Diego JTTF could not have compelled the Washington Field Office to take any *specific* action.

Critically, there was a complete disjunction between the San Diego JTTF's and the Washington JTTF's understanding of the DCIS agent's access to the [REDACTED] database. The San Diego JTTF believed that the DCIS agent had access to that database and would conduct due diligence by querying it for additional information. In contrast, the DCIS agent lacked knowledge of and access to it and thought that the San Diego JTTF would send him any additional communications. As a result, Hasan's subsequent communications were never linked by either JTTF to his first [REDACTED] communications.

When the Washington JTTF provided its assessment back to the San Diego JTTF several months later and the San Diego JTTF disagreed as to the adequacy of the underlying inquiry, there was no attempt by these JTTFs to negotiate a resolution beyond an apparent telephone call between the DCIS agent in San Diego and the DCIS agent in Washington.

- The DCIS agent at the Washington JTTF did send an email to the DCIS agent in San Diego stating that the Washington JTTF would reassess its position if the San Diego JTTF sent any additional information concerning Hasan's links to terrorism or requested any specific action. However, as indicated in that email, the DCIS agent in Washington missed that the purpose of the inquiry – if it had been intelligence-driven – should have been not just to find any current terrorist links but also to assess whether Hasan was radicalizing to violent Islamist extremism and might become a counterintelligence threat by virtue of him holding a security clearance and potentially being deployed to a combat zone. In addition, the Washington DCIS agent's email ignored the fact that the San

[147] *Id.*; Robert Mueller, Director, FBI, *Statement before the Senate Judiciary Committee* (September 17, 2008).
[148] Federal Bureau of Investigation, Records Management Matters, Director's Office: Discontinuance of Discretionary Leads, Electronic Memorandum (March 2, 2010), at 2.

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Diego JTTF had essentially recommended interviews of Hasan's superiors and colleagues

- In turn, the San Diego JTTF never reconsidered its decision not to send a normal FBI intelligence communication to DoD with Hasan's first [REDACTED] communications, an idea that the San Diego JTTF had discarded after erroneously concluding that Hasan was a military communications officer. Equally, there was no attempt by the San Diego JTTF to resolve the issue by confrontation or escalation. The FBI agent at the San Diego JTTF did not provide a formal request to the Washington JTTF for specific action, contact the FBI supervisor in the Washington JTTF directly, or elevate the issue further to senior officials in each field office and, as needed, to the headquarters-based Counterterrorism Division or the National JTTF. The San Diego JTTF's failure to issue a formal request for action or to elevate the matter was particularly problematic given that the San Diego JTTF – the office responsible for investigating the Suspected Terrorist with whom Hasan had communicated – essentially recommended interviewing Hasan's superiors and colleagues despite the Washington JTTF's belief that such interviews would compromise the investigation. [REDACTED].

Although the FBI's headquarters plays a substantial role in what it considers to be the highest priority terrorism cases, it played no role in the inquiry concerning Hasan. Several officials within the headquarters-based Counterterrorism Division were copied on the inter-field-office correspondence related to Hasan, but at no point did anyone at that Division take action to encourage additional or more urgent efforts to examine Hasan – for example, given that at the time the FBI believed that Hasan was a military communications officer. Nor was the Counterterrorism Division informed by the San Diego or Washington JTTFs of the dispute concerning the adequacy of the Washington JTTF's inquiry. The National JTTF also was not informed of this inquiry into Hasan or the dispute between the field offices – even though, by the FBI's own characterization, the National JTTF is intended to coordinate JTTFs as their "hub" and particularly when other agencies' equities (such as DoD's in this case) are involved.[149] Had either or both of the Counterterrorism Division and the National JTTF been informed of the dispute, they could have made their own assessment of whether the Washington JTTF's inquiry was sufficient, forced elevated discussion between the two JTTFs to resolve the matter, shared information directly with DoD, or even have sought to impose their own solution on the JTTFs. The San Diego JTTF's failure to elevate the Hasan matter was poor judgment but also speaks to the cultural pressures within the FBI to defer to and respect other offices' autonomy.

Accordingly, our investigation of the Hasan case suggests that the field offices retain too much autonomy and that the FBI's headquarters-based coordinating mechanisms lack sufficient strength or support from the field. It is noteworthy that the FBI did not produce any documents to the Committee that articulated the division of labor and hierarchy of command-and-control authorities among the Counterterrorism Division, the National JTTF, the FBI's headquarters-based intelligence analysis unit called the Directorate of Intelligence, the field offices, and the

[149] *The Department of Justice's Terrorism Task Forces*, at 21 (citing Federal Bureau of Investigation, *Joint Terrorism Task Force Report to Congress* (October 2003), at 7)

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JTTFs. We conclude that there are none, and the FBI has not disputed this conclusion.[150] We are also concerned that the Counterterrorism Division has had eight leaders since 9/11 and that such turnover contributes to the centrifugal forces within the FBI.[151]

Despite progress by FBI leadership in surmounting it, the Hasan case indicates that the FBI's division among field-offices may still compromise the FBI's stated desire of becoming an intelligence-driven organization that primarily prevents terrorist attacks over the long term. As we noted above, the FBI has had successes to date in interdicting terrorist plots. However, the growing complexity and diversity of the threat, combined with the speed at which individuals are radicalizing to violent Islamist extremism and seeking to commit attacks, mean that the FBI's components will increasingly need to operate as a single, seamless entity and to do so quickly, in real time. Information across cases will need to be fused quickly and matched with other available information from public and private sources. Decisions about prioritization and resource allocation will need to be made across the FBI, as how one field office operates can have significant implications for how the FBI overall is able to counter the national and transnational terrorist enemy. As Arthur Cummings, who was Special Agent in Charge for Counterterrorism at the Washington Field Office, explained in 2007:

> There is no such thing as a local terrorism problem. Something might happen locally, but within two seconds, you discover national and international connections. ... [The Special Agents in Charge of field offices] were always kings in the past. They got to decide who to arrest and when to do it. Now, headquarters needs to oversee those decisions.[152]

The Hasan case suggests that the FBI's internal balance is still skewed too far toward field office autonomy, with insufficient strategic coordination from headquarters of the full range of FBI activities including investigative decisionmaking. The FBI must find the appropriate balance between (1) centralization to ensure that the FBI operates as an intelligence-driven organization able to prevent domestic terrorist attacks planned across multiple field offices' jurisdictions, and (2) decentralization to generate innovation, to identify and seize opportunities quickly, and to work with state and local law enforcement.[153]

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[150] Descriptions of the FBI's internal structure exist but provide no clarity. For example, the FBI's Intranet has the following description of the Counterterrorism Division's International Terrorism Operations Section I: "The mission of [ITOS I] is to support, coordinate and provide oversight of all FBI continental United States (CONUS) based international terrorism (IT) investigations. ITOS I will accomplish its mission utilizing technical collection, human source, coverage, and all essential investigative actions and techniques to optimize collection efforts directed against subjects of [terrorism-related investigations]." Department of Defense, Office of the Inspector, *Affidavit of DCIS 2* (November 24, 2009), at 21. The language of "support, coordinate and provide oversight" is so vague as to be meaningless, and the rest of the description indicates that ITOS I is actually itself an investigative body, not a management and oversight body.

[151] Jeff Stein, "FBI Picks Its Seventh Counterterrorism Chief Since Sept. 11, 2001," *CQ Homeland Security Intelligence* (June 27, 2006). An eighth official was subsequently appointed.

[152] Jan W. Rivkin et al, *Federal Bureau of Investigation, 2007*, at 2.

[153] All organizations face the tension between centralization and decentralization and must constantly assess whether they are making the correct balance. Alfred Cumming and Todd Masse, *FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress*, Report RL32336 (Congressional Research Service, August 4, 2004)), at 15 n 71 (quoting the review of the 1986 Space Shuttle Challenger accident, "The ability to operate in a centralized

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Finding: There was a fundamental disjunction between the San Diego JTTF and the Washington JTTF concerning who was responsible for investigating [REDACTED] communications between Hasan and the Suspected Terrorist. That disjunction contributed to the Washington JTTF's failure to conduct an intensive investigation of Hasan, including interviews of his superiors and colleagues, based on all available information regarding Hasan's communications with the Suspected Terrorist. Neither the FBI's headquarters-based Counterterrorism Division nor the National JTTF was notified of or resolved the conflict between the field offices and thus were unable to take steps to resolve it. As a result, the FBI's inquiry into Hasan was terminated prematurely. The FBI lacks documents that articulate the division of labor and hierarchy of command-and-control authorities among the Counterterrorism Division, the National JTTF, the FBI's headquarters-based intelligence analysis unit called the Directorate of Intelligence, the field offices, and the JTTFs. The leadership of the Counterterrorism Division has also experienced significant turnover since 9/11. Thus, despite the FBI's progress in strengthening its headquarters and bringing field offices under a strategic framework, the Hasan case leads us to be concerned that the FBI remains divided among strong field offices and between the field offices and its headquarters.

Recommendation: The FBI should ensure the appropriate balance between field office autonomy and headquarters central control in order to become the intelligence-driven organization it wants to be. Headquarters elements such as the Counterterrorism Division and the National JTTF should actively identify and resolve investigative disagreements and ensure that they conduct sufficient oversight of how field offices are aligning their activities with strategic priorities for intelligence collection and analysis. The FBI should articulate in writing the command-and-control hierarchy among its headquarters and field entities in order to ensure clear responsibility, authority, and accountability for national security activities.

2. The FBI's inquiry into Hasan failed to utilize intelligence analysts fully in order to drive the purpose of the investigation and assess Hasan's communications.

A critical aspect of becoming an intelligence-driven organization to prevent terrorism and other national security threats requires (1) integrating strategic intelligence analysis into the FBI's operational activities, (2) using intelligence analysis to identify knowledge gaps and threat trends, and (3) using this analysis to prioritize intelligence collection and law enforcement

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manner when appropriate, and to operate in a decentralized manner when appropriate, is the hallmark of a high-reliability organization (*Columbia Accident Investigation Report, Vol. I* (August 2003)). For an assessment of the tension between centralization and decentralization in DoD, *see* Gordon Lederman, *Reorganizing the Joint Chiefs of Staff: The Goldwater-Nichols Act of 1986* (Greenwood, 1999).

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operational activities against national security targets. The FBI has historically been dominated institutionally by its agents, who played the lead role in the law enforcement successes that established the FBI's great reputation. As recounted by the 9/11 Commission, the FBI's attempt to foster intelligence analysis prior to 9/11 ran into cultural resistance, with analysts often being either secretarial staff or relegated to performing secretarial or other support functions.[154] The FBI sought to remedy this problem after 9/11 by creating a Directorate of Intelligence at headquarters and a Field Intelligence Group in each field office composed of intelligence analysts to serve as the intelligence "hub."[155] The FBI also tripled the number of analysts to 2,800 authorized positions (as compared to 13,000 agents[156]), hired agents of increased quality, created a formal mechanism to disseminate intelligence reports, and disseminated thousands of such reports.[157]

Despite these structural improvements in the FBI's analytic capability, FBI intelligence analysts from the resident Field Intelligence Group were not consulted by the DCIS agent or his FBI supervisor in the Washington JTTF concerning Hasan's case. An analyst familiar with the Suspected Terrorist could have advised the DCIS agent on the role that this individual has played in [REDACTED], oriented the DCIS agent toward the question of whether Hasan was radicalizing, and explained what evidence would suggest radicalization. At the very least, an analyst could have helped interpret Hasan's first [REDACTED] communications with a more critical eye regarding whether they represented innocuous research or instead could signify that Hasan was radicalizing to violent Islamist extremism. An analyst may also have noted other possible threats posed by Hasan, including traditional counterintelligence concerns, and recommended additional collaboration with DoD. In contrast, the relevant personnel at the San Diego JTTF included two intelligence analysts, and the San Diego JTTF did flag Hasan's first [REDACTED] communications for further inquiry even though they lacked any evidence of overt terrorist activity. Still, the San Diego JTTF could have marshaled other intelligence analysts – including at the headquarters-based Directorate of Intelligence – when disputing the Washington JTTF's determination that Hasan's first [REDACTED] communications were benign; it should be noted that the San Diego JTTF's decision not to issue a report via normal intelligence channels [REDACTED] based on Hasan's first [REDACTED] communications, due to the mistaken belief that Hasan was a communications officer, foreclosed one avenue for circulating the communications to analysts inside (and outside) the FBI. In sum, the lack of a role for intelligence analysts in the Washington JTTF's inquiry into Hasan raises alarm that the

[154] *See* Zegart, *Spying Blind*, at 126 n.26 (citing the 9/11 Commission, *9/11 Commission Staff Statement Number 9* (April 13, 2004), at 9, and the 9/11 Commission, *9/11 Commission Staff Statement Number 2* (April 14, 2004), at 6); *The 9/11 Commission Report*, at 77. For the FBI's approval of the 9/11 Commission's recommendations concerning intelligence analysis, *see* FBI, National Press Office, *FBI Responds to Report of the National Commission on Terrorist Attacks Upon the United States* (July 22, 2004), at 2 (approving, *inter alia*, of the Commission's recommendation that "The FBI should institute the integration of analysts, agents, linguists, and surveillance personnel in the field so that a dedicated team approach is brought to bear on national security intelligence operations").

