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JOINT INQUIRY INTO INTELLIGENCE COMMUNITY ACTIVITIES BEFORE AND AFTER THE TERRORIST ATTACKS OF SEPTEMBER 11, 2001

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
U.S. SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

VOLUME I

SEPTEMBER 18, 19, 20, 24, and 26, 2002

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CONTENTS

Page

Volume I

Hearing held in Washington, D.C., September 18, 2002 1
Statement of:
Breitweiser, Kristen, Co-Chairperson, September 11th Advocates 21
Hatch, Hon. Orrin G., U.S. Senator from the State of Utah 10
Hill, Eleanor, Staff Director, Joint Inquiry Committee 58
Kyl, Hon. Jon, U.S. Senator from the State of Arizona 17
Push, Stephen, Co-founder and Treasurer of Families of September 11th . 48
Roberts, Hon. Pat, U.S. Senator from the State of Kansas 13

Hearing held in Washington, D.C., September 19, 2002 145
Testimony of:
Armitage, Hon. Richard L., Deputy Secretary of State 148
Berger, Hon. Samuel R., Former Assistant and Deputy Assistant to the President for National Security Affairs 220
Lake, Anthony, Former Assistant to the President for National Security Affairs 208
Scowcroft, Gen. Brent, Former National Security Advisor 216
Wolfowitz, Hon. Paul D., Deputy Secretary of Defense 153
Supplemental Materials:
Response to QFRs from the Department of Defense 272
Response to QFRs from the Department of State 276
Response to QFRs from Hon. Samuel R. Berger 280
Comments on Joint Inquiry Staff Statements by Samuel R. Berger 286
Report on Plans to Improve Department of State Access to FBI Criminal Information for Visa Purposes 292

Hearing held in Washington, D.C., September 20, 2002 305
Statement of:
A Special Agent of the Federal Bureau of Investigation 364
An Officer of the Central Intelligence Agency 344
Beer, Richard, Director, Coordination Division, Visa Office, Office of Consular Affairs, Department of State 392
Hill, Eleanor, Staff Director, Joint Inquiry Committee 309
Kojm, Christopher A., Deputy for Intelligence Policy and Coordination, Bureau of Intelligence and Research, Department of State 371
Rolince, Michael E., Special Agent in Charge, Washington Field Office, Federal Bureau of Investigation 353
Supplemental Materials: Chronology prepared by Senator Carl Levin 380

Hearing held in Washington, D.C., September 24, 2002 431
Testimony of:
A FBI Headquarters Agent 482
A FBI Minneapolis Agent 487
A FBI Phoenix Agent 478
Hill, Eleanor, Staff Director, Joint Inquiry Committee 436
Supplemental Materials:
"The Phoenix Electronic Communication," Phoenix Special Agent, Federal Bureau of Investigation memo dated July 10, 2001 552
Order of Judge Leonie Brinkema, U.S. District Court, dated August 29, 2002, in Criminal No. 01–455–A 562
Order of Judge Leonie Brinkema, U.S. District Court, dated September 23, 2002, in Criminal No. 01–455–A 469
Order of Judge Leonie Brinkema, U.S. District Court, dated September 24, 2002, in Criminal No. 01–455–A 556

Page

Hearing held in Washington, D.C., September 26, 2002 571

Statement of:

Black, Cofer, Former Chief, DCI's Counterterrorist Center, Central Intelligence Agency 589

Watson, Dale, Former Executive Assistant Director, Counter-intelligence and Counterterrorism Division, Federal Bureau of Investigation 604

Supplemental Materials: Declassified June 18, 2002 statement of FBI Director Robert S. Mueller III 573

JOINT COMMITTEE HEARING ON THE EVENTS SURROUNDING THE ATTACK ON THE UNITED STATES ON SEPTEMBER 11, 2001

WEDNESDAY, SEPTEMBER 18, 2002

U.S. SENATE, SELECT COMMITTEE ON INTELLIGENCE AND
U.S. HOUSE OF REPRESENTATIVES, PERMANENT SELECT
COMMITTEE ON INTELLIGENCE,

Washington, DC.

The committees met, pursuant to notice, at 10:10 a.m., in room SH–216, Hart Senate Office Building, the Honorable Bob Graham, Chairman of the Senate Select Committee on Intelligence, presiding.

Senate Select Committee on Intelligence members present: Senators Graham, Levin, Rockefeller, Feinstein, Wyden, Durbin, Bayh, Edwards, Mikulski, Shelby, Kyl, Inhofe, and DeWine.

House Permanent Select Committee on Intelligence members present: Representatives Goss, Bereuter, Castle, Boehlert, Gibbons, LaHood, Hoekstra, Burr, Everett, Pelosi, Bishop, Condit, Roemer, Harman, Boswell, Peterson, and Cramer.

Chairman GRAHAM. I call the Joint Inquiry committee to order.

We are here today because 3,025 innocent people, most of them Americans, were killed 53 weeks ago when terrorists stunned the world by hijacking domestic airliners and crashing them into the World Trade Center towers, the Pentagon, and a field in rural Pennsylvania. We are here today because so many Americans have been personally touched by these horrific events.

We who are privileged to serve in the Senate think of our colleagues and staff as a family. And the Senate family, especially those of the Select Committee on Intelligence, suffered a special loss. Terry Lynch, who had turned 49 one week before the attacks, was married and the father of two beautiful daughters, Tiffany Marie and Ashley Nicole. For more than two decades, he was a public servant. He spent several years on the bipartisan staff of the Senate Intelligence Committee, where he was our expert on Middle Eastern affairs. In 1999, Terry left government service and became a consultant.

On September 11, 2001, Terry was attending a meeting at the Pentagon on the subject of extending military survivor benefits to military families. Every day, Terry's family and the Senate family mourn his loss. And we have him on our minds and hearts today as we begin the public hearing phase of the joint inquiry committee's review of those events of September 11.

Like all Americans, we now realize that terrorism is no longer something that happens "over there," to people on the other side of the globe. Terrorism can hurt people close to us, here at home. In the days after September 11, many were quick to blame the success of the terrorists' diabolical plot on failures of intelligence or preparedness. These public hearings are part of our search for truth, not to point fingers but to pin blame, but with the goal of identifying and correcting whatever systemic problems might have prevented our government from detecting and disrupting Al-Qa'ida's plot.

The public hearings follow a series of ten closed hearings, including one held on September 12. It is our task here to fulfill our oversight responsibility and to recommend reforms. We will follow the facts wherever they lead to provide answers to the American people and to improve our nation's security. While there have been many congressional investigations of significant events in our nation's history, including the several inquiries that followed Japan's surprise attack on Pearl Harbor, this is the first time in the history of the Congress that two permanent committees have joined to conduct a bicameral investigation.

The Joint Inquiry Committee has hired an independent staff, negotiated with the executive branch over access to documents and witnesses and coordinated with the federal judiciary to assure that our public hearings will not interfere with pending prosecutions. I congratulate my colleagues from the Senate and the House and our staff for their commitment and determination to fulfill our obligation to the American people. I am very pleased with our progress to date.

As we enter the public hearing phase of the inquiry, our purpose is to inform the American people of our findings and to continue exploring what reforms will be necessary to reduce the chances of another terrorist attack on our homeland. As we said in the preamble to the scope of inquiry statement that the committee adopted in April, our review is designed to reduce the risk of future terrorist attacks, to honor the memories of the victims of the September 11 terrorist attacks by conducting a thorough search for facts to answer the many questions that their families, and many Americans, have raised, and to lay the basis for assessing the accountability of institutions and officials of the government.

To reach those ends, our inquiry is focusing on three key areas. One, the evolution of the terrorist threat to the United States, and our government's awareness of and response to that threat. It is important that we gain an understanding of how terrorist organizations, particularly Usama bin Ladin and Al-Qa'ida, move from being a relatively insignificant threat to American interests just a decade ago to their status today as America's number one threat.

Second, what the Intelligence Community and the active consumers of the government's intelligence knew, or should have known, prior to September 11 about the scope and nature of possible attacks on U.S. interests by international terrorists. By examining how and when the government recognized this evolving threat and how it responded to that threat, we will gain insights into the ways that we need to respond to terrorism. Clearly, this

is not a static threat, but a rapidly changing and accelerating danger to America.

Three, how the agencies that make up our Intelligence Community interact with one another, as well as with other federal, state and local agencies, with respect to identifying, tracking, assessing and coping with international terrorist threats, including biological, chemical, radiological, and nuclear. The ultimate question we will seek to answer is this: how can we use the information that we discover during the inquiry to recommend, and then to successfully advocate to the American people and our colleagues, changes in the Intelligence Community that will reduce the prospects of another September 11?

In this first open hearing, we will hear from two representatives of the groups that speak for the families of the victims of September 11. Kristen Breitweiser is co-founder of September 11th Advocates. Stephen Push is co-founder and treasurer of Families of September 11th. They have been asked to speak to us about the impact of September 11 on their families and America, as well as what reforms of the Intelligence Community will guard us against future threats.

We will then have the first of several presentations from the Joint Inquiry committee's very capable staff, led by Ms. Eleanor Hill. Ms. Hill is a former prosecutor, a veteran congressional investigator, a former inspector general of the Department of Defense. We are extremely fortunate to have a person of her experience and capabilities as the committee staff director. Ms. Hill will review the work of the Joint Inquiry committee over the last six months, including the ten closed hearings, interviews with nearly 500 individuals, and a review of more than 400,000 documents. Following her presentation, members of the Joint Inquiry committee will be recognized for comments and questions.

In future open hearings, we will hear from customers of intelligence, including representatives of the Defense and State Departments, front-line personnel from intelligence agencies, and then key leaders of the Intelligence Community, including the Director of the Central Intelligence Agency and the Director of the Federal Bureau of Investigation.

I now recognize Congressman Porter Goss, Chairman of the House Permanent Select Committee on Intelligence and Co-Chairman of the Joint Inquiry committee for opening remarks. I am extremely pleased to have Congressman Goss as a partner in this effort. Congressman Goss will be followed by Senator Richard Shelby, vice chairman of the Senate Select Committee on Intelligence, and then by Representative Nancy Pelosi, ranking member of the House Permanent Select Committee on Intelligence.

Congressman Goss.

Chairman GOSS. Thank you, Chairman Graham. I'm pleased to associate myself with your remarks, and I'm honored to serve with you as Co-Chairman of this joint effort.

Looking back at the innocent lives lost and the damage inflicted by a fanatical band of suicidal extremists has been very painful for all of us. We all experienced that just a week ago with the remembrances of 9/11, and I think it's fair to say that every American is incensed. We need to understand the hows and the whys of what

happened to bring some comfort to those who are still grieving, and there are many, and to ensure the wellbeing of Americans at home and abroad as we go about our lives today and tomorrow in the globe, as it exists.

And I want to thank Ms. Breitweiser and Mr. Push for being with us today and sharing with others, and I know there are others in the audience who are with them. You put a human face on the tragedy that we all feel. The people whose lives were unfairly ripped from them is way down deep what drives this committee to follow the facts to find the truth and you should know that. Your contribution today, representing so many who have lost so much, reminds us how the impact of September 11 is very profound and very personal across our land, and in fact, around the world.

Providing your thoughtful, specific suggestions for what we can do better and asking penetrating questions is a help to us, and I know your testimony has questions and suggestions. I suppose everybody has a tragic story about pain and suffering related to September 11. Mine is about CeeCee Lyles. A flight attendant on Flight 93, CeeCee was a resident of Ft. Myers, Florida, in my district. She was a former police patrol officer and detective, and she spent six years risking her life to protect others in that job.

In December, 2000, mindful of her young children and looking for a less dangerous and wearing career, although I'm not sure that was a way to characterize flight attendant work, she enrolled in a flight attendant school and began flying for United out of Newark.

At 9:58 on September 11, 2001, CeeCee called her husband Lorne, a police officer in Fort Myers, from the plane to tell him that her flight had been hijacked. Her words, "I called to tell you I love you. Tell the kids I love them." Her last words that we know of are, "I think they're going to do it. They're forcing their way into the cockpit." And then the call broke off. We here owe a particular debt of gratitude to CeeCee Lyles and her companions on Flight 93, which was heading towards Washington when it crashed in Shanksville.

The President of the United States has told us intelligence is the first line of defense. We know that he's right. We know the first line of defense has to be strong. These hearings will hopefully lead us to capabilities that better fit the threat as it does exist today and make our first line of defense stronger, which obviously it must be. We've already started this process in the oversight committees of intelligence, and I want to compliment all the members of the committees, particularly Representatives Saxby Chambliss and Jane Harman for the excellent report their Subcommittee on Terrorism has already provided us on the House side.

It's been a useful building block to help our Joint Committee staff, a group I would describe as small in number but dynamic in impact. Under the leadership of Eleanor Hill, they have interviewed a multitude of people, as the Chairman has said, read thousands of documents and asked a great many questions, always with the steady hand of the Members and the staffs of the House and Senate Intelligence Committees to back them up.

What this all means is that we have well over 100 professionals and some 37 Members dealing with mountains of information. And these mountains are getting bigger every day. Every time we track

down another terrorist cell, conduct another raid, through interrogation or documentation exploitation and other leads, we find out more about the enemy, and of course, how to stop them.

There will be further chapters as the war on terrorism unfolds. We will incorporate as many as we can in our final report of this joint effort, and I predict there will be plenty of work for the other standing committees of jurisdiction in Congress because our primary focus has been intelligence, and there has been more than just intelligence involved in this situation.

What forms further investigations take we'll leave to the future and concentrate now on finishing our work as completely, as accurately and expeditiously as possible. The terrorist threat remains high. I want to emphasize that it is precisely because we want to save lives in the future that we must be careful how we present and discuss this information in public.

It's true, it may be axiomatic, the enemy is listening to us today. We must protect our sources and methods, and we must not reveal any of our plans and intentions to our enemies, those who would harm us. So today, we begin the process of open hearings with the understanding not everything can be discussed in this forum, as much as we would like to share it with America, but that much can and should be explained to our nation, which is our goal. And we will go as far as we can.

Having said that, Mr. Chairman, I thank you and look forward to the testimony of our witnesses.

Senator INHOFE. Mr. Chairman?

Chairman GRAHAM. Senator Shelby.

Senator INHOFE. Could I ask a question, a procedural question?

Chairman GRAHAM. Yes. Senator Inhofe.

Senator INHOFE. Could you inform us as to how we're going to proceed in terms of Members' participation?

Chairman GRAHAM. Yes. After we complete the opening statements, we will then hear from the representatives of the families. Then Ms. Eleanor Hill will present a report on the work of the Joint Inquiry Committee to date, after which members will be recognized for questions of Ms. Hill and any comments they wish to make.

Senator INHOFE. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Vice Chairman SHELBY. Mr. Chairman, thank you. We now know that our inability to detect and prevent the September 11 attacks was an intelligence failure of unprecedented magnitude. Some people who couldn't seem to utter the words intelligence failure are now convinced of it. Many of us also knew that an accounting would have to be made on behalf of the innocent victims, the families left behind, and the American people. After all, there were nine separate investigations into the attack on Pearl Harbor and the intelligence failures attendant there.

We agreed, however, that some time would have to pass before we began on the Committees such an effort, because we were at war and it was our top priority to ensure its success. Approximately six months after that fateful September day, our two Committees joined together in what I hoped would be a thorough and comprehensive examination of the United States Intelligence Com-

munity's failures to detect and to prevent the attacks of September the 11. Now, approximately six months later, we're making progress, but we are far from done, and I am concerned.

The staff has reviewed many thousands of documents, but they have many thousands yet to review. They have interviewed many people, but there are many people yet to interview. In fact, it's still very difficult even to determine how far we've come, and almost impossible to tell how far we've yet to go.

I've been part of many investigations in my career, but none has been as important as this one. Almost 3000 Americans have been murdered, and perhaps thousands more innocent lives will hang in the balance every day. This investigation, I believe, must be thorough, comprehensive, and complete. I want it to be a success. But to be a success, an inquiry needs time and resources. If you limit either one, your chances of success diminish significantly. Unfortunately, I believe we have a short supply of both in this inquiry, and I'm afraid that we're beginning to reap the results.

From the outset, I argued strongly that we should avoid setting arbitrary deadlines. Deadlines are an invitation to stonewalling and foot-dragging, and we've had some of both in this effort. I've also said many times that agencies under the congressional microscope are generally not motivated to cooperate. That's just common sense, that's human nature.

To be thorough, I believe we must be able to identify and to locate relevant information, retrieve it, analyze it in the context of all of the other information we've gathered. This is inevitably difficult and time consuming. Because we have only one to three staffers actually focusing on any particular agency at any one time, and because so much of our Joint Inquiry staff resources are tied up in producing hearings such as this one, which I deem important, it is becoming exceedingly difficult to be as thorough and probing, I believe, as we need to be.

I'm afraid we've asked the joint staff to move a mountain and perhaps only given them a couple of shovels and a little over six months to get it done. I hope it's enough, but I'm concerned. This is a massive undertaking, and I compliment our Chairmen, Senator Bob Graham and Congressman Porter Goss, for their leadership, because anyone who has willingly volunteered to lead and to coordinate an effort such as this deserves our admiration and our support, and perhaps our condolences. But I'm concerned that the management challenges that you faced and continue to face have created some fundamental flaws in our process.

Many members of our joint committee have found it exceedingly difficult to get information about the inquiry. They're frustrated by what a lot of them perceive to be efforts to limit their ability to participate in this inquiry fully. They want to support and ultimately to endorse this effort that we have undertaken, but they will be unable to do so, I believe, unless they have a clear and unfettered view of the activities of the joint staff.

