Intelligence choices: What price security?

From the Editors in the issue

The commission investigating the 9/11 attacks has heard plenty of complaints about the failure of U.S. counterterrorism. Officials have described agencies as underfunded and understaffed. The CIA and FBI worked with outdated technology and few experts on Middle East languages. Above all, they were weak on sharing information, even within their own agencies.

A chilling tale of information breakdown was reported last December by a former official at the National Security Agency. Stewart Baker, writing in *Slate*, says that FBI officials knew in August 2001 the names of two al-Qaeda agents in the U.S.—Khalid al-Mihdhar and Nawaf al-Hazmi. These men later hijacked an American Airlines plane and flew it into the Pentagon.

In August FBI agents sought to locate the men with the help of the FBI's criminal investigators, but were refused information because agency guidelines prevented the criminal division from doing intelligence work. Stewart cites an FBI memo declaring that evidence of "a substantial federal crime" was needed before the criminal division of the FBI could pursue the al-Qaeda members.

This glitch in sharing information was not simply the result of a bureaucratic turf battle. The wall between the people gathering intelligence on foreigners and those prosecuting lawbreakers was built to protect Americans' civil liberties. It was created in the 1970s by members of Congress who wanted to rein in the FBI and CIA after they had gotten involved in spying on Americans for political reasons (Martin Luther King Jr. was one of the targets).

Baker notes that he had enthusiastically endorsed this wall of separation during his own years at NSA, but says he thinks differently in light of the terrorist threat. "We cannot write rules that will both protect us from every theoretical risk to privacy and still allow the government to protect us from terrorists."

Within the treasured framework of American justice, it is better for law enforcement to fail in pursuing criminals than for citizens to be wrongly convicted or deprived of their rights. This makes sense when what is at stake are isolated crimes. But what if the cost of government failure is a catastrophe of 9/11 proportions?

Such a fundamental question lurks beneath the 9/11 commission's often dry discussion of structural bureaucratic reform: What price are we willing to pay for our civil liberties—intangible and theoretical for us most of the time—when the possible price is thousands of lives?

The terrorist threat should not, of course, be the occasion to abandon liberties indiscriminately. After 9/11 the U.S. government famously rounded up and deported thousands of foreigners, though in the end none were charged with a crime related to al-Qaeda. Yet a hypothetical question is still worth asking: What if that exercise of government power had managed to uncover one terrorist and thereby averted an attack? Would the effort be worth it? And how do we measure such trade-offs?

The ideal, of course, is fully to protect civil liberties while fully preventing terrorism. But in practice, no system is without flaws. Commonsense suggests that a system will err more in one direction than the other. So what direction do we want to go?