[155] Robert Mueller, Director, FBI, *Statement before the House Judiciary Committee* (May 20, 2009) (describing the vision for Field Intelligence Groups to be the "hub" of the FBI intelligence program).

[156] FBI Intelligence Analysts Association, *Intel Shift "Needs to" Happen* (February 26, 2010), at 4-5.

[157] Remarks by Sean Joyce.

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FBI's effort to strengthen its intelligence analytic corps and to integrate it into the FBI's investigative functions is incomplete.

Our concern regarding the role of analysts is echoed by a 2010 report issued by the FBI Intelligence Analysts Association, which found that a "clear hierarchy exists in which agents occupy the ranks of senior executives, and analysts are still relegated to a category called 'Support Employees.'"[158] The report noted that FBI analysts hold only 14 out of 276 (or 5 percent) of the FBI's Senior Management Positions (called in other departments the "Senior Executive Service").[159] The report also found that (1) the FBI's reforms to enhance the role of intelligence analysts were "perceived as a threat" by agents, (2) agents received no training on the role of analysts, (3) a 2005 FBI reorganization demoted the FBI's top analyst, (4) a December 2009 FBI policy permits analysts to be assigned menial duties, and (5) many analysts cannot access the Internet or classified databases from their desks.[160] The report observed that the leaders of the FBI's Directorate of Intelligence have almost all been agents rather than analysts and that high turnover has "led to lapses in the competence, continuity of policy and accountability of FBI management."[161]

Accordingly, based on the Hasan case and these other indications, the FBI should ensure that its intelligence cadre has the leadership and support it needs and that barriers are broken down for analysts to assume their rightful place in FBI organizational culture – such as by permitting analysts to become mid-level and senior managers even over agents.[162] FBI agents should be rewarded for integrating analysis into their operational activities and held accountable if they do not.

In an effort to integrate analysts more fully with agents, the FBI created threat fusion cells to bring together analysts and agents – integrating intelligence and investigations – to identify and mitigate counterterrorism threats and vulnerabilities. Each threat cell focuses on a specific threat and is intended to collect intelligence to provide strategic and tactical analysis to drive operations. The FBI is in the process of applying this model to address a wide range of counterterrorism threats and should accelerate its efforts in this area.

Finding: Despite the FBI's improvements in its analytic capability, intelligence analysts were not integrated sufficiently into the inquiry into Hasan. Such integration might have enabled the JTTF to: (1) gain a broader perspective on the significance of Hasan's communications with the Suspected Terrorist, [REDACTED], (2) orient the inquiry into Hasan to whether he was radicalizing rather than just whether he was engaged in overt terrorist activity, (3) analyze Hasan's communications more critically as to whether they were truly research, and (4) suggest what information to seek in order

[158] *Intel Shift "Needs to" Happen*, at 9.
[159] *Id.*, at 11, 14.
[160] *Id.*, at 16-25 (emphasis in original).
[161] *Id.*, at 22.
[162] We note – as an indicator of FBI culture – that the FBI phone book still divides FBI personnel into two categories: agent and support – with analysts being listed in the support category.

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to determine whether Hasan was radicalizing to violent Islamist extremism or otherwise constituted a national security threat.

Recommendation: We are concerned that analysts may not be sufficiently integrated into operations and may lack sufficient stature within the FBI vis-à-vis agents as necessary for an intelligence-driven organization. As the Hasan case shows, the FBI should ensure that analysts are integrated into operations and play a major role in driving operational decisionmaking. At a basic level, the FBI should ensure that – unlike in the Hasan case – agents consult with analysts routinely, and the FBI should ensure that agents who integrate analysts into their operational activities are rewarded and agents who do not are held accountable. For example, the FBI should accelerate its use of combined agent/analyst threat fusion centers. More generally, the FBI should ensure the dismantling of barriers to intelligence analysts assuming a prominent role in the organization and that analysts have sufficient leadership opportunities at all levels, including to supervise agents as appropriate. Finally, the FBI should ensure that analysts receive the technological and other support necessary to produce sophisticated analysis.

3. The FBI did not update its tradecraft used in the investigation of the Suspected Terrorist, which contributed to the FBI's failure to understand the significance of Hasan's communications with that individual.

The FBI's conduct vis-à-vis Hasan demonstrates that the FBI did not identify and update deficient tradecraft (*i.e.*, the methods and processes for conducting investigative or intelligence activities) concerning significant suspected terrorists such as the Suspected Terrorist [REDACTED] prior to an attack occurring.

An analysis of the full extent of Hasan's communications would have shown that Hasan's interest in the Suspected Terrorist belied any conceivable research purposes. Yet the San Diego JTTF only flagged Hasan's initial [REDACTED] communications with a suspected terrorist for further inquiry. The criteria used by the San Diego JTTF to determine whether a communication with that particular suspected terrorist merited scrutiny or follow-up were neither memorialized nor institutionalized in the event of a personnel turnover and not reviewable by FBI headquarters. We are concerned that this ad hoc approach did not accord with the significance of the Suspected Terrorist [REDACTED].

To its credit, since the Fort Hood attack, the FBI now requires that FBI headquarters-based analysts simultaneously review case information of [REDACTED] subjects of investigations [REDACTED] to ensure that the relevant field office has not missed any important communications. Such oversight accords with the Suspected Terrorist's [REDACTED] and enables headquarters-based analysts – who may have a broader perspective on terrorist activity than agents in a field office – to weigh particular communications differently.

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However, this new process does not replace the need for FBI headquarters to review and oversee a field office's protocols [REDACTED].

Our investigation also found that, in the Hasan case, the San Diego JTTF the San Diego JTTF was prevented from easily linking Hasan's subsequent communications with his first [REDACTED] communications. In addition, the San Diego JTTF never linked Hasan's subsequent communications to his initial [REDACTED] communications either from memory or by actively running a database search under Hasan's name. [REDACTED] Thus, an analyst or agent looking at a communication would not automatically receive information concerning previous communications [REDACTED]. Instead, a communication could only be linked with previous communications [REDACTED] by agents' or analysts' memory or by the agents or analysts actively searching the database [REDACTED].

To its credit, the FBI reacted swiftly after the Fort Hood attack and remedied this problem within a few months by utilizing the necessary information technology. Yet we have concerns that this particular gap suggests a larger challenge facing the FBI's tradecraft.

- The FBI believed that the Suspected Terrorist was, in essence, [REDACTED].

- Accordingly, it is unacceptable that the FBI personnel who had access to communications were content using a system that did not link automatically to [REDACTED] previous communications and that apparently no one in the FBI recognized the attendant inefficiency and risk of mission failure. The ability to link communications would have identified patterns in Hasan's contact with the Suspected Terrorist [REDACTED]. Doing so would place the contents of any single communication in the context of the new individual's overall relationship with a suspected terrorist and help indicate whether that subject was radicalizing to violent Islamist extremism.

The FBI has presented us with no evidence that FBI headquarters or the National JTTF had identified this tradecraft problem, realized its potential implications, and tried to remedy it prior to the Fort Hood attack. Based on the Hasan case, we are concerned that there may be other FBI tradecraft areas that need to be updated against the evolving terrorist threat.

Finding: The FBI did not update its tradecraft for purposes of its investigation of the Suspected Terrorist. The FBI could not easily link Hasan's initial communications with the Suspected Terrorist to his later communications, and the failure to do so was a factor in the government not intervening against Hasan before the attack, and the FBI should have identified and remedied its inability to link his communications together prior to the attack.

Recommendation: The FBI should ensure that its internal processes are effective in identifying tradecraft that is outmoded as compared to evolving threats.

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C. The Inquiry Into Hasan Focused On The Narrow Question Of Whether He Was Engaged In Terrorist Activities And Not Whether He Was Radicalizing To Violent Islamist Extremism And Thus Could Become A Threat.

The 9/11 attacks led the FBI to seek to transform its entire institutional and operational architecture in order to become intelligence-driven and to prevent terrorism domestically.[163] A prime example of the FBI's reorientation to being "intelligence-driven" is the FBI's issuance of a revised *Domestic Investigations Operations Guide* in December 2008. The revised *Guide* permits an "assessment" for intelligence purposes – that is, even when there is "no particular factual predication" that a crime is being committed and instead based on an "authorized purpose" such as "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence."[164] The FBI's view of being intelligence-driven is certainly different from the traditional law enforcement approach of investigating crimes (*e.g.*, terrorist attacks) after they occur. In that sense, the FBI has been generally successful in altering its law enforcement culture.

The San Diego JTTF's flagging of Hasan for additional scrutiny [REDACTED] despite Hasan's communication showing no evidence of criminal activity is a positive example of the FBI being intelligence-driven. Thus, the problem with the FBI's performance in the Hasan case is not that the FBI failed to pick Hasan out of the myriad leads that the FBI faces every day; in actuality, the San Diego JTTF did flag him based on his first [REDACTED] communications to the Suspected Terrorist. Rather, the problem is that, as the DCIS agent in Washington described his investigation, the inquiry into Hasan was focused on whether Hasan was engaged in overt terrorist activities.

The appropriate question about Hasan was not only (as the Washington JTTF focused its investigation) whether he was engaged in terrorist activity. A more intelligence-oriented inquiry would also have sought to know:

- could Hasan be in the process of radicalizing to violent Islamist extremism such that he might engage in terrorist activity in the future;
- what did the nature of Hasan's communications with the Suspected Terrorist teach about that suspected terrorist's *modus operandi* in furtherance of terrorist objectives [REDACTED] without actually breaking the law; and

[163] Immediately following 9/11, the then-new FBI Director, Robert Mueller, declared that the FBI's top priority was preventing domestic terrorist attacks and that the FBI needed to become an intelligence-driven rather than law-enforcement-centric organization. As Director Mueller testified before Congress, "Today, we are focused on prevention, not simply prosecution. We have shifted from detecting, deterring, and disrupting terrorist enterprises to detecting, penetrating, and dismantling such enterprises – part of the FBI's larger culture shift to a threat-driven intelligence and law enforcement agency." Robert Mueller, Director, FBI, *Statement before the Senate Judiciary Committee* (March 5, 2008). And as stated by then-Attorney General Michael Mukasey, "The FBI is an intelligence agency, as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions." Attorney General Michael Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations* (September 29, 2008), at 9.

[164] *Id.*

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- could Hasan be a future counterintelligence threat putting U.S. military operations at risk.

Put more concretely, the Washington JTTF only looked for overt steps to support terrorist activity and did not assess the broader threat posed by a military officer and his communications with a known type of terrorist called a [REDACTED].

We are concerned based on the Hasan case that the FBI has more work to do in training its personnel as to how being intelligence-driven should affect their operational activities.

Finding: The FBI's inquiry into Hasan was focused on whether Hasan was engaged in overt terrorist activities. The inquiry did not pursue whether Hasan might be radicalizing to violent Islamist extremism, what information his radicalization and relationship with the Suspected Terrorist could contribute to the larger understanding of radicalization, and whether Hasan might become a counterterrorism or counterintelligence threat in the future.

Recommendations: The FBI should ensure that agents understand practically how being intelligence-driven should affect their investigative objectives and operational activities.