At this point, I don't believe they do. Today, Eleanor Hill, our staff director, will present a summary of a statement intended to reflect the current state of our inquiry. Members, however, have had essentially no involvement with the process that led to its drafting, and therefore have little idea, as a whole, whether what

it says is accurate or a fair and thorough representation of what has been discovered.

Mr. Chairmen, I'm not saying that it is not accurate or thorough; hopefully, it is both. I'm saying that our Members, as they've voiced to me, have no practical of way of knowing. These are concerns that we've discussed before in the four of us meeting, and they will need to be resolved if we're to have any chance of reaching a consensus at the conclusion of this inquiry.

I think it's important that the American people know where we stand as we begin to discuss publicly why their multi-billion dollar Intelligence Community was unable to detect and prevent the worst single attack on American soil in our history.

At this point, again, I'm very concerned that we may not have the time or resources we set out to do. I will continue to support this effort, and support our Chairmen, but there may come a day very soon when it will become apparent that ours must be only a prelude to further inquiries. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Congresswoman Pelosi.

Ms. PELOSI. Good morning, Mr. Chairmen.

I want to join you in welcoming today's very important witnesses. I commend the two of you for your great leadership in doing the best possible job under the circumstances to get to the bottom of all of this, and I associate myself with the remarks of our distinguished chairmen on the priority we place in the participation of the members of the family.

When we began our Joint Inquiry eight months ago, we began with a moment of silence. We did this in recognition of the tremendous tragedy that had befallen us, the gravity of the responsibility we faced, and the obligation we had to the families of those who lost their lives. Today, it is appropriate that we begin our first public hearing of this joint committee and this inquiry with the presentation of the families.

It is important that this inquiry be viewed through the prism of the families of the victims of this terrible tragedy that occurred at the World Trade Center, at the Pentagon, and in Pennsylvania. The dignity shown by the thousands of family members has been an inspiration to our country and a tribute to their loved ones. They have risen to the occasion that they never could have imagined, and their strength has lifted the spirit of all Americans.

In welcoming our witnesses here today, I want to express the appreciation I know that every American feels towards them. The appreciation of the depth of their grief we can only imagine, but we do appreciate their leadership which has sprung from that sadness. To Kristen Breitweiser, the co-chairman of September 11th Advocates, which is helping other families, and to Stephen Push, cofounder of Families of September 11th, and all the members of the families, thank you for your courage.

All of America has been touched by this tragedy, as we all know, none more directly than all of you. However, we have, some of us, a closer association because of our work at the Pentagon. Members of the Defense Intelligence Agency and the Office of Naval Intelligence lost their lives when they went to work to work to protect our country. Little did they know that they would lose their lives

at the Pentagon doing that. And of course, Mike Spann was the first American killed in conflict in our struggle to root out terrorism wherever it is. And his association with the Intelligence Community is one that I wish to acknowledge.

As we address the challenge September 11 presents to our country—and I also want to mention Betty Ang, a flight attendant on the plane that went into the World Trade Center. She was on Flight 11. She was one of my constituents in San Francisco. Her courage enabled her to keep communicating with the ground until the last possible moment. There are so many, many stories, and we know that there are at least 324 of them directly. We identify New York, Washington, and Pennsylvania, but on those planes, one of which was destined for San Francisco, there were people from all over the country whose lives were touched.

As we address the challenge of September 11that it presents to our country, we're walking on hallowed ground, respecting the sacrifice of those who died and ensuring the families that justice will be done. We must find answers, reduce risk to the American people and comfort the families. Families of those affected by September 11 talk of their continuing reactions to events that used to be no cause for concern. For some family members, every time a plane flies overhead, we have been told, they experience deep fear. We must remove that fear.

We are all united in our determination to win the war against terrorism. We all agree that this battle will be won and that we will succeed by working together. The House and Senate Intelligence Committees have a responsibility to ensure that Congress conducts a thorough assessment of the performance of the intelligence agencies leading up to, and including, September 11.

Yes, Mr. Chairman, we must protect sources and methods, but we must conduct our inquiry in the most open way possible, so that information that can be made available to the public, and especially to the families, is made available. Only in the case of protecting sources and methods should it be withheld, not in the case of protecting reputations or to avoid embarrassment to some.

The committees have decided that the best way to do our inquiry is to work cooperatively in a bipartisan manner on an inquiry conducted by the House and the Senate, as you know. And here we are today with our first public hearing. A joint investigation is an unusual step, but the events of September 11 call for unusual measures. I join both of our Chairmen in commending our colleagues, the Members of the House and the Senate on the Committees for their diligence and their reverence for the subject that we are dealing with.

Our purpose is not to assign blame but to identify areas that could lessen the chance that another September 11 could happen. We must do everything we can to prevent another terrible tragedy. In doing so, we will balance the need to enhance physical security for Americans with the duty to preserve the freedoms guaranteed by the Constitution. The martyrs of September 11 gave their lives because of those freedoms.

The goal of terrorists is to instill fear. That fear can change the way of life for a society. We cannot let them have that victory. We can and we must do things in a way that respects our people, pro-

tects our founding principles, and protects and defends our communities. The words of "America the Beautiful" ring true in describing the great cities of Washington, DC, New York, and indeed, the nation. "Oh, beautiful, for patriot dream that sees beyond the years. Thine alabaster cities gleam, undimmed by human tears."

Today, those tears are fresh, but this is America, land of the free, and, as the martyrs and their families have shown us, home of the brave.

We will take all the time that is needed. We will pursue every angle. We will turn every stone to find answers for the families. And I hope that in all that we do in this Joint Inquiry and in rooting out the terrorism and finding the perpetrators of this tragedy, that our work says to the families, "Peace be with you."

Thank you, Mr. Chairman.

[The prepared statements of Senators Hatch, Roberts and Kyl follow:]

Statement of Senator Orrin Hatch
before the
JOINT INQUIRY OPEN HEARING
United States Congress
September 18, 2002

The topic before us may be the most historic these committees have ever faced. I commend both committee chairmen, the vice chairman, and the ranking member for their efforts and the focus that has brought us to this point. I thank Ms. Hill and the staff for their long hours since we formed this Inquiry last February.

It is a fact of life in Washington that such a high profile investigation will have a lot of scrutiny, from inside Congress and from many other sources, including the media. Despite the fact that much of this inquiry must continue to occur in closed sessions, we can expect to be reading about some aspects of this inquiry in the press. While I regret this, I understand this to be a reality, and I simply say here that I hope that all participants in this process will do their utmost to protect the classified nature of those proceedings.

I expect that, when this process is through, there will be plenty of opportunity for informed and public debate, because, after all, it is the public we serve and the public that deserves to see us succeed in investigating the causes of last September 11's failure to defend the homeland - and implementing the reforms that will give us an intelligence community prepared to defend us in the 21st century.

If this inquiry is conducted as thoroughly as the public has a right to demand, then the lessons we learn will be used for substantial reform of the intelligence community.

Numerous studies and reports have been issued on intelligence reform during the past decade. Many of these have

sought to adjust the intelligence community's mission to the radically evolving threats to our country's national security. In the wake of September 11th, I hope that we can all agree that, at least, we need a reinvigorated intelligence community, and that will begin rededication to provide it with the resources it needs.

However, these resources cannot and should not come until we have measured the strengths as well as the weaknesses, of the current intelligence community's structures and mentalities.

Reforming the community to defeat our determined foes should not devolve to bureaucratic rearrangements of boxes on organizational charts.

Reform must involve a complete and unbiased review of our thinking on all aspects of intelligence if we are to truly learn the lessons of September 11th. This is the point of this inquiry, if it is to be successful, be thorough, and be comprehensive.

And as long as it is thorough and comprehensive, I will support this Inquiry's work, however long it must take to succeed. I will not, however, support any final product where the conclusions are premature or set by artificial deadlines. The work we are to accomplish here is simply too important.

This week's open hearings are a snapshot of a work in progress. I expect the public will understand this.

After all, in the great drama that has been unleashed since the attacks of a little over a year ago, the American public has been an inspiration to the world. Mostly as civilians, they suffered the unprovoked attacks in New York, Pennsylvania and at the Pentagon. As patriots, they have supported the Administration and our troops as they have been deployed across the globe. As responsible citizens, they hold us accountable for the work that must be achieved in this investigation.

Thank you.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate
COMMITTEE ON THE JUDICIARY
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September 19, 2002

Honorable Bob Graham
Chairman
Select Committee on Intelligence
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Honorable Porter Goss
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graham and Chairman Goss:

I am writing regarding the Joint Intelligence Committee's request that Federal Bureau of Investigation employees testify before this Committee in open hearings to be held on September 20 and September 24. I understand that the Middle East television network, Al Jazeera, recently broadcast the name and face of one of the FBI employees who is scheduled to appear before the Committee next week. Because I believe requiring these witnesses to testify in open hearings raises legitimate safety concerns, I respectfully recommend that the Committee permit the witnesses to testify in closed sessions.

Sincerely,

Orrin G. Hatch
Ranking Republican Member
Senate Judiciary Committee

OGH: dff

Senator Pat Roberts
Hearing on 9/11 Joint Inquiry
September 18, 2002

Opening Comment:

The key to a successful campaign against terrorism is intelligence. Dynamic, predictive and accurate intelligence is essential to save lives of our citizens within our own borders and in the field for our men and woman in uniform.

The Intelligence Community's most fundamental responsibility is to provide analytic assessments and warning of attack. Without this, our battleships were sitting ducks in Pearl Harbor on December 7th, 1941; our Marine Barracks were destroyed in Beirut, Lebanon in October, 1983; the Khobar Towers Barracks was destroyed in June, 1996; the USS Cole was crippled with much loss of life in October, 2000; and, we find ourselves today investigating the attacks of last Fall.

Our rate of success has been mixed; we have been able to prevent some attacks from our dedicated terrorist foes (such as the one planned for Los Angeles on New Year's Day 2000), but some have

succeeded.

In my service on the Armed Services and Intelligence Committees, I have gained a much greater appreciation for the value of analysis. It is in this area that I believe we can improve most by learning a few lessons from the tragic attacks on our forces and our territory. My conclusion from a review of the successful terrorist attack on the USS Cole is that available information was not analyzed to its fullest extent. An official warning was drafted that warned of a terrorist attack against a U.S. naval vessel using a small boat filled with explosives. This draft warning indicated that an attack in the region was imminent, but mid-level supervisors stopped it from being published until the day after the USS Cole was attacked.

Intelligence is not, nor will it ever be, perfect. Unexpected attacks–especially by zealots prepared for their own deaths–will be able to get through in many cases. Nevertheless, the quality and rigor of our intelligence analysis and warning processes can be improved.

We need to press the envelop and ask questions such as how is advanced science being use to analyze – not data mine – these data? What models or theory is developed or being developed to confront a more information-rich future world? Couldn't all the terabytes be

used to achieve more depth and breath in analysis?

When the nature of an enemy is as fluid as the terrorists target, the traditional means of discovering their behavior is to extract secrets from their organizations. Yet without a well-placed agent, such collection is impossible. We need to rely on models or analysis tools to develop and mimic a human "agent?" I believe that the terabytes of data we already collect can assist greatly in improving our depth and breath of analysis.

Intelligence is not an intellectual exercise; the goal must not be merely "to observe and comment," but rather "to warn and protect" as George Tenet said upon assuming his duties as Director of Central Intelligence. Warning demands diligence and requires constant questioning of conventional wisdom.

In summary, analysis and warning or the resultant "knowledge" is protection; the Intelligence Community must make its people more aware of the potential dangers and work with them in finding ways to ensure that terrorist plot do not succeed. Good intelligence must be our first line of defense. Flaws in analysis are flaws in the defense of our nation. On 9/11 we saw the consequence. Our efforts in this joint

inquiry will be judged on our ability to find the holes in that first line of defense and repair them.

[redacted] Opening Statement for Senator Jon Kyl
Joint Inquiry Staff open hearing, September 18, 2002

Earlier we heard some powerful and deeply felt words from representatives of the victims' families. Our hearts go out to Ms. Breitweiser and Mr. Push, and to all of the families and friends they represent. As Americans we all share their grief, anger, and frustration, and I share their view that there is more we could have done to try to prevent the terrorism we experienced on September 11, 2001. It remains unclear whether the joint committee investigation and report will satisfy either these witnesses and those they represent, or even all of the members of these committees or other members of the House and Senate.

Mr. Chairman, as you know, I have expressed serious reservations about the direction of our investigation, including the allocation of time and resources to holding open hearings at this time. Ours is a large undertaking and we have much more work to do before our fast-approaching deadline. Yet we are proceeding with public hearings in spite of not having completed our investigation. In fact, what was presented today was only a staff

document, not a consensus product of the committee. Members had no practical input into this interim report. Ordinarily, we investigate, write our report, and then present our recommendations. The staff's presentation of its interim report before Member vetting is, therefore, premature and a diversion of the joint staff from the investigation we have given it the job to do.

The interim statement from our joint inquiry staff provides information about what has been done to date, a chronology of events leading to the September 11th attacks, and some background information about the growing threat of Al Qaeda over the last decade. It is useful to have this history and important to make it public. But the Committee should have approved it first; and, in any event, the release of the report could have been done without taking the time to have it read by the Staff Director.

More importantly, however, I believe that questions fundamental to our investigation have yet to be pursued adequately. These include whether part of the pre-9/11 problem was a result of a culture of risk aversion in the intelligence community and/or an inadequate allocation and improper

prioritization of resources to those on the front-lines of our counter-terror efforts.

Mr. Chairman, you know I have expressed before my concern that committee members have been able to play only a limited role in this inquiry. It is largely being conducted by the Joint Committee staff with little input by or to our own Committee staff, let alone the members themselves. That will make it difficult to concur in the final product without reservations. We will not know what we haven't been told; and, therefore, we will not be able to vouch unequivocally for the final product. Questions about this investigative process have led to calls for the creation of a national commission to investigate all of these matters. This would further stress the intelligence community at the time we are trying to fight the war on terrorism. While it may be deemed necessary, but it can hardly be deemed desirable.

Mr. Chairman, I hope we can continue to work to resolve these issues. Only by doing our very best will we have done our duty to the victims who are represented here today and to the American people.

Chairman GRAHAM. Thank you, Ms. Pelosi.

We are honored today to be joined by representatives of the families of the victims. We understand the pain that you have suffered over the last year. We can empathize, but you represent an invaluable perspective and an insight into the full meaning of this tragedy, and the responsibilities that we all have to avoid the prospects of its repetition. We very much appreciate your sharing with us today.

First, Ms. Kristen Breitweiser.

[The prepared statement of Ms. Breitweiser follows:]

Statement of

Kristen Breitweiser
Co-Chairperson
September 11th Advocates

Concerning the Joint 9/11 Inquiry

Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence

September 18, 2002

I would like to thank the families of the 3000 victims for allowing me to represent them, here today, before the Joint Intelligence Committee. It is a tremendous honor. Testifying before this committee is a privilege and an enormous responsibility that I do not take lightly. I will do my best not to disappoint the families or the memories of their loved ones.

Toward that end, I ask the members present here today to find in my voice the voices of all of the family members of the 3000 victims of September 11th. I would also ask for you to see in my eyes, the eyes of the more than 10,000 children who are now forced to grow up without the love, affection, and guidance of a mother or a father who was tragically killed on September 11.

I would now like to thank the members of the Joint Intelligence Committee, Eleanor Hill, and her staff for giving the families this opportunity to be heard. It has been an excruciating and overwhelming 12 months, and it is now time for our words and our concerns to be heard by you.

My three-year old daughter's most enduring memory of her father will be placing flowers on his empty grave. My most enduring memory of my husband, Ronald Breitweiser, will be his final words to me, "Sweets, I'm fine, I don't want you to worry, I love you." Ron uttered those words while he was watching men and women jump to their deaths from the top of Tower One. Four minutes later, his Tower was hit by United Flight 175. I never spoke to my husband, Ron, again.

I don't really know what happened to him. I don't know whether he jumped or he choked to death on smoke. I don't know whether he sat curled up in a corner watching the carpet melt in front of him, knowing that his own death was soon to come or if he was alive long enough to be crushed by the buildings when they

collapsed. These are the images that haunt me at night when I put my head to rest on his pillow.

I do know that the dream I had envisioned, that I so desperately needed to believe—that he was immediately turned to ash and floated up to the heavens, was simply not his fate. I know this because his wedding band was recovered from ground zero with a part of his left arm. The wedding band is charred and scratched, but still perfectly round and fully intact. I wear it on my right hand, and it will remain there until the day I die.

September 11th was the devastating result of a catalogue of failures on behalf of our government and its agencies. My husband and the approximately 3000 others like him went to work and never came home. But, were any of our governmental agencies doing their job on that fateful morning? Perhaps, the carnage and devastation of September 11th speaks for itself in answering this question.

Our intelligence agencies suffered an utter collapse in their duties and responsibilities leading up to and on September 11th. But, their negligence does not stand alone. Agencies like the Port Authority, the City of NY, the FAA, the INS, the Secret Service, NORAD, the Air Force, and the airlines also failed our nation that morning. Perhaps, said more cogently, one singular agency's failures do not eclipse another's. And it goes without saying that the examination of the intelligence agencies by this Committee does not detract, discount or dismantle the need for a more thorough examination of all of these other culpable parties.