D. Our Investigation Of The Hasan Case Raises Questions About Whether The Joint Terrorism Task Forces Have Become Fully Effective Interagency Coordination and Information-Sharing Mechanisms.

The FBI has set forth a vision – of which we approve – of JTTFs as the premier mechanism for counterterrorism information-sharing and operational coordination among federal entities and with state and local law enforcement. However, the JTTFs did not fulfill this aspiration in the Hasan case, and during our investigation of the Hasan case we learned of larger unresolved policy disputes concerning JTTFs' functioning.

Neither the Washington JTTF nor the San Diego JTTF cited any law [REDACTED] as a barrier to sharing Hasan's communications or information derived from those communications with DoD counterintelligence officials. We have found no legal barrier that prevented the JTTFs from notifying DoD counterintelligence officials concerning Hasan's communications and enlisting those officials' expertise in investigating Hasan, a servicemember. The Hasan case highlights interagency disagreements and internal JTTF weaknesses that raise our concern that the JTTFs are at risk of becoming essentially an investigative entity serving the FBI's interests.

1. DoD and the FBI disagree concerning which agency has the lead for counterterrorism investigations of servicemembers.

The standard operating procedure of the Army's operational counterintelligence unit, the 902nd Military Intelligence Group (located within the Army's Intelligence and Security

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Command), is that even its lowest level of investigation of a servicemember includes interviews of employers and associates. Accordingly, had Hasan's initial [REDACTED] communications (let alone all of them) been shared with the 902nd Military Intelligence Group, then Army counterintelligence officials most likely would have interviewed his superiors and colleagues. Even the most minimal interviews would most likely have shown that his communications were not mere research and instead accorded with his overall displays of radicalization to violent Islamist extremism. Neither the Washington JTTF nor the San Diego JTTF pointed to any law or regulation as the reason that information about Hasan was not shared with DoD counterintelligence officials.[165] At most, the San Diego JTTF initially decided not to circulate the communications as a standard FBI intelligence communication to DoD because of the erroneous belief that Hasan was a military communications officer and thus could have read the report. The San Diego JTTF did not revisit its decision once the Washington JTTF reported that Hasan was a military physician and not a communications officer – and that was a very consequential mistake. Moreover, the Washington JTTF's concern that sharing might expose the investigation [REDACTED] on the Suspected Terrorist was belied by the fact that the San Diego JTTF – which was responsible for the investigation of that individual – advocated interviews of Hasan and his superiors and colleagues.

Our investigation revealed a significant disagreement between the FBI and DoD concerning whether the FBI or DoD should have the lead for investigating servicemembers for counterterrorism purposes. As noted above, the FBI is the lead federal investigative agency for counterterrorism criminal investigations and intelligence collection within the United States pursuant to statute enacted in 1996 and a Presidential directive issued in 2003.[166] DoD and the FBI had signed an accord called the "Delimitations Agreement"[167] in 1979 and supplemented it in 1996. The Delimitations Agreement states that DoD has the lead for "counterintelligence" investigations of servicemembers.[168] Mirroring various statutes and regulations, the Delimitations Agreement defines "counterintelligence" to include both classic espionage and "international terrorism."

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[165] The DCIS detailee in the Washington JTTF and his FBI supervisor decided not to conduct interviews of Hasan's superiors and colleagues in part due to the desire to avoid affecting Hasan's career, which they viewed as a legal imperative under Executive Order 12333 (a key executive order that sets forth operating principles for U.S. Intelligence Community) which mandates that investigative activities be conducted using the least intrusive means. We doubt that a military officer who communicates with a suspected terrorist [REDACTED] while holding a Secret-level security clearance and subject to deployment to a combat zone deserves the same level of concern for his career as a civilian who happens to come up during an investigation. We also note that the San Diego JTTF clearly had a different view of whether interviews were appropriate. Leaving aside whether the least intrusive means test should have prevented interviews (a determination that would not have been supported by the *Domestic Investigations Operations Guide* itself), the least intrusive means test is relevant only to actual investigative tools such as interviews – not whether the FBI could share Hasan's communications with Army counterintelligence officials so that they could become aware of Hasan's contact with the Suspected Terrorist. And in fact, the least intrusive means test was not the driver for the FBI's failure to share Hasan's communications with DoD counterintelligence officials.

[166] See 18 U.S.C. Section 2332b(f), 28 C.F.R. Section 0.85(l), Homeland Security Presidential Directive 5.

[167] *Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation* (signed by the Deputy Secretary of Defense and the Attorney General).

[168] *Id.*, Section 6.C.2.

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- DoD argued that the Delimitations Agreement is directly applicable to the investigation of servicemembers for counterintelligence purposes – to include counterterrorism, by definition. A senior DoD counterintelligence official referred to the agreement as its "bible" governing its relationship with FBI on counterintelligence investigations. Thus, under DoD's view, the agreement required that the Army and not the JTTF lead the inquiry into Hasan and that the FBI notify DoD of the information in its possession regarding Hasan.

- In contrast, the FBI argued that the Delimitations Agreement is not operative with respect to counterterrorism and instead applies only to investigations of servicemembers for classic counterintelligence (*i.e.*, espionage). In the FBI's view, statutory and regulatory sources giving the FBI the lead for domestic counterterrorism investigations govern despite the Delimitations Agreement, and that agreement was signed prior to counterterrorism assuming such a preeminent investigative interest and giving rise to counterterrorism-specific organizations such as JTTFs. In addition, according to the FBI, the Delimitations Agreement has been negated by the "course of dealing." Thus, in the FBI's view, the FBI – through the JTTFs – rather than DoD has the lead for counterterrorism investigations of servicemembers. Under the FBI's view, the JTTFs were the appropriate lead for the inquiry into Hasan.

We are concerned that the question of lead responsibility for counterterrorism investigations of servicemembers is unresolved between the FBI and DoD. In addition, we believe that the legal question of which agency technically has the lead in general is secondary to the operational question of which agency is best situated from an expertise and resource perspective to conduct a particular investigation. In other words, just because the FBI is the *lead* agency for domestic counterterrorism investigations does not mean that the FBI is the *sole* agency conducting such investigations and that no other agency should have the lead in practice depending upon the circumstances. Having other agencies play a lead role in investigations makes sense in order to maximize inherently limited government resources. In the case of Hasan, DoD arguably was best situated to evaluate the counterterrorism threat posed by him given the existence of an entire Army unit with the mission of guarding against threats from within the Army. Thus, we are concerned that the JTTFs' failure to share information about Hasan with DoD may indicate a tendency within part of the FBI to believe that either a lead merits the FBI conducting a counterterrorism investigation or the lead is not worth investigating even by another agency. This tendency would detract from the optimal use of federal, state, and local capabilities beyond the FBI in order to investigate the most leads in the most efficient and effective manner.

Leaving aside the questions of which agency should lead counterterrorism investigations of servicemembers in principle or in practice, we note that the inquiry into Hasan was not only a counterterrorism investigation but also a classic counterintelligence (*i.e.*, espionage) investigation: Hasan's regard for the Suspected Terrorist, as evident in his first [REDACTED] communications [REDACTED], could eventually have led Hasan to seek to aid the enemy if he was deployed to Iraq or Afghanistan; at the very least, Hasan's regard for the Suspected Terrorist could have led Hasan to disclose Secret-level information -- which Hasan was cleared to access –

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in an unauthorized manner. Thus, even if the FBI is correct that it should lead investigations of servicemembers regarding *counterterrorism* (a position not supported by the Delimitations Agreement), the Hasan case was also a classic *counterintelligence* case and should have been reported to DoD for that purpose. As a result, the Delimitations Agreement would require that DoD have had the lead on the investigation from a counterintelligence perspective.

To the credit of both the FBI and DoD, immediately after the Fort Hood attack they took steps to ensure that DoD was aware of all then-existing FBI counterterrorism investigations involving DoD or DOD-affiliated personnel, devised and implemented a new procedure for providing DoD with notification of such investigations going forward, and initiated negotiations to consolidate and update the architecture of FBI/DoD agreements concerning information-sharing and operational coordination.[169] Under this notification policy, a JTTF is required to inform the National JTTF of a counterterrorism inquiry into a servicemember. The individual in the National JTTF to be informed is the Deputy Unit Chief for DoD matters, who will then notify the military counterintelligence entity in DoD most relevant to that servicemember. Also, within days of the attack, the FBI provided DoD with a list of FBI investigations concerning DoD-affiliated personnel or those with access to DoD facilities. The review found [REDACTED] investigations that had a nexus with DoD and that JTTFs had coordinated with the appropriate military investigative organization in [REDACTED] cases. (We do not know whether such coordination involved the lead for investigations of any servicemembers being transferred to DoD pursuant to the Delimitations Agreement.)

Although the FBI/DoD review found that the FBI coordinated over 90 percent of these cases with DoD, we are concerned about the gap given the clear-cut nature of the obligation. Not only did the failure to share information with DoD concerning Hasan play a major role in the government's failure to prevent the attack, but the reasons for the failure to share the Hasan information with DoD were not confined to the misjudgments of a select few but rather are related to policy disputes regarding the functioning of JTTFs. As indicated by the adoption of the new policy, the FBI agrees with the importance of informing DoD of investigations of servicemembers, but the key question of which agency should lead these investigations remains outstanding between the FBI and DoD. The FBI and DoD should be sure to resolve all of these questions related to the Delimitations Agreement in principle and in practice as they negotiate the new master DoD/FBI agreement.

2. DoD and the FBI disagree concerning the status of detailees to JTTFs as primary information-sharing channels of JTTF information back to DoD.

Our investigation has also revealed a significant disagreement between the FBI and DoD concerning whether the FBI giving Hasan's communications to the DCIS agent detailed to the Washington JTTF constituted sharing that information with DoD as a whole: Detailees from an agency to JTTFs are often governed by an agreement between the FBI and that agency covering administrative matters. All such agreements that we have reviewed prohibit a detailee from

[169] Federal Bureau of Investigation, Electronic Communication, *Counterterrorism Program Guidance: Notifications to Outside Agencies: Administrative and Operational Guidance* (January 7, 2010).

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sharing JTTF information with that detailee's home agency without first receiving permission from an FBI supervisor at the JTTF. The FBI's agreement with DCIS had this provision.[170]

- DoD argued that sharing information with a DoD detailee on a JTTF does not constitute sharing that information with DoD as a whole, for three reasons: *First*, each DoD detailee comes from a specific DoD agency and thus cannot represent all of DoD or know what JTTF information would be of interest to another DoD component. *Second*, any particular detailee only sees part of a JTTF's activities and thus cannot be the main avenue for sharing JTTF information with DoD. *Third*, the requirement that a detailee receive approval from an FBI supervisor prior to sharing information with his home agency means that the FBI effectively has veto power over what information is shared -- which is contrary to the FBI's information-sharing obligations under the Delimitations Agreement. In sum, DoD regards its detailees as primarily augmenting the JTTFs, not being information-sharing avenues – even if the DoD detailee actually leads the JTTF's investigation in which information of interest to DoD is generated.

- In contrast, the FBI argued that detailees are representatives of their departments and that the requirement for supervisor approval to share information is a low bar. The FBI's view is that the requirement ensures that the FBI knows when its information is being transmitted outside of the JTTF. The FBI's view is also that the requirement enables the FBI to coordinate any operational activity that the agency receiving the information may wish to conduct based on it. Thus, the FBI believes that sharing information with a DoD detailee constitutes sharing that information with DoD – even if the detailee is from DCIS in the DoD Office of Inspector General and the relevant DoD entity that would be interested in the information is the Army's counterintelligence entity, the 902nd Military Intelligence Group.

Thus, under DoD's view, the sharing of Hasan's first communications with the DCIS detailee in the Washington JTTF did not constitute sharing that information with DOD as a whole. In contrast, under the FBI's view, the sharing of the information with the DCIS detailee constituted sharing with DoD as a whole – and it was the DCIS detailee's decision as to whether the information merited being transmitted to any part of DoD; if the DCIS detailee had decided to share the information with DoD, then per DCIS's agreement with the FBI he would have needed his FBI supervisor's approval.