An independent blue-ribbon panel would be the most appropriate means to achieve such a thorough and expansive examination, in large part, because it would not be limited in scope or hindered by time limits. An independent blue-ribbon panel

would provide a comprehensive, unbiased and definitive report that the devastation of September 11th demands.

Soon after the attacks, President Bush stated that there would come a time to look back and examine our nation's failures, but that such an undertaking was inappropriate while the nation was still in shock.[1] I would respectfully suggest to President Bush and to our Congress that now, a full year later, it is time to look back and investigate our failures as a nation. A hallmark of democratic government is a willingness to admit to, analyze and learn from mistakes. And, it is now time for our nation to triumph as the great democracy that it is.

The families of the victims of September 11th have waited long enough. We need to have answers. We need to have accountability. We need to feel safe living and working in this great nation.

Specific Threats as to Using Planes as Weapons

On May 17th 2002, National Security Advisor Condoleeza Rice stated emphatically, "I don't think anybody could have predicted that these people would take an airplane and slam it into The World Trade Center...that they would try to use an airplane as a missile, a hijacked airplane as a missile."[2]

The historical facts illustrate differently:

*In 1993, a $150,000 study was commissioned by the Pentagon to investigate the possibility of an airplane being used to

[1] NYTimes, 9.14.01, "Juggling Being a Father to a Son and a President," stated by Ari Fleischer, President's Spokesman, "At an appropriate time, the President will be more willing to look back but his focus right now needs to be done in the wake of the attack on the U.S," p.A18.
[2] Newsweek, 5.27.02, "What Went Wrong", p.33.

bomb national landmarks. A draft document of this was circulated throughout the Pentagon, the Justice Department and to FEMA.[3]

*In 1994 a disgruntled FEDEX employee invaded the cockpit of a DC-10 with plans to crash it into a company building in Memphis.[4]

*In 1994, a lone pilot crashed a small plane into a tree on the White House grounds.

*In 1994, an Air France flight was hijacked by members of the Armed Islamic Group with the intent to crash the plane into the Eiffel Tower.[5]

*In January 1995, Philippine authorities investigating Abdul Murad, an Islamic terrorist, unearthed "Project Bojinka." Project Bojinka's primary objective was to blow up 11 airliners over the Pacific, and in the alternative, several planes were to be hijacked and flown into civilian targets in the US. Among the targets mentioned were CIA headquarters, The World Trade Center, the Sears Tower, and the White House. Murad told US intelligence officials that he would board any American commercial aircraft pretending to be an ordinary passenger. And he would then hijack the aircraft, control its cockpit and dive it at the CIA headquarters.[6]

*In 1997, this plot re-surfaced during the trial of Ramsi Yousef—the mastermind behind the 1993 bombings of The World Trade Center. During the trial, FBI agents testified that "the plan targeted not only the CIA but other US government buildings in Washington, including the Pentagon."[7]

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[3] Newsweek, 5.27.02, "What Went Wrong," p.33.
[4] NYTimes, 9.21.01, "US Identifies Some Elements of Hijack Plot in Advance", page B9.
[5] New Yorker, 6.3.02, "Missed Messages," p.43.
[6] NYTimes, 6.9.02, "In Many Years of Plots and Clues, Scope of Al Qaeda Eluded U.S.," p.37.
[7] Newsweek, 5.27.02, "What Went Wrong," p.33.

*In September 1999, a report, The Sociology and Psychology of Terrorism, was prepared for U.S. intelligence by the Federal Research Division, an arm of the Library of Congress. It stated, "Suicide bombers belonging to Al Qaeda's Martyrdom Battalion could crash-land an aircraft packed with high explosives(c-4 and semtex) into the Pentagon, the headquarters of the CIA, or the White House."[8]

This laundry list of historical indicators—in no way exhaustive--illustrates that long before September 11th the American intelligence community had a significant amount of information about specific terrorist threats to commercial airline travel in America, including the possibility that a plane would be used as a weapon.

Failure to Make Warnings Public

On March 11th 2002, Director of the CIA, George Tenet stated, "in broad terms last summer that terrorists might be planning major operations in the United States. But, we never had the texture—meaning enough information—to stop what happened."[9]

On May 8th 2002, Director of the FBI, Robert Mueller stated, "there was nothing the agency could have done to anticipate and prevent the attacks."[10]

Once again, the historical facts indicate differently:

* Throughout the spring and early summer of 2001, intelligence agencies flooded the government with warnings of possible terrorist attacks against American targets, including

[8] CBSNews.com, 9.17.02, "Report Warned of Suicide Hijackers."
[9] NYTimes, 3.11.02
[10] Testimony before Joint Intelligence Committee on May 8, 2002.

commercial aircraft, by Al Qaeda and other groups. The warnings were vague but sufficiently alarming to prompt the FAA to issue four information circulars, or IC's, to the commercial airline industry between June 22nd and July 31st, warning of possible terrorism.[11]

* On June 22, the military's Central and European Commands imposed "Force Protection Condition Delta," the highest anti-terrorist alert.[12]

* On June 28th: National security advisor Condoleeza Rice said: "It is highly likely that a significant Al Qaeda attack is in the near future, within several weeks."[13]

* As of July 31st, the FAA urged U.S. airlines to maintain a "high degree of alertness."[14]

* One FAA circular from late July, noted according to Condoleeza Rice that there was 'no specific target, no credible info of attack to US civil-aviation interests, but terror groups are known to be planning and training for hijackings and we ask you therefore to use caution."[15]

* Two counter-terrorism officials described the alerts of the early and mid-summer 2001 as "the most urgent in decades."[16]

One thing remains clear from this history. Our intelligence agencies were acutely aware of an impending domestic risk posed by Al Qaeda. A question that remains unclear is how many lives

[11] New Yorker, 6.3.02, "Missed Messages," p.41.
[12] International Herald Tribune, 5.18.02, "Aide Warned in July of 'Spectacular Threat,'" p.3.
[13] Ibid.
[14] Ibid.
[15] New Yorker, 6.3.02, "Missed Messages," p.41.
[16] International Herald Tribune, 5.18.02, "Aide Warned in July of 'Spectacular Threat,'" p.3.

could have been saved had this information been made more public.

Airport security officials could have gone over all the basics, again, of the steps needed to prevent hijackings. The policy of allowing passengers to carry razors and knives with blades of up to four inches in length certainly could have come under scrutiny. Indeed, officials could have issued an emergency directive prohibiting such potential weapons in carry-on bags. Finally, all selectees under the Computer Assisted Passenger Pre-Screening System (CAPPS), and their carry-on luggage and checked bags, could have been subjected to additional screening. Apparently, none were on September 11th, although internal FAA documents indicate that CAPPS selected some of the hijackers.[17]

And how many victims may have thought twice before boarding an aircraft? How many victims would have chosen to fly on private planes? How many victims may have taken notice of these Middle- Eastern men while they were boarding their plane? Could these men have been stopped? Going further, how many vigilant employees would have chosen to immediately flee Tower 2 after they witnessed the blazing inferno in Tower 1, if only they had known that an Al Qaeda terrorist attack was imminent?

Could the devastation of September 11 been diminished in any degree had the government's information been made public in the summer of 2001?

Failure to Investigate and Share Information

On July 5th, the government's top counter-terrorism official, Richard Clarke stated to a group gathered at the White House,

[17] International Herald Tribune, 5.31.02, "New Concourse Cheks Proposed in US," p.2.

"Something really spectacular is going to happen here, and it's going to happen soon."[18]

The group included the FAA, the Coast Guard, the FBI, the Secret Service, and the INS. Clarke directed every counter-terrorist office to *cancel vacations, defer non-vital travel, put off scheduled exercises and place domestic rapid response teams on much shorter alert.*[19]

For six weeks last summer at home and abroad, *the U.S. government was at its highest possible state of readiness—and anxiety—against imminent terrorist attack.*[20]

A senior FBI official attending the White House meeting on July 5th *committed the bureau to redouble contacts with its foreign counterparts and to speed up transcription and analysis of wiretaps obtained under the Foreign Intelligence Surveillance Act (FISA), among other steps.*[21]

But when the field agent in Phoenix, Arizona, reported the suspicions of a hijacking plot *just five days later*, the FBI did not share the report with any other agency. One must ask, why?[22]

That report written by Agent Kenneth Williams, now well known as the "Phoenix Memo," recommended that the FBI investigate whether Al Qaeda operatives were training at U.S. flight schools. Williams posited that Osama Bin Laden's followers might be trying to infiltrate the civil aviation system as pilots, security guards or other personnel, and he recommended a national

[18] International Herald Tribune, 5.18.02, "Aide Warned in July of 'Spectacular Threat,'" p.3.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.

program to track suspicious flight school students. Agent Williams was dead-on point.[23]

But, in the summer of 2001, while our nation was at its highest state of alert, his memo was flatly ignored. And, what result if it hadn't been ignored? What if his memo was promptly placed on INTELINK, SIPRNET, or NIPRNET? What if other agents had the same suspicions in Florida, California, Georgia, Ohio, and Nevada? Could the terrorists have been stopped?

On August 15, 2001, an alert civilian instructor at a Minnesota flight school called the FBI and said, "Do you realize that a 747 loaded with fuel can be a bomb?" The next day, Zacarias Moussaoui was arrested. After investigating Zacarias Moussaoui's past, the FBI (with the help of French Intelligence) learned that he had Islamic extremist connections. They also knew that he was interested in flight patterns around New York City, and that he had a strong desire to fly big jets, even though at the time he didn't have so much as a license to fly a Cessna.[24]

And then, what happened?

The FBI office in Minnesota attempted to get a FISA warrant, but they were rebuffed. A crucial mistake, because Zacarias Moussaoui's possessions contained evidence that would have exposed key elements of the September 11th plot.[25]

But, why was this request denied? Again, the historical facts must be analyzed.

In March 2001, an internal debate ignited at the Justice Department and the FBI over wiretap surveillance of certain

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[23] Ibid.
[24] CBSNews.com, 1.2.02, "Moussaoui's Radical Change."
[25] CBSNews.com, 5.8.02, "Could It Have Been Stopped?"

terrorist groups. Prompted by questions raised by Royce C. Lamberth, the Chief Judge of the FISA Court, the Justice Department opened an inquiry into Michael Resnick, an FBI official who coordinated the Act's applications. Attorney General John Ashcroft and Robert Mueller (then deputy Attorney General), ordered a full review of all foreign surveillance authorizations.[26]

Justice Department and FBI officials have since acknowledged the existence of this internal investigation, and said that the inquiry forced officials to examine their monitoring of several suspected terrorist groups, including Al Qaeda. And while senior FBI and Justice Department officials contend that the internal investigation did not affect their ability to monitor Al Qaeda, other officials have acknowledged that the inquiry might have hampered electronic surveillance of terror groups. The matter remains highly classified.[27]

What is not classified is that in early September a Minnesota FBI agent wrote an analytic memo on Zacarias Moussaoui's case, theorizing that the suspect could fly a plane into The World Trade Center. And, tragically, this, too, was ignored.

Also ignored by U.S. intelligence agencies was the enormous amount of trading activity on the Chicago Exchange Board and in overseas markets.[28] Our intelligence agencies readily use Promis software to analyze these kinds of market indicators that presented themselves in the weeks prior to September 11th. Why were these aberrational trades and market swings ignored? We were at the highest state of alert. An attack by Al Qaeda was expected to occur at any given moment. And yet, massive amounts of trades occurred on American Airlines, United Airlines, Re-insurance companies,

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[26] NYTimes, 9.19.01, "Officials Say Two More Jets May Have Been in Plot," p. B4.
[27] Ibid, p.B1.
[28] NYTimes, 9.16.01, "FBI Seeking Two of Hijack Suspects at Time of Attack," p. 7; see also, NYTimes, 9.28.01, "Doubt Intensifies that Advance Knowledge of Attacks Was Used For Profit," p. B4.

and leaseholders in The World Trade Center and none of our watchdogs noticed?

Perhaps even more disturbing is the information regarding Khalid al-Midhar and Nawaf Alhazmi, two of the hijackers. In late August, the CIA asked the INS to put these two men on a watchlist because of their ties to the bombing of the U.S.S. Cole. On August 23, 2001, the INS informed the CIA that both men had already slipped into the country. Immediately thereafter, the CIA asked the FBI to find al-Midhar and Alhazmi. Not a seemingly hard task in light of the fact that one of them was listed in the San Diego phone book, the other took out a bank account in his own name, and finally, an FBI informant happened to be their roommate.[29]

But, again, our intelligence agencies failed.

Were the Terrorists Already Under Surveillance?

It was only after the devastation of September 11th that our intelligence agencies seemed to get back on track.

On September 12, 2001, *The New York Times* reported, "On Tuesday *a few hours* (emphasis added) after the attacks, FBI agents descended on flight schools, neighborhoods, and restaurants in pursuit of leads. The FBI arrived at Huffman Aviation at about 2:30 a.m., Wednesday morning. They walked out with all the school's records, including photocopies of the men's passports."

The New York Times also reported that students at Embry Riddle Aeronautical University said that *within hours* (emphasis added) of the attacks FBI investigators were seen at their school.

[29] NYTimes, 9.16.01, "Lawmakers See a Need to Loosen Rules that Constrain CIA Spy Tactics," p. 4., see also, Newsweek, 6.10.02, "The Hijackers We Let Escape," p.26; see also, Newseek, 9/16/02, "The Informant Who Lived With the Hijackers," p.6.

How did the FBI know exactly where to go only a "few hours" after the attacks? How did they know which neighborhoods, which flight schools, and which restaurants to investigate so soon into the case?

The New York Times went on to report that "federal agents questioned employees at a store in Bangor, Maine, where five Arab men believed to be the hijackers tried to rent cell phones late last week. Store employees at first refused to sell the phones because the men lacked proper identification, but they gave in after the five offered $3000 cash, store employees and an airport official said."

The article goes on to state, "the men then phoned Bangor airport trying to get a flight to Boston but were told there was no flight that matched their desired departure time, the authorities said. The men then phoned Portland International JetPort, where two of them apparently made reservations for a flight to Boston on Tuesday morning."

How would this information be gleaned so quickly? How would the FBI know to visit a store in Bangor, Maine only *hours* after the attacks? Moreover, how would they know the details of a phone conversation that occurred a week *prior* to the attacks? Were any of the hijackers already under surveillance? It has been widely reported that the hijackers ran practice runs on the airline routes that were chosen on September 11th.[30] Did our intelligence agents ever shadow these men on any of their prior practice runs?

Furthermore, on September 12th, *The New York Times* reported that, "authorities said they had also identified accomplices in several cities who had helped plan and execute Tuesday's attacks. Officials said they knew who these people were and

[30] New Yorker, 6.3.02, "Missed Messages," p.42.

important biographical details about many of them. They prepared biographies of each identified member of the hijack teams and began tracing the recent movements of the men."

How were complete biographies of the terrorists and their accomplices created in such short time? Did our intelligence agencies already have open files on these men? Were they already investigating them? Could the attacks of September 11th been prevented?

The speed by which the FBI was able to locate, assimilate, and analyze a small amount of information so soon after the attacks—barely one day later, perhaps answers this question for itself? But, if the terrorists were under investigation, then why were they ever permitted to board those planes? Perhaps, even more potently, why if such an investigation was already underway, why was our nation so late in responding to the emergency that quickly unfolded that day?

Too Many Questions Remain

Too many questions remain. Topping the list of unanswered questions are those that involve our nation's coordination, communication, and response to the attacks that morning. The 24 hours that presented themselves on September 11th beg to be examined. Questions like:

Why did the NY/NJ Port Authority not evacuate The World Trade Center when they had an open phone line with Newark Traffic Control Center and were told that the second plane was bearing down on the South Tower? NY/NJ Port Authority had at least eleven minutes of notice to begin evacuations of the South Tower. An express elevator in The World Trade Center was able to travel from top to bottom in one minute's time. How many lives

may have been saved, had the Port Authority acted more decisively or, rather, acted at all.

Were F-16's and Stealth bombers seen and tracked on radar screens at approximately 8:05am the morning of September 11th in the vicinity of the New York metropolitan area?

Washington Air Traffic Control Center knew about the first plane before it hit the World Trade Center. Yet, the third plane was able to fly "loop de loops" over Washington D.C. one hour and 45 minutes after Washington Center first knew about the hijackings. After circling in this restricted airspace—controlled and protected by the Secret Service who had an open phone line to the FAA, how is it possible that the plane was then able to crash into the Pentagon? Why was the Pentagon not evacuated?

Why was our Air Force so late in its response?

What, if anything, did our nation do, in a defensive military posture that morning?

3000 innocent Americans were killed on September 11th, leaving behind families and loved ones like myself and my daughter. There are too many heartbreaking stories to recount. There are too many lost opportunities and futures to be told.

But what can be said to you today is that the families continue to suffer each and every day. All we have are tears and a resolve to find the answers because we continue to look into the eyes of our young children who ask us why? We have an obligation as parents and as a nation to provide these innocent children with answers as to why their mother or father never returned home from work that day.

We need people to be held accountable for their failures. We need leaders with the courage to take responsibility for what went wrong. Mistakes were made and too many lives were lost. We must investigate these errors so that they will never happen again. It is our responsibility as a nation to turn the dark events of September 11th into something from which we can all learn and grow, so that we, as a nation, can look forward to a safe future.

In closing, I would like to add one thought. Undoubtedly, each of you here today, because you live and work in Washington D.C. must have felt that you were in the bull's-eye on September 11th. For most of you, there was a relief at the end of that day; a relief that you and your loved ones were in safe hands. You were the lucky ones. In your continuing investigation, please, do not forget those of us who did not share in your good fate.

Questions to be Answered

SEC

1. What are the names of the individuals and the financial institutions who placed "put" orders on American Airlines and United Airlines for the 3 weeks prior to 9/11? Who has possession of these monies?

INS

1. Who approved the posthumous visa requests of Atta and Al-shehhi?

2. Who job was it to check on the validity of student visas? Specifically, Hani Hanjour entered this country on a student visa and never attended class, who was responsible for this?

3. From what countries did the terrorists enter this country from? Specifically, when, where, and how did they enter this country? What country of origin were the terrorist's passports from? Under what names were their passports?

4. In 1996 Congress gave $800 million to the INS to upgrade its computer systems. To date, those systems remain antiquated. Where is this money? Whose responsibility was it to oversee that this was carried out?

FAA

1. A flight attendant on AA#11 notified her supervisor within the first few minutes of the plane being overtaken. What was the name of this supervisor? What exactly did he do with this information? Why was NORAD not immediately notified? What are the names of the individuals whose responsibility centers upon notifying NORAD in situations like this--on the local, regional, and national levels? Why was the protocol not followed?

2. Why were these four planes able to evade all radar--even when the transponders are disconnected, a plane is still able to be located by its "skin" on radar screens.

3. Was there a gun on AA#11? FAA executive summary stated that a gun was fired. This report was thereafter redacted. What is the truth?

4. Where did the information about box-cutters come from? How do we know that the terrorists were armed with these? Were any other weapons used on the planes other than box cutters and small knives? If so, what weapons and which flights?

5. Is it true that the FAA permitted 4-inch knives on planes before September 11th even though the FAA knew that such knives were the "weapons of choice" for hijackers?

6. With regard to Mohammed Atta, it was reported that he was armed with pepper spray. Was he armed with pepper spray? If so, how did the pepper spray get on the plane? Moreover, how did the US Attorney glean this fact?

7. Can the FAA and/or the FBI confirm or disprove the use of pepper spray on Flight 175 and a gun on Flight 93?

8. Is there any evidence of a bomb or bomb materials found on any of the flights?

9. Is there any evidence that flight 93 was shot down or exploded before it hit the ground?

10. For each flight, which crew members and passengers may have been injured or killed before the crash? How were

2 of 3

they injured or killed?

11. Where are the "black boxes" and the transcripts from all four crash sites?

12. 9 of the hijackers were selected for special security screenings(2 for irregularities in identification documents, 6 for extra-scrutiny by a computer screening program and 1 because he was traveling with a questionable individual). What exactly were the irregularities in identification? Which 2 had these irregularities? What is the name of the individual who made the decision to let these 2 men board the planes? What was done during the course of the detainment of these 2 individuals? What questions were asked? Was anything confiscated? With regard to the remaining 7 hijackers, what were the list of questions asked to them? Who interrogated them? Was anything confiscated? What is the name of the individual who permitted these men to board the planes? Where are the logs and records and incident reports from these detainments?

13. Were the airlines required to check passengers' names against the terrorist watch list prior to 9/11? If not why? If they were required to check, why were two hijackers on the watch list allowed to board Flight 77 using their own names?

14. Why was Logan Airport not sanctioned for its repeated failure to meet FAA standards for airline security? If they were sanctioned, how much were they fined? Did they completely pay the fine? What is the name of the individual who was responsible for making sure that Logan Airport met its airport/airline security requirements?

15. Where are all transcripts from Air Traffic Control? Where are all logs and records from the FAA?

16. All planes had "light loads" on the morning of September 11th. Was this a coincidence? Would this information be readily and publicly available? What was the average number of passengers that traveled on those flights on a regular basis?

17. The number of people on the flights doesn't match the number of names on the flight lists of the four flights. Why is this?

Port Authority

1. WTC were not up to "code" with regard to their fireproofing. Whose responsibility was it to ensure that these buildings were built to "code"? What is the name of the individual who was responsible to ensure that all buildings were maintained?

2. Why was WTC emergency evacuation protocols not followed?

3. Why were the roof access doors locked?

4. Why were the sprinkler systems locked?

5. Why was there no roof-top evacuation?

6. What is the name of the individual who made the announcement in 2 WTC who told workers to return to their offices?

7. In light of the 1993 bombings, what additional security precautions were put into effect?

8. It has been reported that 85% of the WTC steel was sold and sent overseas. Who authorized the sale of the steel? Was any of the steel examined prior to its shipment? Were any of the pieces of steel recorded on videotape?

Secret Service

1. Why was President Bush not immediately evacuated from the Sarasota school, but rather was permitted to remain in the building after the second building was hit and this nation was under attack? Why was protocol not followed? Was President Bush deemed to be in the "zone of danger"? If so, at exactly, what time was he put in the "zone of danger"?

2. Where is the log and record of the Secret Service agents? Where is the incident report?

NORAD

395

1. At precisely what time was NORAD notified of each plane being hijacked? What was their response? What is the name of the individual who determined from which bases the F-16's should be scrambled from? What are the names of the pilots of these f-16's?

2. Whose decision was it to not utilize the F-16's weapons?

3. Whose decision was it to not fly the F-16's at maximum speed?

4. Why didn't the F-16's intercept the hijacked airliners?

5. Please draw up a chart of NORAD's response to the Payne Stewart lear jet incident vs. the 9/11 incident. Why was protocol not followed on 9/11? What is the name of the individual who did not follow protocol? Where are the transcripts from the F-16's? Where is the log and record from NORAD?

6. What satellites were orbiting North American airspace on 9/11? What exactly does the satellite imaging reveal? What companies own these satellites? Where are the records and logs for these orbits?

FBI/CIA/NSA

1. At a point in time when there was a "high level of chatter" why were the NSA warnings not translated on time? What information was contained in the warnings, specifically?

2. What agency obtained the photo of Atta at the ATM machine in rural Maine less than 48 hours after September 11th? Was Atta under surveillance? Were any of the terrorists on board the planes under surveillance? Where are the logs and records from the Boston FBI field office for the months of June through September?

3. What degree of probable cause was Moussouai being held under when he was arrested in mid-August? What is the name of the individual who turned down the request for the search warrant? What is the name of the supervisor who was overseeing the Mossouai case? Where the transcripts from the original detainment hearing for Moussouai?

4. What is the name of the CIA operative who delivered Bin Laden to an American hospital in Dubai in July of 2001?

5. What is the name of the individual who decided to fly the Bin Laden family back to Saudi Arabia on the eve of September 11th?

6. Please give a list of defensive military action taken by this country on the morning of 9/11.

7. At exactly what time was the shadow government put in place?

8. Was the White House a target on 9/11?

9. At exactly what time was the White House evacuated? Who was in charge of this country on the morning of 9/11?

10. Please explain the United States' position with regard to the pipeline in Afghanistan and the position of our troops in Afghanistan prior to 9/11? Has any of our intelligence agencies investigated the following companies and their activities prior to September 11th--Enron, Halliburton, and the Carlyle Group?

11. Please explain the nature of our relationship to the Israeli government and exactly when we received warning signals from them about an impending attack. What were the warning signals? What was done on the United States' behalf in response to those warning signals?

12. What procedures were put in place after the Graham-Rudman Act was complete and its report finalized?

13. When will the FBI investigation of the airline crashes be complete? Will the NTSB do an investigation at that time? If not, why?

14. When will the FBI release the information that it has about the crashes, including but not limited to autopsy reports, cockpit voice recordings, flight data recordings, tapes, transcripts and reports/transcripts of cell phone calls made from the planes?

15. Florida was put under a state of emergency by Jeb Bush on September 9th, where is the executive order? What was the reason stated?

STATEMENT OF KRISTEN BREITWEISER, CO-CHAIRPERSON, SEPTEMBER 11TH ADVOCATES

Ms. BREITWEISER. Good morning, Mr. Chairman. I have a written statement to be made part of the record, and I would like to submit some supporting documentation.

Chairman GRAHAM. Ms. Breitweiser, could you put the microphone—yes, right in front. Good, thank you.

Ms. BREITWEISER. Is that better?

Chairman GRAHAM. That's good.

Ms. BREITWEISER. I will summarize my testimony as follows. I would like to thank the families of the 3000 victims for allowing me to represent them here today before the Joint Intelligence Committee. It is a tremendous honor. Testifying before this committee is a privilege and an enormous responsibility that I do not take lightly. I will do my best not to disappoint the families or the memories of their loved ones.

Toward that end, I ask the Members present here today to find in my voice the voices of all the family members of the 3000 victims of September 11. I would also ask for you to see in my eyes the eyes of the more than 10,000 children who are left to grow up without the love, affection and guidance of a mother or a father who was tragically killed on September 11.

I would now like to thank the members of the Joint Intelligence Committee, Eleanor Hill and her staff for giving the families this opportunity to be heard. It has been an excruciating and overwhelming 12 months, and it is now time for our words and our concerns to be heard by you. My three-year-old daughter's most enduring memory of her father will be placing flowers on his empty grave. My most enduring memory of my husband Ronald will be his final words to me. "Sweets, I'm fine, I don't want you to worry. I love you."

Ron uttered those words while he was watching men and women jump to their deaths from the top of Tower One. Four minutes later, his tower was hit by United Flight 175. I never spoke to my husband again. I don't really know what happened to him. I don't know whether he jumped or he choked to death on smoke. I don't know whether he sat curled up in a corner watching the carpet melt in front of him, knowing that his own death was soon to come, or if he was alive long enough to be crushed by the buildings when they ultimately collapsed. These are the images that haunt me at night when I put my head to rest on his pillow.

I do know that the dream that I had envisioned, that I so desperately needed to believe, that he was immediately turned to ash and floated up to the heavens, was simply not his fate. I know this because his wedding band was recovered from Ground Zero, with a part of his arm. The wedding band is charred and scratched, but still perfectly round and fully intact. I wear it on my right hand it will remain there until the day I die.

September 11 was the devastating result of a catalogue of failures on behalf of our government and its agencies. My husband and the approximately 3000 others like him went to work that morning and never came home.

But were any of our governmental agencies doing their job on that fateful morning? Perhaps the carnage and devastation of Sep-

tember 11 speaks for itself in answering this question. Our intelligence agencies suffered an utter collapse in their duties and responsibilities leading up to and on September 11. But their negligence does not stand alone. Agencies like the Port Authority, the City of New York, the FAA, the INS, the Secret Service, NORAD, the Air Force and the airlines also failed our nation that morning. Perhaps said more cogently, one singular agency's failures do not eclipse another's.

And it goes without saying that the examination of the intelligence agencies by this committee does not detract, discount, or dismantle the need for a more thorough examination of all of these other culpable parties. An independent, blue ribbon panel would be the most appropriate means to achieve such a thorough and expansive examination, in large part because it would not be limited in scope or hindered by time limits. An independent blue ribbon panel would provide a comprehensive, unbiased, and definitive report that the devastation of September 11 demands.

Soon after the attacks, President Bush stated that there would come a time to look back and examine our nation's failures, but that such an undertaking was inappropriate while the nation was still in shock. I would respectfully suggest to President Bush and to our Congress that now, a full year later, it is time to look back and investigate our failures as a nation.

A hallmark of democratic government is a willingness to admit to, analyze and learn from mistakes, and it is now time for our nation to triumph as the great democracy that it is. The families of the victims of September 11 have waited long enough. We need to have answers. We need to have accountability. We need to feel safe living and working in this great nation.

On May 17, 2002, National Security Adviser Condoleeza Rice stated, "I don't think anybody could have predicted that these people would take an airplane and slam it into the World Trade Center, that they would try to use an airplane as a missile—a hijacked airplane as a missile." The historical facts illustrate differently.

In 1993, a $150,000 study was commissioned by the Pentagon to investigate the possibility of an airplane being used to bomb national landmarks. A draft document of this was circulated throughout the Pentagon, the Justice Department, and to FEMA.

In 1994, a disgruntled FedEx employee invaded the cockpit of a DC10 with plans to crash it into a company building. Again, in 1994, a lone pilot crashed a small plane into a tree on the White House grounds. Again, in 1994, an Air France flight was hijacked by members of the Armed Islamic Group with the intent to crash the plane into the Eiffel Tower.

In January, 1995, Philippine authorities investigating Abdul Murad, an Islamic terrorist, unearthed Project Bojinka. Project Bojinka's primary objective was to blow up 11 airliners over the Pacific. In the alternative, several planes were to be hijacked and flown into civilian targets in the United States. Among the targets mentioned were CIA headquarters, the World Trade Center, the Sears Tower, and the White House.

Murad told U.S. intelligence officials that he would board any American commercial aircraft pretending to be an ordinary passenger and that he would then hijack the aircraft, control its cock-

pit, and dive it at CIA headquarters. In 1997, this plot resurfaced during the trial of Ramzi Yousef, the mastermind behind the 1993 bombings of the World Trade Center. During the trial, FBI agents testified that, "The plan targeted not only the CIA, but other U.S. government buildings in Washington, including the Pentagon."

In September 1999, a report, "The Sociology and Psychology of Terrorism," was prepared for U.S. intelligence by the Federal Research Division, an arm of the Library of Congress. It stated, "Suicide bombers belonging to al-Qa'ida's martyrdom battalion could crash-land an aircraft packed with high explosives into the Pentagon, the headquarters of the CIA, or the White House." Again, that was in September, 1999.

This laundry list of historical indicators, in no way exhaustive, illustrates that long before September 11, the American Intelligence Community had a significant amount of information about specific terrorist threats to commercial airline travel in America, including the possibility that a plane would be used as a weapon.

On March 11, 2002, Director of the CIA George Tenet stated, "In broad terms last summer that terrorists might be planning major operations in the United States, but we never had the texture, meaning enough information to stop what happened."

On May 8 2002, Director of the FBI Robert Mueller stated, "There was nothing the agency could have done to anticipate or prevent the attacks."

Once again, the historical facts indicate differently. Throughout the spring and early summer of 2001, intelligence agencies flooded the government with warnings of possible terrorist attacks against American targets, including commercial aircraft, by al-Qa'ida and other groups. The warnings were vague, but sufficiently alarming to prompt the FAA to issue four information circulars to the commercial airline industry between June 22 and July 31 warning of possible terrorism.

On June 22, the military's Central and European commands enforced force protection condition delta, the highest anti-terrorist alert.

On June 28, 2001, National Security Adviser Condoleeza Rice said, "It is highly likely that a significant al-Qa'ida attack is in the near future within several weeks."

As of July 31, the FAA urged U.S. airlines to maintain a "high degree of alertness." One FAA circular from late July, 2001, noted, according to Condoleeza Rice, that there was, "No specific target, no credible information of attack to U.S. civil aviation interests, but that terror groups are known to be planning and training for hijackings, and we ask you therefore to use caution."

Two counterterrorism officials described the alerts of the early and mid-summer 2001 as "the most urgent in decades." One thing remains clear from this history: Our intelligence agencies were acutely aware of an impending domestic risk posed by al-Qa'ida. A question that remains unclear is how many lives could have been saved had this information been made more public. Airport security officials could have gone over all the basics again of the steps needed to prevent hijackings. The policy allowing passengers to carry razors and knives with blades of up to four inches in length certainly could have come under scrutiny.

Indeed, officials could have issued an emergency directive prohibiting such potential weapons in carry-on bags. Finally, all selectees under the computer-assisted passenger prescreening system, and their carry-on luggage and checked bags, could have been subjected to additional screening. Apparently, none were on September 11, although internal FAA documents do indicate that CAPPS selected some of the hijackers.

And how many victims may have thought twice before boarding an aircraft? How many victims would have chosen to fly on private planes? How many victims would have taken notice of these Middle Eastern men while they were boarding their plane? Could these men have been stopped? Going further, how many vigilant employees would have chosen to immediately flee Tower Two after they witnessed the blazing inferno in Tower One if only they had known that an al-Qa'ida terrorist attack was imminent? Could the devastation of September 11 been diminished in any degree had the government's information been made public in the summer of 2001?

On July 5, 2001, the government's top counterterrorism official, Richard Clarke, stated to a group gathered at the White House, "Something really spectacular is going to happen here, and it's going to happen soon." The group included the FAA, the Coast Guard, the FBI, the Secret Service, and the INS. Clarke directed every counterterrorist office to cancel vacations, defer non-vital travel, put off scheduled exercises, and place domestic rapid response teams on much shorter alert. For six weeks, last summer, at home and abroad, the U.S. government was at its highest possible state of readiness against imminent terrorist attack.

A senior FBI official attending the White House meeting on July 5, 2001, committed the Bureau to redouble contacts with its foreign counterparts and to speed up transcription and analysis of wiretaps obtained under the Foreign Intelligence Surveillance Act, among other steps. But when the field agent in Phoenix, Arizona reported the suspicions of a hijacking plot just five days later, the FBI did not share the report with any other agency. One must ask why.

That report, written by Agent Kenneth Williams, now well-known as the Phoenix memo, recommended that the FBI investigate whether al-Qa'ida operatives were training at U.S. flight schools. Williams posited that Usama bin Ladin followers might be trying to infiltrate the civil aviation system as pilots, security guards, or other personnel. He recommended a national program to track suspicious flight school students. Agent Williams was dead on point.

But in the summer of 2001, while our nation was at its highest state of alert, his memo was flatly ignored. And what result if it hadn't been ignored? What if his memo was promptly placed on INTELINK, SIPRNET or NIPRNET? What if other agents had the same suspicions in Florida, California, Georgia, Ohio, and Nevada? Could the terrorists have been stopped?