This interagency disagreement is reinforced by an additional factor that our investigation found: the lack of training provided to detailees concerning their purpose for being detailed to a JTTF. DoD's training of detailees has been episodic and does not articulate the purpose of the detailees being sent to the JTTFs. DoD's lack of training of detailees arguably reinforces, in silence, DoD's view that detailees from its components do not represent DoD as a whole. Simultaneously, the FBI's view of detailees' purpose is not reflected in its training of them; in

[170] *See, e.g.*, *Joint Terrorism Task Force Standard Memorandum of Understanding Between the Federal Bureau of Investigation and Defense Criminal Investigative Service* (hereinafter FBI/DCIS MOU), 2007, Section IX.A

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other words, the FBI does not instruct detailees to JTTFs that they should regard themselves as primary information-sharing avenues to their home agencies. The apparent inadequacy of the FBI's training of detailees was flagged by a Department of Justice Office of the Inspector General report in 2005, which identified the lack of training of detailees as a critical weakness in the JTTF program. That report faulted the FBI for "not provid[ing] written guidance that defines the roles and responsibilities of" detailees to JTTFs.[171] Since then, the FBI has taken steps to train detailees. However, the most recent FBI training material for detailees to JTTFs[172] lacks a discussion of the detailees' purpose.[173] Thus, detailees could master the training but never be informed that the FBI considered them to represent their entire home departments and to be the critical link for ensuring information-sharing.

DoD's argument that sharing information with a DoD detailee to a JTTF does not constitute sharing with DoD as a whole is more convincing. As mentioned, the Committee has no evidence that FBI and DoD training of detailees ever articulated that detailees represented their departments as a whole. The fact that an FBI supervisor could block the detailee from sharing that information with DoD proper – with no criteria, as seen by the Committee, developed by the FBI to guide that discretion – implies that DoD detailees were not a dedicated information-sharing avenue.

3. <u>FBI corrective action since the Fort Hood attack facilitates information-sharing with DoD but does not resolve the larger policy issues.</u>

Demonstrating its desire to ensure that JTTFs are effective information-sharing mechanisms, as described above the FBI reacted to the Fort Hood attack by instituting the new notification procedure for ensuring that DoD is informed of any counterterrorism inquiries into servicemembers. This policy appears to supersede any requirement that an FBI supervisor approve the sharing of information with DoD. This new policy appears to answer the specific question of whether DoD detailees are representatives of DoD as a whole by indicating that they are not – in other words, any issue regarding a servicemember being handled by a JTTF is sent to the National JTTF for transmission to DoD, rather than having DoD detailees at the relevant JTTF determine whether to inform DoD directly of the information. However, this new policy does not resolve the policy dispute concerning the issue as to whether the sharing of information within a JTTF with a detailee constitutes sharing that information with the detailee's home agency.

- This policy dispute is still relevant to FBI/DoD relations because the new notification procedure on its face covers only JTTF investigations of servicemembers, not JTTF investigations of matters that might affect DoD but are not concerning servicemembers. The FBI and DoD should be sure to resolve this question in the new master agreement that they are negotiating.

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[171] Department of Justice, Office of the Inspector General, *The Department of Justice's Terrorism Task Forces*, No. I-2005-007 (June 2005), at 68-74, 81-2.

[172] Federal Bureau of Investigation, *Joint Terrorism Task Force Task Force Officer Orientation A Reference Guide for New JTTF Task Force Officers (December 2009)*.

[173] *Id.*

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- In addition, the policy question of whether detailees are representatives of their home agencies is still applicable to other entities that send detailees to JTTFs aside from DoD. We recommend that the FBI and its partner agencies decisively resolve the issue of whether detailees are representatives of their agencies and ensure that detailees receive training to that effect.

4. The FBI's failure to link Hasan's first [REDACTED] communications to the Suspected Terrorist to his later ones stemmed in part from JTTF detailees' lack of access to key information, which suggests a major impediment to JTTFs' overall effectiveness.

A review of all of Hasan's communications with the Suspected Terrorist would have shown clearly that Hasan's communications were not research and merited a thorough investigation. As a result, the decision by FBI supervisors at the Washington JTTF to assign the DCIS agent to an inquiry [REDACTED] was flawed because of his lack of access to and knowledge of the [REDACTED] database. Access to that database was essential for the Hasan inquiry due to Hasan's subsequent communications.

Our finding in the Hasan case of the DCIS agent's lack of access to the [REDACTED] database comports with chronic data-access challenges facing detailees to JTTFs identified in prior studies. The Department of Justice's Office of the Inspector General reported in 2005 that "a majority of" detailees "with clearances did not have direct or complete access to the" FBI's Automated Case Support system, "even though such access was permitted by policy, which caused delays in their investigations."[174] The lack of access to the Automated Case Support system was eventually solved, but a survey of JTTF detailees conducted in 2007 by a twenty-three year FBI veteran who had acted as a JTTF supervisor found that detailees' lack of access to other databases continued even though, in his view, detailees must understand the available databases and be able to extract the necessary information from them in order to be effective JTTF members.[175] In fact, the DCIS representative to the National JTTF at the time of the Fort Hood attack not only lacked access to the [REDACTED] database but also was unaware of its existence.[176]

It is paradoxical that, in the Hasan case, the FBI would rely on a detailee so heavily for the Hasan inquiry but not provide that detailee with the full range of database access and training. The DCIS agent was thus in the unenviable position of being relied upon by the FBI as the lead for the JTTF inquiry into Hasan without having the tools necessary to perform competently.

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[174] *The Department of Justice's Terrorism Task Forces*, at 57.
[175] Anthony D'Angelo, *Strategic Change and the Joint Terrorism Task Force: Ideas and Recommendations*, Thesis for the Naval Postgraduate School (2007), at 83 (emphasis in original).
[176] Department of Defense, Office of the Inspector General, *Results of the Independent Review – Fort Hood Shooting Incident* (November 16, 2009), at 6.

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We are concerned by evidence that this problem goes well beyond the Hasan case. The former JTTF supervisor mentioned above wrote in his report, "The fact that (detailees) are less likely to receive substantive training, database access, and training [on how to operate sources], and yet may be assigned as primary or co-case agent in an investigation, goes against the JTTF concept."[177] The FBI's internal review after the Fort Hood attack confirmed that "many" detailees to JTTFs have been unaware of that database, although the FBI could not quantify that number. We find it difficult to align the FBI's view that JTTF detailees are representatives of their home departments for information-sharing purposes with the lack of access of such detailees to the type of information at issue here. Indeed, even if the DCIS agent had considered himself as responsible for representing DoD and serving as a primary bridge for information-sharing to DoD, he would have been unable to share the necessary information due to his lack of access to it.

To its credit, after the Fort Hood attack the FBI increased the training of detailees and FBI agents - 3,700 in all - to widen access to the database, with a prerequisite being an understanding of the rules governing [REDACTED].[178] We are troubled that the FBI made significant progress toward solving this apparently well-known problem only after a mission failure resulted. In any event, we hope that the FBI's action will finally solve this problem, and we will monitor progress to ensure that this barrier to effective JTTF operations and information-sharing is resolved completely.

5. We are concerned that JTTFs are not fulfilling the FBI's vision of being interagency information-sharing and operational coordination mechanisms but rather may merely be appendages of the FBI.

Drawing together the issues of the Delimitations Agreement, the status of detailees for information-sharing, and detailees' lack of access to database, we are concerned JTTFs are not fulfilling the FBI's vision of being the premier domestic counterterrorism mechanism for interagency information-sharing and operational coordination.[179] The question of detailees' status as information-sharing mechanisms needs to be resolved, and training provided by the FBI and detailees' home departments needs to articulate their role clearly. The FBI also must ensure that detailees have the training and access to the full array of databases so that they can become full-fledged members of the JTTFs.

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[177] *Strategic Change and the Joint Terrorism Task Force*, at 81.

[178] *See, e.g.*, Federal Bureau of Investigation, National Joint Terrorism Task Force, *Joint Terrorism Task Force Program: Mandatory Training for JTTF Members* (January 15, 2010).

[179] The "319 Group," composed of current and former senior intelligence and law enforcement officials, has written that "the JTTFs operate as a hub-and-spokes system in which intelligence goes up but does not necessarily come back down, and there is little lateral communication. This guarantees FBI control of information, which other agencies resent as contrary to partnership." The 319 Group, *America's Domestic Intelligence is Inadequate: The Country Still Lacks a Coherent National Domestic Intelligence-Collection Effort* (June 2010), at 13. A former director of intelligence analysis at the New York Police Department has written that "local officials on JTTFs are functionally federalized: they are given access to classified information and are discouraged from reaching back to their home agencies." Samuel Rascoff, "The Law of Homegrown (Counter)Terrorism," in *Texas Law Review* (June 2010), at 1743

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We also believe that improvements are needed regarding the FBI supervisor approval requirement for sharing information outside of a JTTF, as mandated by the FBI's agreements with the other departments providing detailees. This requirement is arguably necessary (leaving aside specific exceptions such as the Delimitations Agreement) so that FBI supervisors can keep tabs on their investigative information and ensure deconfliction among departments. Still, FBI headquarters should clarify expectations to its personnel in writing regarding whether the FBI-supervisor-approval requirement for sharing information outside of the FBI is an administrative step or a substantive hurdle. If the review is a substantive hurdle, then the FBI should justify why such a hurdle is required and clarify the criteria for sharing information. If the review is not a substantive hurdle, then the FBI should educate the departments sending detailees to the JTTFs so that there is a common understanding among the FBI and those departments. The FBI also should highlight this requirement in its training of detailees and encourage them to utilize this process for sharing information with their home departments. The FBI might create a formal process to contest an FBI supervisor's decision that prevents a detailee from sharing information and to protect detailees who file appeals from repercussions.

We remain concerned that the dispute between the FBI and DoD regarding the interpretation of the Delimitations Agreement remains unresolved. More generally, the FBI should ensure that its JTTFs do not operate under the belief that they (to use government jargon) "own" counterterrorism investigations as well as the information that those investigations produce. Such a belief could unfortunately result in a JTTF believing that, if it determines that a particular individual does not pose a threat, then there is no reason to pass the information to another department. As has been proven time and again in the intelligence context, information that may not appear troubling to one analyst may complete the puzzle for another analyst who has a different perspective or access to other information. In other words, as the Fort Hood case illustrates, information on violent radicalization in the hands of one entity can be misinterpreted, but effective information-sharing can add unique perspectives to help identify threats. Effective operational coordination can help ensure that the entity best situation to act on the threat does so.

Finding: JTTF personnel never cited any legal restrictions as the reason that Hasan's communications were not shared with DoD counterintelligence officials. Our investigation surfaced a policy dispute concerning whether detailees to JTTFs were representatives of their departments and thus served a major information-sharing function. As revealed in the Hasan case and reinforced by other evidence, detailees to JTTFs have often lacked adequate access to databases and training but paradoxically are relied upon to lead JTTF investigations. As a result, we are concerned that JTTFs may not be fulfilling their intended role as interagency information-sharing and operational coordination mechanisms.

Recommendation: The FBI should ensure that JTTFs fulfill the broader role of being mechanisms for interagency information-sharing and operational coordination rather than being mere FBI investigative entities and sources of personnel augmentation. Detailees need training and access to databases so that they can be full-fledged members of the JTTFs. The FBI

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and departments sending detailees should agree upon and train them regarding the purpose of their detail. The FBI also should clarify the requirement that FBI supervisors approve the sharing of information by a detailee with his home agency by setting forth criteria for such approval, creating an appeals process, and evaluating the process periodically. Finally, the FBI should ensure that it facilitates other entities in playing critical investigative roles in countering terrorism and other national security threats, including by sharing appropriate information and having those entities lead investigations in order to use inherently limited government resources and expertise most efficiently and effectively.

E. The FBI's Training Materials Contemporaneous To The Hasan Inquiry Did Not Adequately Cover The Ideology Of Violent Islamist Extremism.

Hasan's first [REDACTED] communications, scrutinized by both JTTFs, were not conclusive of terrorist conspiracy or that Hasan was radicalizing to violent Islamist extremism. Hasan, however, was a military officer who had sworn an oath to support and defend the Constitution, held a Secret-level security clearance, and could be deployed to a combat zone in which violent Islamist extremists were the enemy. In that light, Hasan's initial [REDACTED] communications contained significant anomalies that should have triggered additional and urgent investigative activity even though the Officer Evaluation Reports praised his research concerning terrorism. These [REDACTED] communications were [REDACTED], meandered in a "stream of consciousness," hinted at the answer Hasan wanted to hear, and had content that contravened officership standards. The communications on their face raised questions of whether Hasan was a potential counterintelligence or counterterrorism threat that relying merely on his Officer Evaluation Reports, as opposed to interviewing his superiors and colleagues, could not answer. Yet neither the DCIS agent nor the FBI supervisor at the Washington JTTF picked up on the communications' signals.

The inadequacy of the Washington JTTF's inquiry led us to examine the training materials regarding the understanding of radicalization to violent Islamist extremism among the agents on the front-lines of the FBI's counterterrorism efforts. The FBI provided the Committee with a swath of training material and analytical reports concerning radicalization in the United States, including the training material that the San Diego JTTF received.[180] (FBI lacks records of what training was provided to the DCIS agent in the Washington JTTF.) These documents focus on the various behavioral indicators of radicalization (*e.g.*, the individual isolates himself from his friends) but have little information on the ideology of violent Islamist extremism and the reasons for its appeal. In other words, the documents ignore the *substance* of radicalization, including what violent Islamist extremists believe and why. Understanding the ideology of violent Islamist extremism would assist agents in determining, in conjunction with an individual's conduct, what degree of risk an individual might present and whether to pursue further inquiry.

[180] Federal Bureau of Investigation, *Table of Contents* for material provided to the Senate Committee on Homeland Security and Governmental Affairs, August 25, 2010.

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Based on our review of the training documents provided to us by the FBI, we believe that the FBI should produce in-depth analysis of the ideology of violent Islamist extremism, the factors that make that ideology appealing to individuals (including U.S. citizens and legal permanent residents), and what ideological indicators or warning signs show that the individual is weighing or accepting the ideology. Our review also leads us to believe that the FBI also should provide sufficient training to its agents including: (1) ideological indicators or warning signs of violent Islamist extremism to serve as an operational reference guide, and (2) the difference between violent Islamist extremism and the peaceful practice of Islam.

Following the Fort Hood attack, the FBI acted to improve the training of its agents by developing radicalization training material jointly with the National Counterterrorism Center. We learned that this material was completed by NCTC and presented to three field offices during the fall of 2010.

Finding: The FBI's internal training materials contemporaneous to the Hasan inquiry did not provide sufficient guidance concerning the ideology of violent Islamist extremism and intellectual indicators that evince that an individual is subscribing to that ideology.

Recommendation: The FBI and other intelligence agencies should ensure that they have sufficient understanding of the ideology of violent Islamist extremism and that ideological indicators or warning signs have been developed for use by agents. Our Committee will review the training materials recently completed by NCTC and the FBI to ensure their adequacy.

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VII. The United States Needs A Comprehensive Approach To Countering The Threat Of Homegrown Terrorism.

The Hasan case emphasizes the fact that the United States needs to strengthen its defenses against homegrown violent Islamist extremism in order to be sufficiently capable of identifying individuals in our country who are radicalizing to violent Islamist extremism, taking action to deter such radicalization, and disrupting terrorist plots when they arise among such radicalized Americans. There needs to be adequate coordination across federal, state, and local jurisdictions to counter the evolving homegrown terrorist threat. The United States must also carefully consider what types of counterradicalization activity are appropriate, and by whom, and then develop a comprehensive national approach to this challenge. All of this should be done in consultation with Muslim-American communities.

As discussed in Chapter II, the number of cases of homegrown terrorism escalated substantially beginning in 2009. The pace of radicalization encouraged by propaganda on the Internet and by English-speaking terrorist operatives that direct recruiting messages and other encouragement to individuals within the United States that may be radicalizing has increased. So inspired, these violent radicals can initiate operations on their own, with little or no contact with terrorist groups. Many attacks require less sophisticated planning and therefore can be undertaken more rapidly.

Analysis of recent cases shows that a generic profile of a homegrown violent Islamist extremist cannot easily be developed. The only common thread is these individuals' adherence to the ideology of violent Islamist extremism.[181]

As stated in a September 2010 report by two prominent counterterrorism experts:

> The conventional wisdom has long been that America was immune to the heady currents of radicalization affecting both immigrant and indigenous Muslim communities elsewhere in the West. That has now been shattered by the succession of cases that have recently come to light of terrorist radicalization and recruitment occurring in the United States. And while it must be emphasized that the number of U.S. citizens and residents affected or influenced in this manner remains extremely small, at the same time the sustained and growing number of individuals heeding these calls is nonetheless alarming. . . .
>
> The diversity of these latest foot soldiers in the wars of terrorism being waged against the U.S. underscores how much the terrorist threat has changed since the September 11, 2001 terrorist attacks. In the past year alone the United States has seen affluent suburban Americans and the progeny of hard-working immigrants gravitate to terrorism. Persons of color and Caucasians have done so. Women along with men. Good students and well-educated individuals and high school dropouts and jailbirds. Persons born in the U.S. or variously in Afghanistan,

[181] Peter Bergen and Bruce Hoffman, *Report of the National Security Preparedness Group: Assessing the Terrorist Threat* (September 10, 2010), at 29.

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> Egypt, Pakistan, and Somalia. Teenage boys pumped up with testosterone and middle-aged divorcees. The only common denominator appear to be a newfound hatred for their native or adopted country, a degree of dangerous malleability, and a religious fervor justifying or legitimizing violence that impels these very impressionable and perhaps easily influenced individuals toward potentially lethal acts of violence.[182]

This volatile mix of factors places incredible burdens on our law enforcement and intelligence officers and underscores the need for a coherent and rationalized approach to information-sharing, operational coordination, resource allocation, and overall strategy across federal, state, and local jurisdictions. As discussed above vis-à-vis the Delimitation Agreement, even if JTTFs become true interagency information-sharing and operational coordination mechanisms, they are still only one node – a large and critical node, to be sure – in the nation's overall law enforcement and intelligence network. Other federal entities have their own roles to play, for example DoD in investigating potential counterintelligence threats involving servicemembers and other federal departments investigating activity within their jurisdiction that has terrorist or other national security dimensions. State and local law enforcement also bring resources and expertise. Ensuring integration of all the components of our counterterrorism defenses domestically is an ongoing challenge and requires greater focus by senior government leaders.[183]

Even so, concentration on law enforcement and intelligence tactics to disrupt terrorists preemptively, prior to their conducting an attack, is important but insufficient. A critical strategic question for the United States is how to counter the spread of violent Islamist extremist radicalization domestically in order to preempt such cases from arising. Without confrontation of the ideology motivating terrorism, there is no reason to believe that the number of homegrown terrorists will abate.[184]

Consider if Hasan had actually been discharged prior to November 5, 2009: It is unclear that there would have been any way to ameliorate the radicalization of Hasan the civilian to violent Islamist extremism and, if so, which entity or entities across federal, state, or local governments or the private sector would have been the lead. And it is also unclear whether doing so is an appropriate role for law enforcement and intelligence agencies as opposed to other governmental or even non-governmental entities. When law enforcement or intelligence agencies can identify an individual in the process of radicalizing – such as an individual who is communicating [REDACTED] – such agencies may introduce [REDACTED] against the individual. If the individual takes affirmative steps toward engaging in terrorism, then the individual can be arrested. However, if the individual does not actually move forward with

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[182] *Id.*

[183] The 319 Group, composed of former senior law enforcement and intelligence professionals, recently concluded, the United States lacks a "systemic, coherent" approach across law enforcement, intelligence, and homeland security and that the current "structure is an array of federal, state, and local capabilities, each with its own strengths and weaknesses." *America's Domestic Intelligence is Inadequate*, at 2, 13, 15

[184] *See* J. Scott Carpenter, Matthew Levitt, Steven Simon, and Juan Zarate, *Fighting the Ideological Battle: The Missing Link in U.S. Strategy to Counter Violent Extremism* (Washington Institute for Near East Policy, 2010), at 1

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terrorist activity, then law enforcement and intelligence agencies have a limited role. A whole-of-government approach — which taps into the nongovernmental and private sectors — is needed to counter radicalization toward violent Islamist extremism.

The FBI does outreach to leaders and activists in Muslim-American communities to seek to develop trust, address concerns, and dispel myths concerning the FBI. The Department of Homeland Security conducts outreach concerning the civil rights and privacy implications of its policies. State and local governments have the greatest knowledge of their communities by virtue of community policing and the provision of local services. And private groups could provide counterradicalization initiatives through preventative education and *post hoc* deprogramming similar to the work of anti-cult groups. Although there is a nascent effort within the Executive Branch, the United States is missing the coherent architecture of policies, programs, partnerships, and resources that will engage in the ideological struggle and counter the growth of homegrown terrorism.

Finding: The United States is confronted by a growing threat of homegrown terrorism but lacks sufficient capability to identify individuals in our country who are radicalizing to violent Islamist extremism, to deter such radicalization, and to disrupt terrorist plots when they arise.

Recommendation: We request that the National Security Council and Homeland Security Council in coordination with state and local officials ensure a comprehensive approach to countering the threat of homegrown terrorism.

First, this effort would include leadership by the Attorney General, Secretary of Homeland Security, and Director of National Intelligence to ensure an integrated law enforcement, intelligence, and homeland security approach domestically.

Second, we request that the federal government (1) carefully consider what types of counterradicalization activity could be effective, and by whom, across federal, state, and local governments and the private sector and then (2) develop a national approach to this challenge utilizing all relevant federal agencies including those not traditionally part of counterterrorism. That approach should be implemented into specific, coordinated, and measurable programs across the government. A system could then be developed to measure compliance with those plans, and regular reports of the success of those programs could be made to the National Security Council and the Homeland Security Council.

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APPENDIX: COMPILATION OF FINDINGS AND RECOMMENDATIONS

Strengthening DoD Policies And Training To Prevent Radicalization Of Servicemembers To Violent Islamist Extremism

Finding: DoD policies provided Hasan's superiors with sufficient authority to discipline or discharge him based on his conduct as witnessed by fellow servicemembers and his superiors. However, DoD lacked an institutional culture, through policies and training, sufficient to inform commanders and servicemembers on how to identify radicalization to violent Islamist extremism and to distinguish this ideology from the peaceful practice of Islam.

DoD avoided referencing violent Islamist extremism explicitly in the West/Clark inquiry into the Fort Hood attack or in the recommendations issued by DoD in response to the review. It will be more difficult for the military to develop effective approaches to countering violent Islamist extremism if the identity and nature of the enemy cannot be labeled accurately.

Recommendation: DoD leadership should identify the enemy as violent Islamist extremism explicitly and directly in order to enable DoD to confront it effectively and efficiently. DoD should reform religious discrimination and other equal opportunity policies to distinguish violent Islamist extremism from legitimate, protected religious observance of Islam so that commanders will not be reluctant to deal with displays of violent Islamist extremism among servicemembers and in order to protect the thousands of Muslim-American servicemembers from unwarranted suspicion. Servicemembers should receive specific training concerning the ideology and behaviors associated with violent Islamist extremism – and how they differ from the peaceful practice of Islam. Finally, DoD should ensure that personnel evaluations are accurate with respect to any evidence of violent Islamist extremist behavior.

Strengthening The FBI To Prevent Domestic Terrorist Attacks

Finding: There was a fundamental disjunction between the San Diego JTTF and the Washington JTTF concerning who was responsible for investigating [REDACTED] communications between Hasan and the Suspected Terrorist. That disjunction contributed to the Washington JTTF's failure to conduct an intensive investigation of Hasan, including interviews of his superiors and colleagues, based on all available information regarding Hasan's communications with the Suspected Terrorist. Neither the FBI's headquarters-based Counterterrorism Division nor the National JTTF was notified of or resolved the conflict between the field offices and thus were unable to take steps to resolve it. As a result, the FBI's inquiry into Hasan was terminated prematurely. The FBI lacks documents that articulate the

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division of labor and hierarchy of command-and-control authorities among the Counterterrorism Division, the National JTTF, the FBI's headquarters-based intelligence analysis unit called the Directorate of Intelligence, the field offices, and the JTTFs. The leadership of the Counterterrorism Division has also experienced significant turnover since 9/11. Thus, despite the FBI's progress in strengthening its headquarters and bringing field offices under a strategic framework, the Hasan case leads us to be concerned that the FBI remains divided among strong field offices and between the field offices and its headquarters.