On August 15, 2001 an alert civilian instructor at a Minnesota flight school called the FBI and said, "Do you realize that a 747 loaded with fuel can be a bomb?" The next day, Zacharias Moussaoui was arrested. After investigating Moussaoui's past, the FBI, with the help of French intelligence, learned that he had Islamic extremist connections. They also knew that he was interested

in flight patterns around New York City, and that he had a strong desire to fly big jets, even though at the time he didn't have so much as a license to fly a Cessna.

And then what happened? The FBI office in Minnesota attempted to get a FISA warrant, but they were rebuffed, a crucial mistake, because Zacharias Moussaoui's possessions contained evidence that would have exposed key elements of the September 11 plot. Why was this request denied? Again, the historical facts must be analyzed. In March, 2001, an internal debate ignited at the Justice Department and the FBI over wire-tap surveillance of certain terrorist groups. Prompted by questions raised by Royce C. Lamberth, the chief judge of the FISA court, the Justice Department opened an inquiry into Michael Resnik, an FBI official who coordinated the Act's applications.

Attorney General John Ashcroft and Robert Mueller, then Deputy Attorney General, ordered a full review of all foreign surveillance authorizations. Again, this was in March, 2001. Justice Department and FBI officials have since acknowledged the existence of this internal investigation and said that the inquiry forced officials to examine their monitoring of several suspected terrorist groups, including al-Qa'ida. And while senior FBI and Justice Department officials contend that the internal investigation did not affect their ability to monitor al-Qa'ida, other officials have acknowledged that the inquiry might have hampered electronic surveillance of terror groups. The matter remains highly classified. What is not classified is that in early September, a Minnesota FBI agent wrote an analytic memo on Zacharias Moussaoui's case, theorizing that the suspect could fly a plane into the World Trade Center. Tragically, this too was ignored.

Also ignored by U.S. intelligence agencies was the enormous amount of trading activity on the Chicago Exchange Board and in overseas markets. Our intelligence agencies readily use PROMIS software to analyze these kinds of market indicators that presented themselves in the weeks prior to September 11. Why were these aberrational trades and market swings ignored? We were at the highest state of alert, an attack by al-Qa'ida was expected to occur at any given moment, and yet massive amounts of trade occurred on American Airlines, United Airlines, reinsurance companies and lease holders in the World Trade Center, and none of our watchdogs noticed.

Perhaps even more disturbing is the information regarding Khalid al-Mihdhar and Nawaf al-Hazmi, two of the hijackers. In late August 2001, the CIA asked the INS to put these two men on a watch list because of their ties to the bombing of the USS *Cole*. On August 23, 2001, the INS informed the CIA that both men had already slipped into this country.

Immediately thereafter, the CIA asked the FBI to find al-Mihdhar and al-Hazmi, not a seemingly hard task in light of the fact that one of them was listed in the San Diego phone book, the other took out a bank account in his own name, and finally we have recently come to find out that an FBI informant happened to be their roommate. But again, our intelligence agencies failed.

It was only after the devastation of September 11 that our intelligence agencies seemed to get back on track. On September 12,

2001, the New York Times reported, "On Tuesday, a few hours after the attacks, FBI agents descended on flight schools, neighborhoods and restaurants in pursuit of leads. The FBI arrived at Huffman Aviation at about 2:30 a.m. Wednesday morning. They walked out with all of the school's records, including photocopies of the men's passports."

The New York Times also reported that day that students at Embry-Riddle Aeronautical University said that, "within hours of the attacks, FBI investigators were seen," at their school. How did the FBI know exactly where to go only a few hours after the attacks? How did they know which neighborhoods, which flight schools and which restaurants to investigate so soon in the case?

The New York Times went on to report on September 12 that, "Federal agents questioned employees at a store in Bangor, Maine, where five Arab men believed to be the hijackers tried to rent cell phones late last week. Store employees at first refused to sell the phones because the men lacked proper identification, but they gave in after the five offered $3,000 cash to store employees, an airport official said."

The September 12 article goes on to state, "The men then phoned Bangor Airport trying to get a flight to Boston, but were told that there was no flight that matched their desired departure time. The men then phoned Portland International Jetport, where two of them apparently made reservations for a flight to Boston on Tuesday morning."

How would this information be gleaned so quickly? How would the FBI know to visit a store in Bangor, Maine, only hours after the attacks? Moreover, how would they know the details of a phone conversation that occurred a week prior to the attacks? Were any of the hijackers already under surveillance?

It has been widely reported that the hijackers ran practice runs on the airline routes that were chosen on September 11. Did our intelligence agents ever shadow these men on any of their prior practice runs?

Furthermore, on September 12, the New York Times reported that, "Authorities said they had also identified accomplices in several cities who had helped plan and execute Tuesday's attacks. Officials said they knew who these people were and important biographical details about many of them. They prepared biographies of each identified member of the hijack teams, and began tracing the recent movements of the men."

How are complete biographies of the terrorists, and their accomplices, created in such short time? Did our intelligence agencies already have open files on these men ? Were they already investigating them? Could the attacks of September 11 been prevented?

The speed by which the FBI was able to locate, assimilate and analyze a small amount of information so soon after the attacks, barely one day later, perhaps answers this question for itself.

But if the terrorists were under investigation, then why were they ever permitted to board those planes? Perhaps even more potently, why, if such an investigation was already under way, was our nation so late in responding to the emergency that quickly unfolded that morning?

Too many questions remain. Topping the list of unanswered questions are those that involve our nation's coordination, communication and response to the attacks that morning. The 24 hours that presented themselves on September 11 beg to be examined. Questions like, why did the New York Port Authority not evacuate the World Trade Center when they had an open phone line with Newark Air Traffic Control Center and were told that the second plane was bearing down on the South Tower? New York/New Jersey Port Authority had at least 11 minutes of notice to begin evacuations of the South Tower. An express elevator in the World Trade Center was able to travel from top to bottom in one minute's time. How many lives may have been saved had the Port Authority acted more decisively or, rather, acted at all?

Washington Air Traffic Control Center knew about the first plane before it hit the World Trade Center, yet the third plane was able to fly loop-the-loops over Washington, DC, one hour and 45 minutes after Washington Center first knew about the hijackings. After circling in this restricted airspace, controlled and protected by the Secret Service, who had an open phone line to the FAA, how is it possible that that plane was then able to crash into the Pentagon? Why was the Pentagon not evacuated? Why was our Air Force so late in its response? What, if anything, did our nation do in a defensive military posture that morning?

Three thousand innocent Americans were killed on September 11, leaving behind families and loved ones like myself and my daughter. There are too many heartbreaking stories to recount. There are too many lost opportunities and futures to be told. But what can be said to you today is that the families continue to suffer each and every day. All we have are tears and a resolve to find the answers, because we continue to look into the eyes of our young children, who ask us, "Why?"

We have an obligation, as parents and as a nation, to provide these young children with answers as to why their mother or father or aunt or uncle or grandmother or grandfather never returned from work that day. We need people to be held accountable for their failures. We need leaders with the courage to take responsibility for what went wrong.

Mistakes were made, and too many lives were lost. We must investigate these errors so that they will never happen again. It is our responsibility as a nation to turn the dark events of September 11 into something from which we can all learn and grow so as a nation we can look forward to a safe future.

In closing, I would like to add one thought. Undoubtedly, each of you here today, because you live and work in Washington, DC, must have felt that you were in the bullseye on the morning of September 11. For most of you, there was a relief at the end of that day, a relief that you and your loved ones were in safe hands. You were the lucky ones. In your continuing investigation, please do not forget those of us who did share in your good fate. Thank you.

[Applause.]

Chairman GRAHAM. Thank you, Ms. Breitweiser for a moving, inspirational and highly motivating statement. Thank you.

Ms. BREITWEISER. Thank you.

Chairman GRAHAM. Mr. Stephen Push.

[The prepared statement of Mr. Push follows:]

Statement of

Stephen Push
Treasurer
Families of September 11, Inc.
Washington, D.C.

Concerning the Joint 9/11 Inquiry

Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence

September 18, 2002

Chairmen Graham and Goss, Ranking Minority Members Shelby and Pelosi, and members of the Senate and House Intelligence Committees, my name is Stephen Push. I am a co-founder and Treasurer of Families of September 11, a non-profit organization that represents 1,300 family members of victims murdered in the 9/11 terrorist attacks. On that day my wife, Lisa Raines, was a passenger on American Airlines Flight 77, the plane that crashed into the Pentagon.

First, I would like to thank you and the Joint 9/11 Inquiry staff for the vital work you are doing to understand the problems of the intelligence agencies and take steps to correct them. I appreciate the hard work you and the staff are doing to ensure that our loved ones will not have died in vain.

Second, I would like to thank you for inviting Kristen Breitweiser and me to testify today. I realize that your decision was not popular with bureaucrats in the intelligence community. But the victims' families greatly appreciate the opportunity to have their voices heard on the important work of the your inquiry. Our loved ones paid the ultimate price for the worst American intelligence failure since Pearl Harbor. I hope that Kristen and I can do justice to their sacrifice and contribute in some small way to preventing other families from experiencing the immeasurable pain that accompanies such tragic loss.

While I eagerly await the final report of your inquiry, one thing is already clear to me based on news reports about the intelligence failures that led to the attacks: If the intelligence community had been doing its job, my wife would be alive today.

I realize that preventing terrorism is a difficult task and that we will never achieve absolute safety. But a series of missteps that defy common sense made the attack on the Pentagon possible.

In January 2000 the Central Intelligence Agency (CIA) learned that two Saudi nationals, Nawaf al-Hazmi and Khalid al-Midhar, attended an al-Qaeda meeting in Kuala Lampur. Thanks to the infamous "stovepiping" of information in the intelligence community, these two men, who were to become two of the hijackers of Flight 77, were not immediately placed on the terrorist watch list and were allowed to enter the United States.

Shortly after the bombing of the *U.S.S. Cole* in October 2000, the CIA discovered that one of the men photographed with al-Hazmi and al-Midhar in Kuala Lampur was a suspect in the Cole attack. But still the two suspected terrorists in the United States did not appear on the watch list. The Federal Bureau of Investigation (FBI) seems to have been unaware of them, even though they lived with an FBI informant during part of their time in this country.

The two suspects were finally added to the watch list on August 23, 2001. But on September 11 they were able to board Flight 77 using their own names. I don't know why it was called a watch list; apparently no one was watching it.

After the Kuala Lampur meeting, al-Hazmi had at least three meetings with Hani Hanjour, the terrorist believed to have piloted Flight 77. I am convinced that, had the CIA and FBI displayed any initiative, Al-Hazmi, Al-Midhar, and Hanjour could have been apprehended. With the loss of three of the hijackers, including the pilot, Flight 77 would not have been hijacked and the lives of the 184 people killed in the Pentagon attack would have been saved.

What's more, Mohammed Atta, the ringleader of the 9/11 conspiracy and pilot of the first plane to hit the World Trade Center, attended one of the meetings between al-Hazmi and Hanjour. Thus it's possible, if not likely, that surveillance of al-Hazmi could have lead to surveillance of Atta and discovery of the other terrorists involved in the conspiracy. In fact the FBI, in an apparent attempt to pin the blame for 9/11 on the CIA, reportedly developed a chart that showed how timely access to the information about al-Hazmi and al-Midhar would have enabled the FBI to foil the entire 9/11 plot.

I won't belabor the argument about the possibility of preventing the 9/11 attacks. A number of intelligence experts have said that such preventive work is easier said than done. I don't know if that's a fair excuse, but one conclusion is incontestable: The 9/11 attacks exposed serious shortcomings in the American intelligence community.

Or to state this fact more precisely: The attacks exposed these flaws to the wider public. Many of the flaws had been know to intelligence professionals, to your two committees, and to a succession of commissions for years.

In voicing these complaints, it is not my intention to malign the field officers, agents, analysts, and technicians serving their country in the intelligence agencies. I'm sure most of them are competent and dedicated. But in many cases they seem to be stymied by a bloated, risk-averse, politicized intelligence bureaucracy that is more interested in protecting its turf than protecting America.

Initially I thought 9/11 would be a wake-up call for the intelligence community. But I was mistaken. The intelligence agencies and the White House have asserted that no mistakes had been made. That they couldn't possibly have conceived that anyone would use commercial jets in suicide attacks on buildings. That al-Qaeda is impossible to penetrate. Such a "*can't* do" attitude is profoundly un-American. It also raises the question of why taxpayers should continue to provide the intelligence community with tens of billions of dollars annually if it cannot protect us.

The following anecdote suggests that little has changed at the FBI since 9/11. Three years ago a female flight attendant for an American airline was assaulted in-flight, in front of a witness, by a male flight attendant wielding a knife that the female flight attendant described at the time as looking like a box cutter. The assailant had bragged about how he regularly smuggled the knife past security. The woman reported the incident at the time, but the airline dropped the case without explanation. Immediately after the 9/11 attacks, the female flight attendant, noting the parallels between her

assailant and the hijackers, reported the incident to the FBI. An agent interviewed her, but later told her the FBI couldn't find the male flight attendant.

Nearly a year later, the female flight attendant grew frustrated and asked her congressman to investigate. The congressman sent the request, including the original incident report describing the weapon and the assault, to FBI headquarters. Within a few weeks, the woman received a letter from the FBI explaining that the matter fell outside the Bureau's jurisdiction. I find this response unacceptable, not only because assaulting an airline crewmember in-flight is a federal offense, but also because a violent man who smuggles knives onto planes should have received more attention from the FBI than this man apparently did.

The time for incremental reform of the intelligence community ended on September 11, 2001. The ossified intelligence bureaucracy must now be thoroughly restructured. If it isn't, the next attack may involve weapons of mass destruction, and the death toll may be in the tens of thousands – or even hundreds of thousands.

I urge you to seriously consider making the following changes in the intelligence community:

1) Put someone in charge of intelligence. Stovepiping is an inevitable consequence of competition among agencies. Only a strong leader with authority over all the intelligence agencies can force them to share information. In principle, this is the President's job, but he has limited time to spend on intelligence. There should be a cabinet-level official with authority over all of the intelligence agencies.

2) Establish a new domestic intelligence agency similar to Britain's MI5. This agency would have no law enforcement powers and would work with the FBI when criminal investigations and arrests were necessary. The FBI would retain a small intelligence unit to serve a liaison with the intelligence community. Domestic intelligence professionals cannot flourish in a culture that rewards people for the number of cases solved or the number of arrests made.

3) Develop closer links with state and local law enforcement agencies. There are 700,000 state and local law enforcement officers who can help provide the intelligence community with raw intelligence and can act on threat assessments issued by the federal government.

4) Create a new clandestine service. Human intelligence has become a lost art at the CIA. A new clandestine service should be established and protected from second-guessing by the risk-averse, politicized bureaucracy.

5) Share more intelligence with other countries. American intelligence agencies have obtained much valuable intelligence from foreign intelligence services,

but the American agencies have a reputation for not reciprocating. If we want to maintain the flow of information from these other services, we have to be more generous with the information we provide them.

6) Require that all intelligence reports be uploaded promptly to Intelink, the intelligence community's secret online database. This will help foster information exchange at all levels of the intelligence community.

7) Reorient the National Security Agency (NSA) to become a "hunter" of information, rather than a "gatherer." The volume of electronic communications has grown exponentially, to the point where intercepts cannot be translated in a timely manner. The agency must learn to focus its resources on those communications links most likely to yield information about terrorist threats.

8) Upgrade technical intelligence. The proliferation of new communications technologies has hampered the NSA's ability to intercept messages. Some of the nation's best scientists and engineers should be assigned to a Manhattan Project-style program aimed at making breakthroughs in new technologies for monitoring electronic communications.

While this is by no means an exhaustive list, I believe it addresses some of the most urgent problems in the intelligence community. Whether you decide to accept or reject these specific recommendations, I hope you will agree that the monumental tragedy of 9/11 calls for changes far more sweeping than the reform measures implemented in recent years.

Finally, I urge Congress to establish an independent commission to study the events surrounding the 9/11 attacks. While the work of your inquiry is invaluable, it has become clear that you cannot complete a thorough, comprehensive investigation by the end of the 107th Congress. And there are 9/11 issues other than intelligence that should be investigated by an independent commission, such as law enforcement, border control and immigration policy, diplomacy, transportation security, and the flow of assets to terrorists.

In conclusion, I would like to thank you again for offering the 9/11 families this opportunity to have our voices – and the voices of our loved ones – heard on these important questions.

Stephen Push is a co-founder and treasurer of Families of September 11, which represents 1,300 family members of 9/11 victims. A resident of Great Falls, Va., Mr. Push retired from his career in December to volunteer fulltime for 9/11-related causes. He has more than 20 years of experience in public relations, most recently as director of corporate communications at Igen International Inc., a biotech company in Gaithersburg, Md. He has also held senior positions with Genzyme Corporation, the National Academy of Sciences, and the Johns Hopkins Medical Institutions. He earned a Bachelor of Science degree in biology from the City College of New York and a Master of Administrative Science degree from the Johns Hopkins University. His wife of 21 years, Lisa Raines, was a passenger on the plane that terrorists crashed into the Pentagon.

Lisa Raines was senior vice president of government affairs at Genzyme Corporation. A graduate of the State University of New York at Stony Brook and Georgetown Law School, Ms. Raines started her career with the Congressional Office of Technology Assessment, where she was study director and legal analyst in the biological applications program. From 1986 until 1993, she worked at the Industrial Biotechnology Association (now the Biotechnology Industry Organization), first as director of government relations and later as vice president. She was one of the earliest and most effective lobbyists in the biotechnology industry and played a key role in negotiating much of the legislation affecting the industry, including the Biotechnology Process Patent Act and the Food and Drug Modernization Act. She was instrumental in winning passage of the Food and Drug Administration's fast-track approval process, which has help speed promising new drugs for people with serious illnesses. At the time of her death, she was working on a proposal for a Medicare outpatient drug benefit.