Recommendation: The FBI should ensure the appropriate balance between field office autonomy and headquarters central control in order to become the intelligence-driven organization it wants to be. Headquarters elements such as the Counterterrorism Division and the National JTTF should actively identify and resolve investigative disagreements and ensure that they conduct sufficient oversight of how field offices are aligning their activities with strategic priorities for intelligence collection and analysis. The FBI should articulate in writing the command-and-control hierarchy among its headquarters and field entities in order to ensure clear responsibility, authority, and accountability for national security activities.

Finding: Despite the FBI's improvements in its analytic capability, intelligence analysts were not integrated sufficiently into the inquiry into Hasan. Such integration might have enabled the JTTF to: (1) gain a broader perspective on the significance of Hasan's communications with the Suspected Terrorist, [REDACTED], (2) orient the inquiry into Hasan to whether he was radicalizing rather than just whether he was engaged in overt terrorist activity, (3) analyze Hasan's communications more critically as to whether they were truly research, and (4) suggest what information to seek in order to determine whether Hasan was radicalizing to violent Islamist extremism or otherwise constituted a national security threat.

Recommendation: We are concerned that analysts may not be sufficiently integrated into operations and may lack sufficient stature within the FBI vis-à-vis agents as necessary for an intelligence-driven organization. As the Hasan case shows, the FBI should ensure that analysts are integrated into operations and play a major role in driving operational decisionmaking. At a basic level, the FBI should ensure that – unlike in the Hasan case – agents consult with analysts routinely, and the FBI should ensure that agents who integrate analysts into their operational activities are rewarded and agents who do not are held accountable. For example, the FBI should accelerate its use of combined agent/analyst threat fusion centers. More generally, the FBI should ensure the dismantling of barriers to intelligence analysts assuming a prominent role in the organization and that analysts have sufficient leadership opportunities at all levels, including to supervise

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agents as appropriate. Finally, the FBI should ensure that analysts receive the technological and other support necessary to produce sophisticated analysis.

Finding: The FBI did not update its tradecraft for purposes of its investigation of the Suspected Terrorist. The FBI could not easily link Hasan's initial communications with the Suspected Terrorist to his later communications, and the failure to do so was a factor in the government not intervening against Hasan before the attack, and the FBI should have identified and remedied its inability to link his communications together prior to the attack.

Recommendation: The FBI should ensure that its internal processes are effective in identifying tradecraft that is outmoded as compared to evolving threats.

Finding: The FBI's inquiry into Hasan was focused on whether Hasan was engaged in overt terrorist activities. The inquiry did not pursue whether Hasan might be radicalizing to violent Islamist extremism, what information his radicalization and relationship with the Suspected Terrorist could contribute to the larger understanding of radicalization, and whether Hasan might become a counterterrorism or counterintelligence threat in the future.

Recommendations: The FBI should ensure that agents understand practically how being intelligence-driven should affect their investigative objectives and operational activities.

Finding: JTTF personnel never cited any legal restrictions as the reason that Hasan's communications were not shared with DoD counterintelligence officials. Our investigation surfaced a policy dispute concerning whether detailees to JTTFs were representatives of their departments and thus served a major information-sharing function. As revealed in the Hasan case and reinforced by other evidence, detailees to JTTFs have often lacked adequate access to databases and training but paradoxically are relied upon to lead JTTF investigations. As a result, we are concerned that JTTFs may not be fulfilling their intended role as interagency information-sharing and operational coordination mechanisms.

Recommendation: The FBI should ensure that JTTFs fulfill the broader role of being mechanisms for interagency information-sharing and operational coordination rather than being mere FBI investigative entities and sources of personnel augmentation. Detailees need training and access to databases so that they can be full-fledged members of the JTTFs. The FBI and departments sending detailees should agree upon and train them regarding the purpose of their detail. The FBI also should clarify the

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requirement that FBI supervisors approve the sharing of information by a detailee with his home agency by setting forth criteria for such approval, creating an appeals process, and evaluating the process periodically. Finally, the FBI should ensure that it facilitates other entities in playing critical investigative roles in countering terrorism and other national security threats, including by sharing appropriate information and having those entities lead investigations in order to use inherently limited government resources and expertise most efficiently and effectively.

Finding: The FBI's internal training materials contemporaneous to the Hasan inquiry did not provide sufficient guidance concerning the ideology of violent Islamist extremism and intellectual indicators that evince that an individual is subscribing to that ideology.

Recommendation: The FBI and other intelligence agencies should ensure that they have sufficient understanding of the ideology of violent Islamist extremism and that ideological indicators or warning signs have been developed for use by agents. Our Committee will review the training materials recently completed by NCTC and the FBI to ensure their adequacy.

A Comprehensive Approach To Countering The Threat Of Homegrown Terrorism.

Finding: The United States is confronted by a growing threat of homegrown terrorism but lacks sufficient capability to identify individuals in our country who are radicalizing to violent Islamist extremism, to deter such radicalization, and to disrupt terrorist plots when they arise.

Recommendation: We request that the National Security Council and Homeland Security Council in coordination with state and local officials ensure a comprehensive approach to countering the threat of homegrown terrorism.

First, this effort would include leadership by the Attorney General, Secretary of Homeland Security, and Director of National Intelligence to ensure an integrated law enforcement, intelligence, and homeland security approach domestically.

Second, we request that the federal government (1) carefully consider what types of counterradicalization activity could be effective, and by whom, across federal, state, and local governments and the private sector and then (2) develop a national approach to this challenge utilizing all relevant federal agencies including those not traditionally part of counterterrorism. That approach should be implemented into specific, coordinated, and measurable programs across the government. A system could then be developed to measure compliance with those plans, and regular reports of the success of those programs could be made to the National Security Council and the Homeland Security Council.

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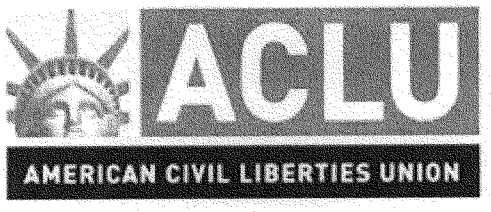

Written Statement of the
American Civil Liberties Union

Laura W. Murphy
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Senate Homeland Security
and Governmental Affairs Committee

February 15, 2011

A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack

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Chairman Lieberman, Ranking Member Collins, and Members of the Committee:

The American Civil Liberties Union is a non-partisan organization of over half a million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the protection of individual rights and civil liberties under the U. S. Constitution and the Bill of Rights. We write today to take issue with one of the cornerstones of the Committee's report dated February 3, 2011, on the Fort Hood shootings entitled, *A Ticking Time Bomb*, the subject of today's hearing. A flawed analysis issued by the New York Police Department (NYPD) in 2007 serves as that cornerstone and provides the primary justification for this committee's call in the Fort Hood report to focus in on "developing a comprehensive national approach to countering homegrown radicalization to violent Islamist extremism".[1] Because it ignores the basic flaws in the NYPD analysis, the Committee has improperly cast suspicion on the entire Muslim community in America – thereby erecting higher barriers to Muslim-Americans confidence in and assistance to the domestic counter-terrorism effort. Your report has made it more likely that law enforcement officials will misunderstand the scientific evidence surrounding risk factors for violence and focus their investigative efforts on innocent Americans because of their religious beliefs rather than on true threats to the community.

The danger posed by modern terrorists is real and Congress must understand the scope and nature of the threat and exercise its authorities appropriately in overseeing the government's response, holding our military, law enforcement and intelligence agencies accountable, and crafting sensible legislation that enhances security while protecting the rights of innocent persons. But the security threat was no less real during the first 'Red Scare', during the Cold War, and during the era of protests against the Vietnam War. The question is not whether Congress should respond but how it should respond. History tells us that conflating the expression of unorthodox or even hostile beliefs with threats to security only misdirects resources, unnecessarily violates the rights of the innocent, and unjustly alienates communities unfairly targeted as suspicious. Justice Brandeis argued that "[f]ear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men

[1] *A Ticking Time Bomb: Counterterrorism Lessons from the U. S. Government's Failure to Prevent the Fort Hood Attack*, United States Senate Committee on Homeland Security and Governmental Affairs at 11 (Feb. 3, 2011). The Committee report concludes that America's enemy is not terrorism or a particular organization or state, but rather 'the ideology of violent Islamic extremism'. *Id.* at 17. In doing so, the report simply ignores all instances of domestic terrorism except those fitting the report's view of 'America's enemy'. While the report offers no justification for such a limited view, it rests its entire theory upon the path to radicalization set forth in the NYPD report. *Id.* at 17 – 18.

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from the bondage of irrational fears."[2] The Committee's Fort Hood report contributes to a predisposition to unfairly target the entire Muslim community in America as suspicious and, in doing so, misses an opportunity to encourage an examination of the commonalities in all domestic terrorist incidents, regardless of the existence of ideologically-driven motivations.

The Committee's Fort Hood report goes down the wrong path in large part due to its unquestioning reliance on a single ill-conceived and methodologically flawed report produced by one city police department. The 2007 New York Police Department report, *Radicalization in the West: The Homegrown Threat*, concludes not only that terrorist acts are linked to the adoption of certain beliefs but that there is a uniform process of "radicalization" in which one progresses from belief to association to terrorism. The NYPD report purports to identify a four-step "radicalization process" that terrorists follow. But even the authors of the study admit crucial limitations to the application of their theory, namely:

- that not all individuals who begin the process pass through all the stages;
- that many "stop or abandon this process at different points;" and
- that "individuals do not always follow a perfectly linear progression" through the four steps.[3]

So these are not consecutive steps along a path at all, but rather four stones scattered in the woods which a terrorist or anyone else wandering through may or may not touch.

Each of the four steps described in the NYPD report involves constitutionally-protected religious and associational conduct. The authors ignore the fact that millions of people may progress through one, several, or all of these "stages" and never commit an act of violence. Moreover, these conclusions are based on just five terrorism cases, clearly a statistically insignificant sample from which to draw such sweeping conclusions. Yet the Virginia Fusion Center, for example, has cited the NYPD report, as well as Department of Homeland Security (DHS) and FBI reports, in designating the state's universities and colleges as "nodes of radicalization" requiring law enforcement attention and characterized the "diversity" surrounding a Virginia military base and the state's "historically black" colleges as possible threats.[4]

The NYPD report drew quick condemnation from the civil liberties and Muslim communities. The Brennan Center for Justice issued a memo complaining of the report's "foreseeable stigmatizing effect, and its inferential but unavoidable advocacy of racial

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[2] *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring).
[3] Mitchell Silber and Arvin Bhatt, New York Police Department, *Radicalization in the West: The Homegrown Threat*, at 6 (2007). This report seems to draw heavily from an earlier FBI Intelligence Assessment, *The Radicalization Process: From Conversion to Jihad* (May 10, 2006) though it is not cited.
[4] *See* ACLU press release, *Fusion Center Declares Nation's Oldest Universities Possible Terrorist Threat* (Apr. 6, 2009) *available at*: http://www.aclu.org/technology_and_liberty/fusion_center_declares_nation%E2%80%99s-oldest-universities-possible-terrorist-threat

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and religious profiling."[5] New York City Muslim and Arab community leaders formed a coalition in response to the NYPD report and issued a detailed analysis criticizing the NYPD for wrongfully "positing a direct causal relation between Islam and terrorism such that expressions of faith are equated with signs of danger," and potentially putting millions of Muslims at risk.[6]

A 2008 report by this Committee entitled *Violent Islamist Extremism, The Internet, and the Homegrown Terrorism Threat* ignored this criticism and once again restated the NYPD's flawed radicalization theories in arguing for a national strategy "to counter the influence of the Ideology."[7] Again, Muslim and Arab civil liberties organizations united to issue a joint letter complaining that the report "undermines fundamental American values" and "exacerbates the current climate of fear, suspicion and hatemongering of Islam and American Muslims."[8] And now this Committee has also relied upon this flawed report yet again to argue that the existence of such a path to radicalization justifies a renewed law enforcement and intelligence focus in a manner that will bring unjustifiably severe focus on the entire Muslim community in America.