STATEMENT OF STEPHEN PUSH, CO-FOUNDER AND TREASURER OF FAMILIES OF SEPTEMBER 11TH

Mr. PUSH. Chairmen Graham and Goss, Ranking Minority Members Shelby and Pelosi, and members of the Senate and House Intelligence Committees, I would like to thank you and also thank the joint 9/11 inquiry staff for the vital work that you have been doing to understand the problems of the intelligence agencies and take steps to correct them. I appreciate the hard work that you and your staff are doing to ensure that our loved ones have not died in vain.

I would also like to thank you for inviting Kristen and me to testify before you today. I realize that your decision was not popular with the bureaucrats in the Intelligence Community, but the victims' families greatly appreciate the opportunity to have their voices heard on the important work of your inquiry.

Our loved ones paid the ultimate price for the worst American intelligence failure since Pearl Harbor. I hope that Kristen and I can do justice to their sacrifice and contribute in some small way to preventing other families from experiencing the immeasurable pain that accompanies such a tragic loss.

While I eagerly await the final report of your inquiry, one thing is already clear to me from the news reports about the intelligence failures that led to the attacks: If the Intelligence Community had been doing its job, my wife, Lisa Raines, would be alive today. She was a passenger on flight 77, the plane that was crashed into the Pentagon.

I realize that preventing terrorism is a very difficult task, and that we will never achieve complete safety. But a series of missteps that defy common sense made the attack on the Pentagon possible.

In January of 2000, the Central Intelligence Agency learned that two Saudi nationals, Nawaf al-Hazmi, and Khalid al-Mihdhar attended an al-Qa'ida meeting in Kuala Lumpur. Thanks to the infamous stovepiping of information in the Intelligence Community, these two men, who were to become two of the hijackers on flight 77, were not immediately placed on the terrorism watch list, and they were allowed to enter the United States.

Shortly after the bombing of the USS *Cole* in October of 2000, the CIA discovered that one of the men photographed with al-Hazmi and al-Mihdhar in Kuala Lumpur was a suspect in the Cole attack. But still the two suspected terrorists in the United States did not appear on the watch list. The Federal Bureau of Investigation seems to have been unaware of him, even though they lived with an FBI informant during part of their time in this country.

The two suspects were finally added to the watch list on August 23, 2000, but on September 11, they were able to board flight 77 using their real names. I don't know why they called it a watch list; apparently no one was watching them.

After the Kuala Lumpur meeting, al-Hazmi had at least three meetings with Hani Hanjour, the terrorist believed to have piloted flight 77. I am convinced that had the CIA and the FBI displayed any initiative, al-Hazmi, al-Mihdhar and Hanjour would have been apprehended. With the loss of three hijackers, including the pilot, flight 77 would not have been hijacked and the lives of the 184 people murdered in the Pentagon attack would have been saved.

What's more, Mohamed Atta, the ringleader of the 9/11 conspiracy and the pilot of the first plane to hit the World Trade Center, attended one of the meetings between Al-Hazmi and Hanjour. Thus it's possible, if not likely, that surveillance of Al-Hazmi could have led to surveillance of Atta and discovery of the other terrorists involved in the conspiracy. In fact, the FBI, in an apparent attempt to pin the blame for 9/11 on the CIA, reportedly developed a chart that showed how timely access of the information about Al-Hazmi and Al-Mihdhar would have enabled the FBI to foil the entire 9/11 plot.

I won't belabor the argument about the possibility of preventing the 9/11 attacks. A number of intelligence experts have said that preventive work is easier said than done. I don't know if that's a fair excuse, but one conclusion is incontestable: The 9/11 attacks exposed serious shortcomings in the American Intelligence Community. Or, to state this fact more precisely, the attack exposed these flaws to the wider public. Many of the flaws have been known to intelligence professionals, to your two Committees and to a succession of commissions for years.

In voicing these complaints it is not my intention to malign the field officers, agents, analysts, technicians and others serving their country in the intelligence agencies. I'm sure that most of them are very competent and dedicated people. But in many cases they seem to be stymied by a bloated, risk-averse and politicized intelligence bureaucracy that is more interested in protecting its turf than in protecting America.

Initially, I thought 9/11 would be a wake-up call for the Intelligence Community, but I was mistaken. The intelligence agencies and the White House have asserted that no mistakes were made. They couldn't possibly have conceived that anyone would use commercial jets in suicide attacks on buildings. They asserted that al-Qa'ida is impossible to penetrate.

Such a can't-do attitude is profoundly un-American. It also raises the question of why taxpayers should continue to spend tens of billions of dollars annually on the Intelligence Community if it cannot protect us.

The following anecdote suggests that little has changed at the FBI since 9/11. Three years ago, a female flight attendant for an American airline was assaulted in flight in front of a witness by a male flight attendant wielding a knife that the female flight attendant described at the time as looking like a box cutter. The assailant had bragged to this flight attendant about how he regularly smuggled the knife past security. The woman reported the incident immediately, but the airline dropped the case without explanation.

Immediately after the 9/11 attacks, the female flight attendant, noting the parallels between her assailant and the hijackers, reported the incident to the FBI. An agent interviewed her, but later told her that the FBI couldn't find the male flight attendant because he no longer worked for the airline.

I had a private investigator, yesterday, do a search for me using public databases, and within a matter of a few hours he was able to tell me the current address of this male flight attendant and also report to me that he is indeed still an employee of the airline in question.

Nearly a year later, the female flight attendant grew frustrated and asked her Congressman to investigate. The Congressman sent the request, including the original incident report describing the weapon and the assault, to FBI headquarters. Within a few weeks the woman received a letter from the FBI explaining that the matter fell outside the Bureau's jurisdiction.

I find this response unacceptable, not only because assaulting an airline crew member in flight is a federal offense, but also because a violent man who smuggles knives onto planes should have received more attention from the FBI than this man apparently did.

The time for incremental reform of the Intelligence Community ended on September 11, 2001. The ossified intelligence bureaucracy must now be thoroughly restructured. If it isn't, the next attack may involve weapons of mass destruction, and the death toll may be in the tens of thousands, or even hundreds of thousands.

I urge you, please, seriously consider making the following changes in the Intelligence Community.

One, put someone in charge of intelligence. Stovepiping is an inevitable consequence of competition among agencies. Only a strong leader with authority over all of the intelligence agencies can force them to share information. In principle, this is the President's job, but he has limited time to spend on intelligence. There should be a Cabinet-level official with authority over all of the intelligence agencies.

Two, establish a new domestic intelligence agency similar to Britain's MI–5. This agency would have no law enforcement powers, and would work with the FBI when criminal investigations and arrests were necessary. The FBI would retain a small intelligence unit to serve as a liaison with the Intelligence Community. Domestic intelligence professionals can not flourish in a culture that rewards people for the number of cases solved or the number of arrests made.

Three, develop closer links with state and local law enforcement agencies. There are 700,000 state and local law enforcement officers who can provide help by providing the Intelligence Community with raw intelligence and by acting on threat assessments issued by the federal government.

Four, create a new clandestine service. Human intelligence has become a lost art at the CIA. A new clandestine service should be established and must be protected from second-guessing by the risk-averse, politicized bureaucracy.

Five, share more intelligence with other countries. American intelligence agencies have obtained much valuable intelligence from foreign intelligence services. But the American agencies have a reputation for not reciprocating. If we want to maintain the flow of information from these other services, we must be more generous with the information we provide them.

Six, require all intelligence reports to be uploaded immediately to INTELINK, the Intelligence Community secret online database. This will help foster information exchange at all levels of the Intelligence Community.

Seven, reorient the National Security Agency to be a hunter of information rather than a gatherer. The volume of electronic communications has grown exponentially, to the point where intercepts

cannot be translated in a timely manner. We've all read about the two intercepts on September 10 that warned of something to happen on September 11 that were translated on September 12. The agency must learn to focus its resources on those communications links most likely to yield information about terrorist threats.

Eight, upgrade technical intelligence. The proliferation of new communications technologies has hampered the NSA's ability to intercept messages. Some of the nation's best scientists and engineers should be assigned to a Manhattan Project-style program aimed at making breakthroughs in new technologies for monitoring electronic communications.

Nine, set up a separate oversight subcommittee specifically for intelligence on terrorism.

While this is by no means an exhaustive list, I believe it addresses some of the most urgent problems in the Intelligence Community. Whether you decide to accept or reject these specific recommendations, I hope you will agree that the monumental tragedy of 9/11 requires changes far more sweeping than the reform measures that have been implemented in recent years.

Finally, I join Kristen in urging Congress to establish an independent commission to study the events surrounding the 9/11 attacks. While the work of your inquiry is invaluable, it has become clear that you cannot complete a thorough, comprehensive investigation by the end of the 107th Congress. And also there are other 9/11 issues other than intelligence that should be investigated by an independent commission, such as law enforcement, border control and immigration policy, diplomacy, transportation security and the flow of assets to terrorists.

In conclusion, I would like to thank you again for offering the 9/11 families this opportunity to have our voices and the voices of our loved ones heard on these very important issues.

[Applause.]

Chairman GRAHAM. Mr. Push, thank you very much for that very informative statement, and your specific recommendations. They will be taken fully into account throughout the completion of our inquiry.

Mr. PUSH. Thank you, sir.

Chairman GRAHAM. Thank you very much. The panel is dismissed.

Again, we extend our thanks and appreciation to Ms. Breitweiser and to Mr. Push and to all the families who are with us today. You are a reminder of why we are undertaking this inquiry. You are a challenge for us to fully fulfill our obligation.

Ms. Eleanor Hill, staff director of the Joint Inquiry Committee.

[The prepared statement of Ms. Hill and supporting documents follow:]

Joint Inquiry Staff Statement, Part I
Eleanor Hill, Staff Director, Joint Inquiry Staff
September 18, 2002

Foreword

Chairman Graham, Chairman Goss, before I proceed with my statement, I want to make clear to you and the members of these two Committees that the information I am going to present has been cleared for public release. As you know, much of the information the Joint Inquiry Staff has been examining is highly classified. Over the last two months, we have been working with the Intelligence Community in a long and arduous process to declassify information we believe is important to the public's understanding of why the Intelligence Community did not know of the September 11 attacks in advance. By late last night, we were able to resolve all but two issues.

The Director of Central Intelligence has declined to declassify two issues of particular importance to this Inquiry:

- Any references to the Intelligence Community providing information to the President or White House; and
- The identity of and information on a key al-Qa'ida leader involved in the September 11 attacks.

According to the DCI, the President's knowledge of intelligence information relevant to this Inquiry remains classified even when the substance of that intelligence information has been declassified. With respect to the key al-Qa'ida leader involved in the September 11 attacks, the DCI declined to declassify his identity despite an enormous volume of media reporting on this individual.

The Joint Inquiry Staff disagrees with the DCI's position on both issues. We believe the American public has a compelling interest in this information and that public disclosure would not harm national security. However, we do not have independent authority to declassify intelligence information short of a lengthy procedure in the U.S. Congress. We therefore prepared this statement without detailed descriptions of our work in these two areas.

Introduction

Chairman Graham, Chairman Goss, members of this Joint Committee, good morning. I appreciate the opportunity to appear here today to advise the Committees, and the American public, on the progress to date of the Joint Inquiry Staff's review of the activities of the U.S. Intelligence Community in connection with the September 11 terrorist attacks on the United States. As the horror and sheer inhumanity of that day engulfed this nation, all of us struggled with the shock, the utter disbelief, and the inevitable search for answers. The questions, if not the answers, were obvious: How could we have been so surprised? What did our government, especially our intelligence agencies, know before September 11, 2001? Why didn't they know more? What can we do to strengthen and improve the capabilities of our intelligence agencies and, as a result, help save ourselves, and our children, from ever having to face this again?

On February 14, 2002, the leadership of these two Committees announced their resolve to come together to find credible answers to those sobering, but critically important questions. The Committees joined in an unprecedented, bicameral, and bipartisan Joint Inquiry effort to meet that challenge. With the support of the Senate and House leadership and the White House, the Joint Inquiry focused its work on seven areas of investigation:

- The evolution of the international terrorist threat to the United States, the response of the United States Government, including that of the Intelligence Community to international terrorism, from the creation of the Director of Central Intelligence's (DCI) Counterterrorist Center (CTC) in 1986 to the present, and what the Intelligence Community had, has, or should have learned from all sources of information, including any terrorist attacks or attempted ones, about the international terrorist threat to the United States;

- What the Intelligence Community knew prior to September 11 about the scope and nature of any possible terrorist attacks against the United States or United States interests by international terrorists, including by any of the hijackers or their associates, and what was done with that information;

- What the Intelligence Community has learned since the events of September 11 about the persons associated with those events, and whether any of that information suggests actions that could or should have been taken to learn of, or prevent, those events;

- Whether any information developed before or after September 11 indicates systemic problems that may have impeded the Intelligence Community from learning of or preventing the attacks in advance, or that, if remedied, could help the Community identify and prevent such attacks in the future;

- How and to what degree the elements of the Intelligence Community have interacted with each other, as well as with other parts of the federal, state, and

local governments, with respect to identifying, tracking, assessing, and coping with international terrorist threats; as well as biological, chemical, radiological, or nuclear threats, whatever their source (such as the Anthrax attack of 2001);

- The ways in which the Intelligence Community's responses to past intelligence problems and challenges, whether or not related to international terrorism, have affected its counterterrorism efforts; and

- Any other information that would enable the Joint Inquiry, and the Committees in the performance of their continuing responsibilities, to make such recommendations, including recommendations for new or amended legislation and any administrative or structural changes, or other actions, as they determine to be necessary or desirable to improve the ability of the Intelligence Community to learn of, and prevent, future international terrorist attacks.

Given the scope of the areas of investigation as well as the size of the Intelligence Community, it was clear from the outset that this effort would necessarily entail the review of massive amounts of documentation and other information, as well as interviews of numerous individuals, both within the Intelligence Community and elsewhere. To conduct the review, the Committees assembled a single staff – the Joint Inquiry Staff – of twenty-four highly skilled professionals with considerable experience in such areas as intelligence collection, analysis, management, law enforcement, investigations and oversight. That staff has been divided into five investigative teams, each responsible for reviewing different aspects of the counterterrorist effort.

My purpose today is to report to you on the results of the Joint Inquiry Staff efforts to date. My testimony this morning, as well as this initial series of public hearings, is intended to address the first of three stages of the Joint Inquiry's work. The Inquiry's initial task, which we will discuss this morning, was to conduct a factual review of what the Intelligence Community knew or should have known prior to September 11, 2001, regarding the international terrorist threat to the United States, to include the scope and nature of any possible international terrorist attacks against the United States or United States interests. Future hearings will address the next stage of this Inquiry, which focuses on the examination of any systemic problems that may have impeded the Intelligence Community from learning of or preventing these attacks in advance. Finally, the Inquiry will address, in both hearings and a subsequent report, recommendations to improve the Intelligence Community's ability to identify and prevent future international terrorist attacks.

I should also note that my presentation this morning on the factual review is, by necessity, an "interim" statement on that effort. The staff's actual investigative work, such as document review and witness interviews, began in earnest in April 2002. While the staff has made substantial headway in the huge effort required for this inquiry, I cannot at this point report that its work is finished. As we sit here this morning, other

members of the Joint Inquiry Staff are continuing to make their way through the massive amount of documentation and information that is relevant to this inquiry. While I will share with you the results of our work to date in a number of specific areas, I caution that the inquiry remains "a work in progress" and that we may be developing additional, relevant information as our work continues. That being said, we feel it is important to share with the American people, through these hearings, what we have found through our efforts to date.

Let me briefly describe the way in which the Joint Inquiry Staff has approached this review.

At an early point in the inquiry, it became apparent that a focused approach was essential to an effective and efficient analysis of the vast amounts of information that could potentially be involved in this kind of review. We decided to target our search on categories of information that would most likely yield any intelligence material of relevance to the September 11 attacks. Specifically, our teams requested and reviewed from the Intelligence Community agencies:

- Any information obtained before September 11 suggesting that an attack on the United States was imminent, and what was done with it;

- Any information obtained before September 11 that should have alerted the Intelligence Community to this kind of attack, i.e., using airplanes to attack buildings, and what was done with it;

- Any information obtained before September 11 about the 19 dead hijackers, as well as Zacarias Moussaoui, and what was done with it; and

- Any information obtained after September 11 about the hijackers and their backgrounds (including their involvement with al-Qa'ida), entry into this country, and activities while in this country, as well as why they never came to the attention of the U.S. Government.

A large part of our effort has been centered in the on-site work of our investigative teams assigned to the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency, where the most extensive universe of potentially relevant intelligence information resides. The Joint Inquiry Staff has also interviewed officials and requested and reviewed materials at other intelligence and other U.S. Government agencies, among them: the Departments of Defense, State, Treasury, Justice, Transportation, and Energy, as well as a number of private sector individuals and organizations.

To supplement that labor-intensive effort, the Joint Inquiry Staff also submitted written questionnaires to these organizations. We will submit separately for the record a classified summary of relevant information that was provided in the written responses to those questionnaires.

Regarding the scope of this ongoing document-gathering effort, I can report to date that the staff has reviewed over 400,000 pages of relevant documents, identified and selected over 66,000 pages for our central records, and documented approximately 400 interviews and technical discussions.

Scope of the Information to be Presented Today

Because this is a public hearing about the activities of the Intelligence Community, let me also say a few words about some of the terms and concepts that are particularly relevant to our Inquiry.

As Members of these Committees are well aware, the U.S. Government divides terrorism into two categories. Domestic terrorism is perpetrated by domestic groups in the United States and is beyond the scope of the Joint Inquiry. International terrorism is within the scope of this Inquiry and involves the territory or citizens of more than one country; it includes acts perpetrated by international groups either in the United States or against U.S. interests overseas.

This Inquiry is focused for the most part on international terrorist acts perpetrated by Usama Bin Ladin's network, just one international terrorist group that poses a danger to U.S. interests.

Many people instantly associate the term "Intelligence Community" with the Central Intelligence Agency. When we use the term "Intelligence Community" we are referring to the group of fourteen government agencies and organizations that, either in whole or in part, conduct the intelligence activities of the United States Government:

- Central Intelligence Agency (CIA);
- Department of the Treasury;
- Department of Energy;
- Department of State;
- Defense Intelligence Agency (DIA);
- Federal Bureau of Investigation (FBI);
- National Imagery and Mapping Agency (NIMA);
- National Reconnaissance Office (NRO);
- National Security Agency (NSA);
- U.S. Air Force Intelligence;
- U.S. Army Intelligence;
- U.S. Coast Guard Intelligence
- U.S. Navy Intelligence; and
- U.S. Marine Corps Intelligence.

The Intelligence Community has multiple responsibilities with respect to counterterrorism, all of which are relevant to this Inquiry. Among the most important are:

- Collecting, analyzing, and disseminating information regarding terrorist incidents and groups that perpetrate terrorism, including such things as how these groups are organized, who their leaders are, what their objectives are, their weapons and tactics, and whether they are receiving any support from any state sponsors;
- Issuing warnings to policymakers to counter potential terrorist threats;
- Preventing, pre-empting, and disrupting terrorist operations; and
- Supporting diplomatic, legal, and military operations against terrorism.

The Joint Inquiry is examining the Intelligence Community's performance of all these responsibilities as they relate to the attacks of September 11, 2001.

With respect to the Intelligence Community's role in warning of impending terrorist operations, our review has focused on both strategic and tactical warning capability. "Strategic warning" is used to describe instances in which the Intelligence Community has very broad indications that an attack may occur but does not have the specifics as to where, when, or how the attack will be carried out. An example would be when terrorists are overheard talking to each other in general terms about the impact that an attack might have without mentioning the precise target of the attack. Strategic warning enables policymakers and government decision-makers to take steps to strengthen anti-terrorist defenses and initiate other counterterrorist actions.

"Tactical warning" may be issued when the Intelligence Community has not only broad indicators of an impending attack but also more detailed information on where, when, or how the attack might be carried out. Tactical warning enables policymakers and government decision-makers to direct preventive action against specific individuals who may be involved in the planned attack and to implement appropriate protective action for specific targets. Ideally, such action occurs before the attack ever gets underway.

The distinction is important because, so far as the Inquiry has been able to determine to date, the Intelligence Community did have general indications of a possible terrorist attack against the United States or U.S. interests overseas in the spring and summer of 2001 and promulgated strategic warnings. However, it does not appear to date that the Intelligence Community had information prior to September 11 that identified precisely where, when and how the attacks were to be carried out.

Finally, the Intelligence Community employs various offensive and defensive tools to disrupt, pre-empt, and prevent terrorist operations. These tools include: intelligence gathering; analysis and dissemination; criminal investigations and prosecutions in the United States and overseas; renditions of terrorists abroad for prosecution in U.S. courts; raids on suspected terrorist facilities; use of watchlists to deny terrorists U.S. visas and entry into the United States, liaison relationships with foreign

intelligence and law enforcement services; covert action; and warnings promulgated to appropriate federal, state and local government agencies, the private sector, including, for example, the aviation industry, and the American public.

The Joint Inquiry is examining the Intelligence Community's efforts in each of these realms. However, several forms of Intelligence Community activity, including some offensive operations aimed at collecting intelligence or disrupting Usama Bin Ladin's terrorist network, remain highly classified and beyond the scope of information appropriate for a public hearing. This is particularly true given the national security concerns arising from the ongoing war on terrorism. While further detail on specific operations is inappropriate in a public forum, this Inquiry is reviewing those operations, both through the staff's investigation and through testimony in closed hearings. For purposes of today's public hearing, I can state that our review has to date confirmed that, prior to September 11, 2001:

- The Intelligence Community was engaged in numerous efforts to collect intelligence on Usama Bin Ladin's network and to disrupt his operations;
- The Intelligence Community's efforts spanned a large geographic area, from North America, to Europe, the Middle East, Africa, and Asia;
- The Intelligence Community achieved some successes – in some cases, major successes – in these operations. In other cases, little came of the Intelligence Community's operations.

The Joint Inquiry is also examining why those efforts, like the actions to be discussed in these public hearings, did not enable the U.S. Government to anticipate and prevent the September 11 attacks.

The Evolving Terrorist Threat: A Context for the September 11 Attacks

As part of its review of the evolution of the international terrorist threat against the United States, the Joint Inquiry Staff has produced a chronology that begins in 1982 and ends on September 11, 2001. That chronology, which I request be made part of the hearing record, notes significant events in international terrorism, with particular attention to the rise of Usama Bin Ladin and al-Qa'ida. The chronology also highlights significant counterterrorist actions that were taken by the U.S. Government in response to the threat. Finally, based on our factual review, the chronology also indicates information received by the Intelligence Community that was potentially relevant to the September 11 attacks.

The chronology underscores several points regarding what the U.S. Government, specifically the Intelligence Community, knew about the international terrorist threat to the United States and U.S. interests prior to September 11, 2001:

- September 11, while indelible in magnitude and impact, was by no means America's first confrontation with international terrorism. While the nature of

the threat has evolved and changed over time, it has long been recognized that United States interests were considered prime targets by various international terrorist groups;

- In response to a number of terrorist attacks on U.S. interests abroad during the 1980s, the U.S. Government initiated a focused effort against terrorism, including the establishment, by DCI William Casey, of the CTC at CIA headquarters in 1986. In 1996, the FBI created its own Counterterrorism Center at FBI headquarters;

- Both in terms of attempts and actual attacks, there was considerable historical evidence, prior to September 11, that international terrorists had planned and were, in fact, capable of conducting major terrorist strikes within the United States. The 1993 attack on the World Trade Center, the subsequent discovery in 1993 of plots to bomb New York City landmarks, and the arrest in 1999 during the Millennium celebrations of an individual with al-Qa'ida connections intending to bomb Los Angeles International Airport should have erased any doubts, to the extent they existed, about that point;

- From 1994 through as late as August 2001, the Intelligence Community had received information indicating that international terrorists had seriously considered the use of airplanes as a means of carrying out terrorist attacks. While this method of attack had clearly been discussed in terrorist circles, there was apparently little, if any, effort by Intelligence Community analysts to produce any strategic assessments of terrorists using aircraft as weapons;

- Usama Bin Ladin's role in international terrorism came to the attention of the Intelligence Community in the early 1990s. While Bin Ladin was initially viewed as a "financier" of terrorism, by 1996 the Intelligence Community was aware of his involvement in directing terrorist acts and had begun actively collecting intelligence on him;

- Bin Ladin's own words indicated a steadily escalating threat. In August 1996, Usama Bin Ladin issued a public *fatwa*, or religious decree, authorizing attacks on Western military targets in the Arabian Peninsula. In February 1998, Bin Ladin issued another public *fatwa* authorizing and promoting attacks on U.S. civilians and military personnel anywhere in the world;

- Following the August 1998 bombings of two U.S. Embassies in East Africa, Intelligence Community leadership recognized how dangerous Bin Ladin's network was. In December 1998, DCI George Tenet provided written guidance to his deputies at the CIA, declaring, in effect, "war" with Bin Ladin. DCI Tenet wrote: We must now enter a new phase in our effort against Bin Ladin…We are at war…I want no resources or people spared in this effort, either inside CIA or the Community." In our review to date, we have found that resources dedicated to counterterrorism generally increased during

the 1990s even as overall spending on intelligence declined. While counterterrorism was a resource priority from the time of the DCI's statement onward, it was competing with several other intelligence priorities, such as non-proliferation. Despite the DCI's declaration of war in 1998, there was no massive shift in budget or reassignment of personnel to counterterrorism until after September 11, 2001. For example, the number of CIA personnel assigned to the CTC nearly doubled after the September 11 attacks, from approximately 400 to approximately 800, and was accompanied by additional contractors supporting the CTC. There is no similar shift of resources and personnel to counterterrorism prior to September 11, 2001;

- By late 1998, the Intelligence Community had amassed a growing body of information, though general in nature and lacking specific details on time and place, indicating that Bin Ladin and the al-Qa'ida network intended to strike within the United States; and

- Concern about Bin Ladin continued to grow over time and reached peak levels in the spring and summer of 2001, as the Intelligence Community faced increasing numbers of reports of imminent al-Qa'ida attacks against U.S. interests. In July and August 2001, that rise in intelligence reporting began to decrease, just as three additional developments occurred in the United States: the Phoenix memo; the detention of Zacarias Moussaoui; and the Intelligence Community's realization that two individuals with ties to Usama Bin Ladin's network – Khalid al-Mihdhar and Nawaf al-Hazmi – were possibly in the United States. The two individuals turned out to be two of the 19 hijackers on September 11, 2001. The Intelligence Community apparently had not connected these individual warning flags to each other, to the "drumbeat" of threat reporting that had just occurred, or to the urgency of the "war" effort against Usama Bin Ladin.

Our review to date provides further context for each of these points.

International Terrorism against U.S. Interests in the 1980s and early 1990s and the Intelligence Community's Response to the Evolving Terrorist Threat

Our nation's experience with international terrorism in the 1980s began with the bombings of the U.S. Embassy in Beirut in April 1983 and the U.S. Marine Barracks in Beirut in October 1983; the terrorist group Islamic Jihad claimed responsibility for both attacks. These were followed by the March 1984 kidnapping and murder of William Buckley, an official from the U.S. Embassy in Beirut. Other U.S. citizens in Lebanon not connected to the U.S. Government were also kidnapped by terrorist groups over the next two years.

In April 1984, the Iranian-backed terrorist group Hezbollah claimed responsibility for the bombing of a restaurant frequented by U.S. service members near Torrejon

Airbase in Spain. In September 1984, the U.S. Embassy annex in Beirut was bombed. 1985 brought a flurry of terrorist activity directed at U.S. citizens and interests, including the June 1985 hijacking of TransWorld Airways Flight 847, the October 1985 hijacking of the cruise ship *Achille Lauro*, and the November 1985 hijacking of an EgyptAir flight from Athens to Malta. In December 1985, the Rome and Vienna airports were attacked by terrorists of the Abu Nidal Organization.

Three of the U.S. Government's responses to the emerging threat are of particular interest to this Inquiry because they represent the foundations of U.S. policy towards international terrorists prior to the September 11 attacks. The responsive actions, recommended by a task force led by then-Vice President George H. W. Bush in a December 1985 report on combating terrorism, included the following:

- National Security Decision Directive 207, signed on January 20, 1986, by President Ronald Reagan, outlining our nation's policy with respect to international terrorism; it also assigned various counterterrorist functions to U.S. Government departments and agencies;

- Establishment in February 1986 of the DCI's CTC as the focal point for U.S. Government counterterrorist activities; and

- A directive signed in the spring of 1986 authorized the CIA to conduct certain counterterrorist activities.

Americans first faced the reality of a major international terrorist attack within the United States on February 26, 1993, when a bomb was detonated in the parking garage of the World Trade Center in New York City. A second alarm sounded on June 24, 1993, when the FBI arrested eight individuals for plotting to bomb a number of New York City landmarks, including the United Nations building and the Lincoln and Holland tunnels. The central figures in these plots were Ramzi Yousef and Shaykh Omar Abd al-Rahman, both of whom have been linked to Usama Bin Ladin and are now serving prison sentences.

In January 1995, the Philippine National Police discovered Ramzi Yousef's bombmaking lab in Manila and arrested an accomplice named Abdul Hakim Murad. Captured materials and interrogations of Murad revealed Yousef's plot to kill the Pope, bomb U.S. and Israeli embassies in Manila, blow up 12 U.S.-owned airliners over the Pacific Ocean, and crash a plane into CIA headquarters. Together, these plans were known collectively as the "Bojinka Plot." Murad was eventually convicted for his role in the plot and is currently incarcerated in the United States.

Interestingly, Murad was charged only for his involvement in the plot to blow up 12 airliners over the Pacific, and not for the other aspects of the Bojinka Plot. The plans to crash a plane into CIA headquarters and to assassinate the Pope were only at the "discussion" stage and therefore not included in his indictment. The FBI's criminal investigative file reflects the focus of the prosecution. The Joint Inquiry Staff located

almost no references to the plan to crash a plane into CIA headquarters in the FBI's investigatory files on the case. The FBI agents interviewed by the Joint Inquiry Staff about the Bojinka Plot confirmed this focus, stating that this case was about the plan to blow up 12 airliners and that the other aspects of the plot were not part of the criminal case and therefore not considered relevant.

The first World Trade Center bombing, the New York City landmarks plot, and the Bojinka Plot are significant, in terms of this inquiry, for several reasons:

- They indicated a growing threat from individuals who ascribed to a radical interpretation of Sunni Islam. Usama Bin Ladin emerged in this same timeframe as a promoter of this ideology;
- These plots involved efforts to inflict mass casualties;
- The incidents confirmed that international terrorists were interested in attacking symbolic targets within the United States, including the World Trade Center;
- They provided a data point on a terrorist group discussing a plan to use an aircraft as a weapon.

All of this historical information was in the possession of the Intelligence Community and other parts of the U.S. Government years before September 11, 2001.

Usama Bin Ladin's War on the United States

Usama Bin Ladin's connection to international terrorism first came to the attention of the Intelligence Community in the early 1990s. He had founded the al-Qa'ida organization sometime in 1989 and moved to Sudan sometime in 1991 or 1992. During his time in Sudan, he was building a network of international Islamic extremists and allying with other Sunni terrorist groups. In 1996, Bin Ladin moved back to Afghanistan, where he was treated as an honored guest of the Taliban, then the dominant political and military group in Afghanistan.

Bin Ladin drew on a broader network of Islamic radicals fighting in the Balkans, Chechnya, and Kashmir conflicts in an attempt – in their eyes – to defend Islam against its persecutors. Individuals from Saudi Arabia, Egypt, Pakistan, and many other countries took up arms to aid their co-religionists, while Muslims from around the world contributed money. Although the specific actions of al-Qa'ida often did not enjoy widespread support, the causes it championed were often viewed as legitimate, indeed laudable, in much of the Muslim world.

In August 1996, after his move back to Afghanistan, Usama Bin Ladin issued a public *fatwa*, or religious decree, authorizing attacks by his followers against Western military targets on the Arabian Peninsula. In February 1998, Usama Bin Ladin and four other extremists publicly issued another public *fatwa* expanding the 1996 *fatwa* to include

U.S. military and civilian targets anywhere in the world. In a May 1998 press conference, Bin Ladin publicly discussed "bringing the war home to America."

On August 7, 1998, two truck bombs destroyed the U.S. Embassies in Nairobi, Kenya and Dar Es Salaam, Tanzania. The Intelligence Community confirmed very quickly that these attacks had been carried out by Bin Ladin's terrorist network. The attacks showed that Bin Ladin's network was capable of carrying out very bloody, simultaneous attacks and inflicting mass casualties.

Our review has confirmed that initially, the Intelligence Community focused on Bin Ladin as a financier of terrorist activities. In 1996, as Bin Ladin's direct involvement in planning and directing terrorist acts became more evident, the DCI's CTC created a special unit to focus specifically on him. Approximately 10-15 individuals were assigned to that unit at that time. Since that realization in 1996, the Community has been actively engaged – with mixed success – in operations to collect intelligence on Usama Bin Ladin and disrupt this network. On September 10, 2001, there were approximately 35-40 personnel assigned to the CTC's special Bin Ladin unit. Recognizing the danger posed by Bin Ladin, the FBI created its own unit in 1999 at FBI headquarters to focus on him. Approximately 17-19 individuals were working in that FBI unit on September 10, 2001.

Our Inquiry has raised questions about the adequacy of these resources with respect to the magnitude of the threat, especially in light of the massive shift in resources and personnel to counterterrorism that occurred immediately following the September 11 attacks. Individuals in both the CIA and FBI units interviewed by the Joint Inquiry Staff reported being seriously overwhelmed by the volume of information and workload prior to September 11, 2001. We are continuing to examine such issues as the roles of these units in the counterterrorist effort, the numbers of personnel and levels of resources allocated to these units, and the extent of cooperation and coordination between them.

Compounding the resource problems, the staff has been told by numerous individuals that al-Qa'ida proved an exceptionally difficult target for U.S. intelligence. Details of major terrorist plots were not widely shared in the al-Qa'ida organization, making it hard to develop the necessary intelligence to preempt or disrupt an attack. In addition, senior al-Qa'ida officials were very sensitive to the need for operational security. They relied on personal meetings and said in media interviews that they spoke in code to avoid revealing details of operations. Many al-Qa'ida members also enjoyed the benefits of sanctuary in Afghanistan, allowing them to plan and prepare in relative freedom. Finally, we were told that senior members of al-Qa'ida were skilled and purposeful: they learned from their mistakes, and they were flexible in their organization and plans.