It is important to recognize the impact these dubious reports have on the American Muslim and Arab communities, as explained in their thoughtful responses, because the Committee has heard in the past testimony from several witnesses who cited the growth of Islamophobia and the polarization of the Muslim community as risk factors that could raise the potential for extremist violence.[9] If the goal is to encourage greater community cooperation with law enforcement, the last thing government should be doing is isolating that community and imbuing it with an aura of suspicion and guilt by association.

Indeed a more recent United Kingdom analysis based on hundreds of case studies of individuals involved in terrorism reportedly concluded that, contrary to the NYPD study, there is no single identifiable pathway to extremism and "a large number of those

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[5] Aziz Huq, *Concerns with Mitchell D. Silber and Arvin Bhatt, N.Y. Police Dep't, Radicalization in the West: The Homegrown Threat*, New York University School of Law, Brennan Center for Justice (Aug. 30, 2007) *available at* http://brennan.3cdn.net/436ca44aae969ab3c5_sbm6vtxgi.pdf. *See also* American Civil Liberties Union et al., *Coalition Memo to the Senate Committee on Homeland Security and Governmental Affairs Regarding "Homegrown Terrorism,"* (May 7, 2008) *available at* http://www.aclu.org/safefree/general/35209leg20080507.html.

[6] Muslim American Civil Liberties Coalition, *CountertERRORism Policy: MACLC's Critique of the NYPD's Report on Homegrown Terrorism* (2008).

[7] United States Senate Committee on Homeland Security and Governmental Affairs Majority and Minority Staff Report, *Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat* (May 8, 2008).

[8] Coalition Letter to the Honorable Joseph I. Lieberman and the Honorable Susan M. Collins (May 14, 2008) *available at* http://www.muslimadvocates.org/documents/temporary_HSGAC_report_Allied_response_FINAL.pdf

[9] *See, e.g.*, Hearing of the Senate Homeland Security and Governmental Affairs Committee, *Violent Islamist Extremism: The European Experience* (June 27, 2007) (testimony of Lidewijde Ongering and Marc Sageman among others, available at: http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=9c8e1805-75c8-48c2-810d-d778af31ccc6).

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involved in terrorism do not practice their faith regularly."[10] Moreover, the study reportedly identified "facing marginalization and racism" as a key vulnerability that could tend to make an individual receptive to extremist ideology.[11] The conclusion supporting tolerance of diversity and protection of civil liberties was echoed in a National Counterterrorism Center (NCTC) paper published in August 2008. In exploring why there was less violent homegrown extremism in the U.S. than the U.K., the authors cited the diversity of American communities and the greater protection of civil rights as key factors.[12] The Department of Defense's (DOD) report on force protection after the Ft. Hood shootings looked at the scientific literature, rather than flawed theories, and determined that "researchers have yet to develop a single model that can estimate who is at risk for potential violence."[13] The report emphasized that predicting who might become violent is extremely difficult because while researchers have identified certain risk factors, "few people in the population who have risk factors... actually assault or kill themselves or others."[14] Most importantly, and contrary to the NYPD report, the DOD study found that religious fundamentalism is not a risk factor, "as most fundamentalist groups are not violent, and religious-based violence is not confined to members of fundamentalist groups."[15]

It is also important to remember that Muslim and Arab groups aren't the only ones affected by the government's inappropriate reliance on an unsubstantiated theory of radicalization. Non-violent protest groups have repeatedly been targeted for surveillance and infiltration by law enforcement over the last several years based on their opposition to government policies from both sides of the political spectrum. An assessment published by the Department of Homeland Security (DHS) in 2009 warned that right-wing extremists might recruit and radicalize "disgruntled military veterans."[16] An intelligence report produced for DHS by a private contractor accused environmental organizations like the Sierra Club, the Humane Society and the Audubon Society as "mainstream organizations with known or possible links to eco-terrorism."[17] Similarly, a Missouri Fusion Center released an intelligence report on "the modern militia movement" that claimed militia members are "usually supporters" of presidential candidates Ron

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[10] Alan Travis, "*MI5 Report Challenges Views on Terrorism in Britain*," The Guardian, (Aug. 20, 2008) *at* http://www.guardian.co.uk/uk/2008/aug/20/ukseccurity.terrorism1; Alan Travis, *The Making of an Extremist*, The Guardian (Aug. 20, 2008) *at*: http://www.guardian.co.uk/uk/2008/aug/20/ukseccurity.terrorism

[11] *Id.*

[12] National Counterterrorism Center Conference Report, *Towards a Domestic Counterradicalization Strategy*, (August 2008). Notwithstanding the conclusion, the paper inexplicably went on to examine how the U.S. could better adopt U.K. counterterrorism strategies.

[13] *See* Department of Defense, *Protecting the Force: Lessons from Fort Hood*, Report of the DOD Independent Review at Appx. D (Jan. 2010) *available at* http://www.defense.gov/pubs/pdfs/DOD-ProtectingTheForce_Web_Security_HR_13jan10.pdf.

[14] *Id.*

[15] *Id.*, at D-3.

[16] *See* U.S. Dep't of Homeland Security, *Assessment: Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment* (Apr. 7, 2009), *available at* http://wnd.com/images/dhs_rightwing-extremism.pdf.

[17] UNIVERSAL ADVERSARY DYNAMIC THREAT ASSESSMENT, ECO-TERRORISM, ENVIRONMENTAL AND ANIMAL RIGHTS MILITANTS IN THE UNITED STATES (May 7, 2008) *available at* http://wikileaks.org/leak/dhs-ecoterrorism-in-us-2008.pdf.

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Paul and Bob Barr.[18] Slandering upstanding and respectable organizations does not just violate the rights of these groups and those who associate with them, it wastes security resources and undermines public confidence in the government.

So, we do not criticize the Committee's report and the underlying NYPD report solely because they tend to cast guilt by association upon America's Muslim community – though they do just that. More broadly, these reports suggest that there is something inherently wrong in radical belief systems, something worthy of investigation and suspicion. Instead, the basis for bringing law enforcement and intelligence resources to bear on a problem should rest on whether the targets are prone to violence and/or criminal behavior. Ideological beliefs, even extreme ones, are entitled to the full protection of the First Amendment to the U. S. Constitution. As Barry Goldwater said to the Republican National Convention in 1964, "Extremism in the defense of liberty is no vice." This report rests on a wholly contrary assumption – that radical beliefs alone justify suspicion and investigation. Such an assumption is wrong under the First Amendment, wrong under traditional American principles of fairness and justice, and should not serve as the basis for this Committee's recommendations to target Muslims in America.[19]

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[18] T.J. Greaney, *'Fusion Center' Data Draws Fire over Assertions*, COLOMBIA DAILY TRIBUNE, (Mar. 14, 2009) *available at* http://www.columbiatribune.com/news/2009/mar/14/fusion-center-data-draws-fire-over-assertions/.

[19] This statement has focused on the NYPD report and its flaws due to its centrality to the Committee's report. We have other concerns with the Committee report, including its failure to recognize the role played by over-classification in preventing adequate access to information on the part of some investigators, and its failure to consider the inadequacy of whistleblower protections that might otherwise have encouraged reluctant FBI personnel to question the actions of colleagues.

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Post-Hearing Questions for the Record
Submitted to the Honorable Charles E. Allen
From Senator John Ensign

"A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack"
February 15, 2011

1. In January of this year, U.S. Border Patrol Agents arrested Said Jaziri, a Tunisian Muslim cleric who had previously been deported from Canada to Tunisia in 2008. Canadian authorities deported him when they discovered that he failed to report on his refugee application a criminal conviction he received in France. In that incident, he was part of a fundamentalist group that assaulted another Muslim whom the group believed to be responsible for closing down a prayer room. In this most recent incident, the U.S. Border Patrol found him hidden in the trunk of a car being driven fifty miles east of San Diego. He allegedly paid a Tijuana-based smuggler $5,000 to successfully sneak him into the United States.

   Based on your experience from your previous positions, is the intelligence and information obtained by federal immigration and border authorities from this type of incident, being distributed to the various local, state and federal law enforcement and intelligence communities? If so, were there any restrictions on how this information could be shared?

   Again based on your previous experience, have there been any connections found or indicated between indigenous radical Islamists and suspected radical Islamists attempting to illegally enter the United States?

Answer

Based on my previous experience and knowledge as an Intelligence Community senior intelligence officer and program manager, DHS' Custom and Border Protection would have shared information obtained from Jaziri not only with federal law enforcement but also with state and local authorities. The arrest was a high-profile event that gathered significant publicity and public interest, especially in southern California. In this case, it is my understanding that the information was shared by CBP with state and local governments.

Nonetheless, it was my experience as the Under Secretary for Intelligence and Analysis from 2005 to 2009 that CBP did not as a matter of policy and process share routinely with state and local governments the information gathered on individuals stopped for further screening or those who were arrested between US ports of entry. Some of the information gathered was shared, but it tended to be on a case by case basis, depending on the nature and the sensitivity of the information gathered. I recall ensuring that not only my Office of Intelligence and Analysis (I&A) received information gathered by CBP from interviews and arrests but that the National Counterterrorism Center (NCTC) received it as well. I understand this information is now

generally shared by CBP with I&A and the NCTC. Based on my experience, however, CBP could make further improvements in sharing such information with state and local law enforcement authorities. I recommend that this question be directed to the current Under Secretary for Analysis and Intelligence at DHS for up-to-date information as well as to the Director, Office of Intelligence, CBP, in order to obtain current insights into how CBP information is shared.

We know that indigenous radical Islamists have maintained and continue to have connections with Islamic extremists overseas in the Federal Administration Tribal Area (FATA) of Pakistan and with al Qa'ida in the Arabian Peninsula (AQAP). We only have to review the cases of David Coleman Headley of Chicago and Naijbullah Zazi of Denver to know the serious threat posed by such relationships. Both received terrorist training in Pakistan; both posed a direct threat to the US homeland. Zazi, in particular posed a grave risk in that he and conferates were planning suicide bombings on the New York City subway system. The number of young North American Muslims who follow extremist websites and who engage in "chat" with other extremists here in the United States as well as with terrorists abroad is extremely worrisome. For example, we all should be deeply concerned over the continuing connections of young American Muslims with Anwar al-Awlaki, the radical US cleric who is on the run in the wilds of Yemen, but who still posts messages urging the killing of Americans via Internet communications, such as YouTube. Neither the current US administration nor the previous one has had an effective strategy for countering homegrown terrorism.

2. This Committee's investigation of the Fort Hood tragedy showed that the FBI's Joint Terrorism Task Force (JTTF) office in San Diego, California, sent a "discretionary lead" to their counterparts in Washington, D.C., regarding Major Hasan, on January 7, 2009. It took six weeks for this lead to be assigned to a task force officer; in this case, a detailee from the Department of Defense's Defense Criminal Investigative Service. This detailee then did nothing regarding the lead until the last day before the 90-day deadline for completion of such discretionary lead investigations. Even then, all this detailee did was check database and personnel file records before closing the investigation. He did not interview one single individual that might have caused a more in-depth investigation.

   Considering that the JTTF is an FBI-led entity, did any FBI regulations in place at the time require earlier investigative action, for example within 14 days after assignment or, at the least, a verbal or written status report to be provide to the task force supervisor?

   In the absence of such regulations, shouldn't the task force supervisor have requested such a status report earlier, considering that the investigation concerned an officer of the U.S. military?

Answer

In my view, the questions posed raise serious questions about the Joint Terrorism Task Force (JTTF) structure and modus operadi. The JTTFs were established beginning in the early 1980s, to investigate and pursue subjects believed to be engaged in terrorist acts. Currently, there are over 100 JTTFs across the country; they are led by the FBI but have representatives

from other law enforcement and intelligence entities (for example, Immigration and Customs Enforcement, DHS, has over 200 officers assigned to JTTFs). The JTTFs have operated over the years in a highly decentralized mode whereby they interact as needed among themselves in order to pursue counterterrorism leads and to work jointly, as necessary, where there are overlapping jurisdictions. In most cases, this model works well, and the JTTFs have done an outstanding job in disrupting and preventing terrorist attacks within the United States. We are an infinitely safer country as a result of the dedicated work of the JTTFs.

Nonetheless, the JTTF model is insufficient and needs to be reviewed and, in my view, restructured. The Fort Hood attack provides ample raison d'être for such a restructuring. First, because of the decentralized way JTTFs are managed and operated, the National Security Branch and its Intelligence Directorate at FBI Headquarters were unaware of the "discretionary lead" sent by the JTTF in San Diego to its JTTF counterpart in Washington, D. C., regarding the email contacts of Major Hasan with a "suspected terrorist." Thus, the most senior officers of the FBI responsible for counterterrorism policies and operations located at FBI Headquarters were not aware of the "discretionary lead." Second, the assignment of the lead in the Washington JTTF to a detailee from the Department of Defense's Defense Criminal Investigative Service was a mistake; the detailee did not have the clearance to access a sensitive data base of the FBI that almost certainly would have shed new light on the level of contact between Major Hasan and "the suspected terrorist." As indicated above, the JTTFs have hundreds of officers assigned to them from other agencies. In my view, detailees should not be given the responsibility to pursue a lead if he or she is not cleared at the levels necessary to conduct the investigation.

At the time of the Fort Hood attack, the FBI clearly did not have in place the standard operating procedures and processes required to ensure that leads were pursued within reasonable time frames nor did it have security clearance processes that ensured that JTTF personnel could operate at a "systems high" level when necessary. Finally, FBI Headquarters remained unaware of the "discretionary lead" until the attack at Fort Hood had occurred. I understand the FBI has made a number of changes in the way the JTTFs operate as a consequence of the Fort Hood shootings. But unless there are fundamental changes in the way JTTFs are structured and carry out their responsibilities in the future, I am concerned we may have future incidents on the scale of Fort Hood.

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Post-Hearing Questions for the Record
Submitted to General John M. Keane, USA, Retired
From Senator Claire McCaskill

"A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack"
February 15, 2011

1. A comprehensive bipartisan report, "'A Ticking Time Bomb,' Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack," was prepared for the purpose of (1) assessing the information the U.S. Government possessed prior to the horrific attack at Fort Hood and, (2) identifying steps necessary to protect the United States from attacks by extremist, violent Islamic terrorists whom are radicalized largely within the United States. During both the hearing and contained in the report is discussion of the process of "radicalization" a person experiences when they become a violent Islamist extremist. Could changes in personality and/or behavior identified in your report as leading to radicalization also be attributed to some sort of mental illness or psychosis? If so, what type of processes or training does the military presently have to identify, evaluate and address the potential of a person having an underlying mental illness that might make them more susceptible to radicalization? Do you know if this issue is being evaluated by the Department?

2. Because Nidal Hassan was a violent Islamist extremist, much emphasis has been put on developing training to identify a person who is a violent Islamist extremist. Does the radicalization process described in your report or something similar apply beyond the Muslim faith? If so, is the government preparing the same sort of training and recognition techniques to identify the "radicalization" of a broader spectrum of violent extremist persons? We only need to look back to Ruby Ridge, Waco, and the race based killings at Fort Bragg. But at the same time I want to make sure we do not implement future processes in too narrow a fashion. Can you address how the Department might be able to take a broader focus on violent extremism?

The responses to these Questions for the Record were not received at time of printing.

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Post-Hearing Questions for the Record
Submitted to General John M. Keane, USA, Retired
From Senator John Ensign

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February 15, 2011

1. As the Fort Hood Report shows, clear signs were missed by Major Hasan's superior officers of the Major's transformation to radical Islamist beliefs. His written reports, his oral presentations, and his comments to his fellow officers all showed him to be sympathetic to the beliefs and grievances of radical Islamists with whom we are at war, and opposed to the United States and our Constitution. There were policies and procedures in place for the Army to discipline Major Hasan. For example, the Department of Defense's Guidelines for Handling Dissident and Protest Activities Among Members of the Armed Forces could have and should have been applied to the Major's verbal statements, at the very least, but were not.

    - I agree with your incredulity at this whole situation with Major Hasan. In spite of his written and verbal comments, he was not disciplined, but evaluated as an outstanding officer. Had Major Hasan been an enlisted man, would this have changed anything? Were the thresholds lower for disciplining an enlisted member for this type of behavior?
    - As your statement noted, Major Hasan was given a "superstar" evaluation, while in reality he was anything but. What is the review process of an officer's evaluation? Who else has to review and approve an officer's evaluation before it is finalized and placed in their official file?
    - Elaborate on the possible reasons for the military's inability to tackle the problem of identifying and removing service members with radical Islamist beliefs and how that compares and contrasts with the previous problems involving white supremacist service members.
    - How would the proposed training in the identification of the radicalization of an individual need to be modified for those in combat zones?

The responses to these Questions for the Record were not received at time of printing.

Post-Hearing Questions for the Record
Submitted to J. Philip Mudd
From Senator John Ensign

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1. In January of this year, U.S. Border Patrol Agents arrested Said Jaziri, a Tunisian Muslim cleric who had previously been deported from Canada to Tunisia in 2008. Canadian authorities deported him when they discovered that he failed to report on his refugee application a criminal conviction he received in France. In that incident, he was part of a fundamentalist group that assaulted another Muslim whom the group believed to be responsible for closing down a prayer room. In this most recent incident, the U.S. Border Patrol found him hidden in the trunk of a car being driven fifty miles east of San Diego. He allegedly paid a Tijuana-based smuggler $5,000 to successfully sneak him into the United States.

    - Based on your experience from your previous positions, is the intelligence and information obtained by federal immigration and border authorities from this type of incident, being distributed to the various local, state and federal law enforcement and intelligence communities? If so, were there any restrictions on how this information could be shared?
    - Again based on your previous experience, have there been any connections found or indicated between indigenous radical Islamists and suspected radical Islamists attempting to illegally enter the United States?

Response: The information-sharing question you pose gets at the heart of one of the more significant challenges any security or intelligence service faces in the 21st century. In the past, questions about information sharing related to issues such as classification, or policy and procedure, or the simple understanding by an officer in the field that a seemingly inconsequential bit of information might somehow fit into a broader picture, and therefore be appropriate for dissemination to a wider group of agencies. I am not an expert on the information sharing policies followed by immigration and border authorities and I am not certain whether there are limitations -- in law, policy or practice -- related to dissemination of information from these agencies. But I can tell you that I do not believe policy and procedure are the sole, or even the most significant, challenges to putting bits of information such as border or immigration data in context by combining these bits with other federal, state, or local data.

Instead, in my experience, it is the growing volume of data, from both public and private sector sources such as border and immigration authorities, that poses among the most significant challenges for government data analysis. This type of analysis of massive data sets requires long-term investment in hardware, software, and training. I found in government that budgetary investments in information technology (IT) were still viewed as one-off events: buy this hardware or software this year, and solve a problem. If we want to absorb ever-growing amounts of data from diverse sources, such as immigration data (including digital data such as biometrics), we will have to maintain a budgetary commitment to IT that is year-in, year-out.

Some standard rate of reinvestment, in other words: either keep up with the information revolution with investment every year, or fall behind. There is no middle ground. In my view, then, an appropriate question might be whether federal services, when they are dealing with immigration and border information, have the right tools, training, and legal backing to wade through such massive data sets and find connections. I do not believe they do.

In addition, I believe the question you pose also gets to the heart of the expanding expectations of federal security services. You ask about data sharing restrictions. During the past decade, public and Congressional expectations of federal security services have expanded; these services now have the responsibility of preventing events, not simply responding to events. Prevention of events, by definition, involves looking at potential actors before they have committed a crime, and sharing information about potential actors. And in a country of more than 300 million people, there is not way to try to preempt that does not involve analyzing data patterns to try to find aberrant behavior. After 24 years in various government agencies, I can tell you that intelligence and law enforcement professionals are rightly leery of doing this: they know that even if they are hit today with an accusation that they are not creative enough in looking for connections across increasingly vast databases, tomorrow they will be vilified for looking too aggressively at the same databases, or for storing information too aggressively.

2. This Committee's investigation of the Fort Hood tragedy showed that the FBI's Joint Terrorism Task Force (JTTF) office in San Diego, California, sent a "discretionary lead" to their counterparts in Washington, D.C., regarding Major Hasan, on January 7, 2009. It took six weeks for this lead to be assigned to a task force officer; in this case, a detailee from the Department of Defense's Defense Criminal Investigative Service. This detailee then did nothing regarding the lead until the last day before the 90-day deadline for completion of such discretionary lead investigations. Even then, all this detailee did was check database and personnel file records before closing the investigation. He did not interview one single individual that might have caused a more in-depth investigation.

    - Considering that the JTTF is an FBI-led entity, did any FBI regulations in place at the time require earlier investigative action, for example within 14 days after assignment or, at the least, a verbal or written status report to be provide dto the task force supervisor?
    - In the absence of such regulations, shouldn't the task force supervisor have requested such a status report earlier, considering that the investigation concerned an officer of the U.S. military?

Response: I do not want to avoid your question, but I am simply not expert enough in the tactical conduct of investigations to offer an informed answer to the question. As a CIA officer who spent most of my career focused on intelligence overseas, and analysis, my role at the FBI, as a detailee, was to bring an intelligence perspective to corporate issues related to collection, reporting, analysis, and management of the expanding FBI intelligence program. I was not and did not become an expert on investigations.

Post-Hearing Questions for the Record
Submitted to Samuel J. Rascoff
From Senator John Ensign

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1. In January of this year, U.S. Border Patrol Agents arrested Said Jaziri, a Tunisian Muslim cleric who had previously been deported from Canada to Tunisia in 2008. Canadian authorities deported him when they discovered that he failed to report on his refugee application a criminal conviction he received in France. In that incident, he was part of a fundamentalist group that assaulted another Muslim whom the group believed to be responsible for closing down a prayer room. In this most recent incident, the U.S. Border Patrol found him hidden in the trunk of a car being driven fifty miles east of San Diego. He allegedly paid a Tijuana-based smuggler $5,000 to successfully sneak him into the United States.

    - Based on your experience from your previous positions, is the intelligence and information obtained by federal immigration and border authorities from this type of incident, being distributed to the various local, state and federal law enforcement and intelligence communities? If so, were there any restrictions on how this information could be shared?
    - Again based on your previous experience, have there been any connections found or indicated between indigenous radical Islamists and suspected radical Islamists attempting to illegally enter the United States?

There has been ongoing official attention to the possibility that individuals of concern to the United States may enter the country illegally from Canada or Mexico. Relevant federal authorities, in my experience, have proved effective at working with state and local partners to address this serious issue and mitigate the associated risks. Indeed, in the specific case of Said Jaziri, media reports have emphasized the role that firefighters played in alerting federal border authorities of suspicious activity that led to the arrest.[1]

2. As the Fort Hood Report shows, clear signs were missed by Major Hasan's superior officers of the Major's transformation to radical Islamist beliefs. His written reports, his oral presentations, and his comments to his fellow officers all showed him to be sympathetic to the beliefs and grievances of radical Islamists with whom we are at war, and opposed to the United States and our Constitution. There were policies and procedures in place for the Army to discipline Major Hasan. For example, the Department of Defense's Guidelines for Handling Dissident and Protest Activities

[1] *See* Richard Marosi, *Controversial Muslim Cleric is Arrested While Sneaking into the U.S.*, L.A. TIMES (Jan. 27, 2011).

Among Members of the Armed Forces could have and should have been applied to the Major's verbal statements, at the very least, but were not.

- Are there any programs in place at the state or local level that could be a good starting point for the military to consider in educating its members on how to identify radical Islamist behavior and how to respond?

In my experience, there are not programs in place at the state and local levels that can serve as models for how the United States military ought to identify manifestations of radicalism. The task of making sense of radical commitments by reference to behavioral criteria (as opposed to a complex array of social and ideological factors) is very challenging. Furthermore, the military will probably need to pursue a unique strategy in this area that attends to its legal and cultural distinctiveness.