Nonetheless, particularly since the bombings in East Africa, the Intelligence Community did amass a body of information detailing Usama Bin Ladin's ties to terrorist activities against U.S. interests around the world, including Europe, Africa, the Persian Gulf region, and Asia. Armed with that information, prior to September 11, 2001, U.S. Government counterterrorist efforts, had focused to a substantial degree, on Bin Ladin

and his network. In February 2000, for example, DCI Tenet testified that the Intelligence Community had "helped render more than two dozen terrorists to justice," half of whom were associated with Usama Bin Ladin. Along with those successes, there were also failures and frustrations. For example, there were the Community's unsuccessful efforts against a key al-Qa'ida leader involved in the September 11 attacks, whose identity the DCI has declined to declassify. By late 2000 and into 2001, the Intelligence Community was engaged with foreign intelligence and law enforcement partners in an extensive, shadowy struggle against al-Qa'ida. Despite such efforts, Bin Ladin carried out successful and devastating attacks against Americans and citizens of other nations, including the bombing of *USS Cole* in Yemen in October 2000.

Bin Ladin's war on the United States and the Intelligence Community's response were the prelude to the September 11 attacks.

Intelligence Reporting on Bin Ladin's Intentions to Strike Inside the United States

Central to the September 11 plot was Usama Bin Ladin's idea of carrying out a terrorist operation inside the United States. It has been suggested, both in published reports and in interviews, that prior to September 11, 2001, information available to the Intelligence Community had, for the most part, pointed to a terrorist threat against U.S. interests abroad. The Joint Inquiry Staff therefore requested and reviewed reports the Intelligence Community had prior to September 11, 2001 suggesting that an attack within the United States was a possibility. Our review confirmed that, shortly after Usama Bin Ladin's May 1998 press conference, the Intelligence Community began to acquire intelligence information indicating that Bin Ladin's network intended to strike inside the United States. Many of these reports were disseminated throughout the Intelligence Community and to senior U.S. policy-makers.

These intelligence reports should be understood in their proper context. First, they generally did not contain specific information as to where, when, and how a terrorist attack might occur and, generally, are not corroborated by further information. Second, these reports represented a small percentage of the threat information that the Intelligence Community obtained during this period, most of which pointed to the possibility of attacks against U.S. interests overseas. Nonetheless, there was a modest, but relatively steady, stream of intelligence information indicating the possibility of terrorist attacks inside the United States. Third, the credibility of the sources providing this information was sometimes questionable. While one could not, as a result, give too much credence to some individual reports, the totality of the information in this body of reporting clearly reiterated a consistent and critically important theme: Usama Bin Ladin's intent to launch terrorist attacks inside the United States.

Several of these reports are summarized below:

- In June 1998, the Intelligence Community obtained information from several sources that Usama Bin Ladin was considering attacks in the U.S., including Washington, DC and New York. This information was provided to senior U.S. Government officials in July 1998;

- In August 1998, the Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center. The information was passed to the FBI and the FAA. The FAA found the plot highly unlikely given the state of that foreign country's aviation program. Moreover, they believed that a flight originating outside the United States would be detected before it reached its intended target inside the United States. The FBI's New York office took no action on the information, filing the communication in the office's bombing repository file. The Intelligence Community has acquired additional information since then indicating there may be links between this group and other terrorist groups, including al-Qa'ida;

- In September 1998, the Intelligence Community prepared a memorandum detailing al-Qa'ida infrastructure in the United States, including the use of fronts for terrorist activities. This information was provided to senior U.S. Government officials in September 1998;

- In September 1998, the Intelligence Community obtained information that Usama Bin Ladin's next operation could possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it; this information was provided to senior U.S. Government officials in late 1998;

- In October 1998, the Intelligence Community obtained information that al-Qa'ida was trying to establish an operative cell within the United States. This information indicated there might be an effort underway to recruit U.S. citizen Islamists and U.S.-based expatriates from the Middle East and North Africa;

- In the fall of 1998, the Intelligence Community received information concerning a Bin Ladin plot involving aircraft in the New York and Washington, DC areas;

- In November 1998, the Intelligence Community obtained information that a Bin Ladin terrorist cell was attempting to recruit a group of five to seven young men from the United States to travel to the Middle East for training. This was in conjunction with planning to strike U.S. domestic targets;

- In November 1998, the Intelligence Community received information that Bin Ladin and senior associates had agreed to allocate reward money for the assassinations of four "top" intelligence agency officers. The bounty for each assassination was $9 million. The bounty was in response to the U.S.

announcement of an increase in the reward money for information leading to the arrest of Bin Ladin;

- In the spring of 1999, the Intelligence Community obtained information about a planned Bin Ladin attack on a U.S. Government facility in Washington, DC;

- In August 1999, the Intelligence Community obtained information that Usama Bin Ladin's organization had decided to target the U.S. Secretary of State, Secretary of Defense, and DCI. "Target" was interpreted by Intelligence Community analysts to mean "assassinate";

- In September 1999, the Intelligence Community obtained information that Usama Bin Ladin and others were planning a terrorist act in the United States, possibly against specific landmarks in California and New York City. The reliability of the source of this information was unknown;

- In late 1999, the Intelligence Community obtained information regarding the Bin Ladin network's possible plans to attack targets in Washington, DC and New York City during the New Year's Millennium celebrations;

- On December 14, 1999, an individual named Ahmed Ressam was arrested as he attempted to enter the United States from Canada. An alert U.S. Customs Service officer in Port Washington stopped Ressam and asked to search his vehicle. Chemicals and detonator materials were found in his car. Ressam's intended target was Los Angeles International Airport. Ressam, who was later determined to have links to Usama Bin Ladin's terrorist network, has not been formally sentenced yet;

- In February 2000, the Intelligence Community obtained information that Usama Bin Ladin was making plans to assassinate U.S. intelligence officials, including the Director of the FBI;

- In March 2000, the Intelligence Community obtained information regarding the types of targets that operatives in Bin Ladin's network might strike. The Statue of Liberty was specifically mentioned, as were skyscrapers, ports, airports, and nuclear power plants;

- In March 2000, the Intelligence Community obtained information indicating Bin Ladin was planning attacks in specific West Coast areas, possibly involving the assassination of several public officials. The Intelligence Community had concerns that this information might have come from a source known to fabricate information; and

- In April 2001, the Intelligence Community obtained information from a source with terrorist connections who speculated that Bin Ladin would be interested in commercial pilots as potential terrorists. The source warned that

the United States should not focus only on embassy bombings, that terrorists sought "spectacular and traumatic" attacks, and that the first World Trade Center bombing would be the type of attack that would be appealing. The source did not mention a timeframe for any attack. Because the source was offering personal speculation and not hard information, the information was not disseminated within the Intelligence Community.

To date, in the course of reviewing intelligence products on Bin Ladin's terrorist network, the Joint Inquiry Staff has not found any similar comprehensive listing of Bin Ladin-related threats to the United States produced by the Intelligence Community prior to September 11, 2001. We are still researching this issue.

Usama Bin Ladin's declaration of war in February 1998 and intelligence reports indicating possible terrorist plots inside the United States did not go unnoticed by the Intelligence Community, which, in turn, advised senior officials in the U.S. Government of the serious nature of the threat. Many individuals in the National Security Council staff and at the DCI's CTC interviewed by the Joint Inquiry Staff in the course of this Inquiry pointed to the August 1998 bombings of the U.S. Embassies in Africa as the moment in time when they recognized that Bin Ladin was waging war on the United States.

The Joint Inquiry Staff has also reviewed documents, other than individual intelligence reports, that demonstrate that, at least at senior levels, the Intelligence Community understood that Bin Ladin posed a serious threat to the domestic United States. Here are five examples of what we have found in our Inquiry thus far:

- A December 1, 1998 Intelligence Community assessment of Usama Bin Ladin read in part: "UBL is actively planning against U.S. targets... Multiple reports indicate UBL is keenly interested in striking the U.S. on its own soil... al-Qa'ida is recruiting operatives for attacks in the U.S. but has not yet identified potential targets";

- On December 4, 1998, in a memorandum to his deputies at the CIA, the DCI summed up the situation in this way: "We must now enter a new phase in our effort against Bin Ladin. Our work to date has been remarkable and in some instances heroic; yet each day we all acknowledge that retaliation is inevitable and that its scope may be far larger than we have previously experienced... We are at war... I want no resources or people spared in this effort, either inside CIA or the [Intelligence] Community";

- A classified document signed by a senior U.S. Government official in December 1998 read in part: "The intelligence community has strong indications that Bin Ladin intends to conduct or sponsor attacks inside the United States";

- In June 1999 testimony before the Senate Select Committee on Intelligence and in a July 1999 briefing to House Permanent Select Committee on Intelligence staffers, the chief of the CTC described reports that Bin Ladin and his associates were planning attacks in the United States; and

- A classified document signed by a senior U.S. Government official in July 1999 characterized Bin Ladin's February 1998 statement as a "de facto declaration of war" on the United States.

What is less clear is the extent to which other parts of the government, as well as the American people, understood and fully appreciated the gravity and immediacy of the threat. For example, officials at the NSA whom we have interviewed were aware of DCI Tenet's December 1998 declaration that the Intelligence Community was "at war" with Bin Ladin. On the other hand, relatively few of the FBI agents interviewed by the Joint Inquiry Staff seem to have been aware of DCI Tenet's declaration. There was also considerable variation in the degree to which FBI-led Joint Terrorism Task Forces (JTTFs) prioritized and coordinated field efforts targeting Bin Ladin and al-Qa'ida. While the FBI's New York office was the lead office in the vast majority of counterterrorism investigations concerning Usama Bin Ladin, many other FBI offices around the country were unaware of the magnitude of the threat.

There are also indications that the allocation of Intelligence Community resources after the DCI's December 1998 declaration did not adequately reflect a true "war" effort against Bin Ladin. In 1999, for example, the CTC had only three analysts assigned full-time to Bin Ladin's terrorist network worldwide. After 2000 (but before September 11, 2001), that number had risen to five. On September 11, 2001, the international terrorism analytic unit at FBI headquarters had in place only one analyst to address al-Qa'ida.

On a broader scale, our review has found little evidence, prior to September 11, of a sustained national effort to mobilize public awareness and to "harden" the homeland against a potential assault by Bin Ladin within the United States with the possible exception of heightened focus on weapons of mass destruction. Consistent with his internal statements, DCI Tenet did stress, in some of his public speeches, the "immediacy and seriousness" of the threat from Bin Ladin. We have also found the following Presidential statements referring directly or, more commonly, indirectly to the issue of war against Bin Ladin specifically or terrorism generally:

- On August 20, 1998, in his address to the nation on military action against terrorist sites in Afghanistan and Sudan, President Clinton said: "A few months ago, and again this week, Bin Ladin publicly vowed to wage a terrorist war against America."

- On August 22, 1998, in his radio address to the nation, President Clinton said: "Our efforts against terrorism cannot and will not end with this strike. We should have realistic expectations about what a single action can achieve, and we must be prepared for a long battle."

- On January 19, 1999, in his State of the Union speech to Congress, President Clinton said: "As we work for peace, we must also meet threats to our Nation's security, including increased dangers from outlaw nations and terrorism. We will defend our security wherever we are threatened, as we did this summer when we struck at Usama Bin Ladin's network of terror. The bombing of our Embassies in Kenya and Tanzania reminds us again of the risks faced every day by those who represent America to the world."

- On July 6, 1999, in a Presidential statement on the national emergency with respect to the Taliban, President Clinton said: "To this day, Bin Ladin and his network continue to plan new attacks against Americans, without regard for the innocence of their intended victims or for those non-Americans who might get in the way of his attack."

- On October 18, 2000, in a ship-side ceremony commemorating the 17 service members killed in the terrorist attack on *USS Cole*, President Clinton said: "Their tragic loss reminds us that even when America is not at war, the men and women of our military still risk their lives for peace... To those who attacked them, we say: you will not find safe harbor. We will find you, and justice will prevail."

- On March 20, 2001, in remarks to CIA employees (and subsequently made available to the public on the White House website), President Bush said: "Today, that single threat [the Soviet Union, its ideology, and its allies] has been replaced by new and different threats, sometimes hard to define and defend against; threats such as terrorism, information warfare, the spread of weapons of mass destruction and the means to deliver them."

- On May 1, 2001, in remarks to students and faculty at National Defense University, Ft., McNair, Washington, DC, President Bush said: "We must work together with other like-minded nations to deny weapons of terror from those seeking to acquire them."

- On May 8, 2001, in a statement on domestic preparedness against weapons of mass destruction, President Bush said: "Some non-state terrorist groups have also demonstrated an interest in acquiring weapons of mass destruction."

- On August 29, 2001, in remarks at the American Legion's 83rd Annual Convention, President Bush said: "We recognize it's a dangerous world. I know this nation still has enemies, and we cannot expect them to be idle. And that's why security is my first responsibility. And I will not permit any course that leaves America undefended."

Strategic Warning: Indications of a Possible Terrorist Attack in the Spring and Summer 2001

In the last few months, the media has reported that the Intelligence Community had information in the spring and summer of 2001 that might have been relevant to the September 11 attacks, including: information about some of the hijackers, the so-called Phoenix memo, and the FBI's investigation of Zacarias Moussaoui. The Joint Inquiry Staff has examined those issues in depth and will be reporting in greater detail, during the course of this inquiry, on that aspect of our work.

Our focus in this section, however, is on what we have found regarding the level and nature of threat information that was obtained by the Intelligence Community during the spring and summer of 2001. Our review has confirmed that, at least in the eyes of the Intelligence Community, the world did appear increasingly dangerous for Americans in the spring and summer of 2001. During that time period the Intelligence Community experienced a significant rise in information indicating that Bin Ladin and al-Qa'ida intended to strike against United States interests in the very near future. Some individuals within the Intelligence Community have suggested that the increase in threat reporting was unprecedented, at least in terms of their own experience. While the reporting repeatedly predicted dire consequences for Americans, it did not provide actionable detail on when, where and how specific attacks would occur.

Between late March and September 2001, the Intelligence Community detected numerous indicators of an impending terrorist attack, some of which pointed specifically to the United States as a possible target:

- In March 2001, an intelligence source claimed a group of Bin Ladin operatives were planning to conduct an unspecified attack in the United States in April 2001. One of the operatives allegedly resided in the United States;

- In April 2001, the Intelligence Community obtained information that unspecified terrorist operatives in California and New York State were planning a terrorist attack in those states for April;

- Between May and July, the National Security Agency reported at least 33 communications indicating a possible, imminent terrorist attack. None of these reports provided any specific information on where, when, or how an attack might occur, nor was it clear that any of the individuals involved in these intercepted communications had any first-hand knowledge of where, when, or how an attack might occur. If they did know, it was not evident in the intercepts. These reports were widely disseminated within the Intelligence Community;

- In May 2001, the Intelligence Community obtained information that supporters of Usama Bin Ladin were reportedly planning to infiltrate the United States via Canada in order to carry out a terrorist operation using high

explosives. This report mentioned an attack within the United States, though it did not say where in the U.S., or when, or how an attack might occur. In July 2001, this information was shared with the FBI, the Immigration and Naturalization Service (INS), U.S. Customs Service, and the State Department and was included in a closely held intelligence report for senior government officials in August 2001;

- In May 2001, the Department of Defense acquired and shared with other elements of the Intelligence Community information indicating that seven individuals associated with Usama Bin Ladin departed various locations for Canada, the United Kingdom, and the United States;

- In June 2001, the DCI's CTC had information that key operatives in Usama Bin Ladin's organization were disappearing while others were preparing for martyrdom;

- In July 2001, the DCI's CTC was aware of an individual who had recently been in Afghanistan who had reported, "Everyone is talking about an impending attack." The Intelligence Community was also aware that Bin Ladin had stepped up his propaganda efforts in the preceding months;

- On August 16, 2001, in Minneapolis, Minnesota, the INS detained Zacarias Moussaoui. Prior to that date, in August 2001, Mr. Moussaoui's conduct had aroused suspicions about why he was learning to fly large commercial aircraft and had prompted the flight school he was attending in Minneapolis to contact the local FBI field office. FBI agents believed that Moussaoui may have been intending to carry out a terrorist act, but there was internal debate as to whether there was sufficient information to show that he was acting as an agent of a foreign power, which was necessary to obtain a search warrant under the Foreign Intelligence Surveillance Act. On September 4, 2001, the FBI sent a cable about the Moussaoui investigation to the Intelligence Community, including the Federal Aviation Administration (FAA), the Secret Service, and several other agencies. (By this time, the DCI's CTC was already collaborating with the FBI on the Moussaoui investigation, as described further below.) The teletype noted that Moussaoui was being held in custody but did not describe any particular threat that the FBI thought he posed. The teletype also did not recommend that the addressees take any action or look for any additional indicators of a terrorist attack. The events surrounding Mr. Moussaoui's detention will be discussed in greater detail in a future statement;

- On August 23, 2001, the Intelligence Community requested that two individuals, Khalid al-Mihdhar and Nawaf al-Hazmi, who had first come to the attention of the Intelligence Community in 1999 as possible associates of Usama Bin Ladin's terrorist network, be added to the U.S. Department of State's watchlist for denying visas to individuals attempting to enter the

United States. Working levels of INS and U.S. Customs Service had determined that at least one of them was likely in the United States, prompting FBI headquarters to request searches for them in both New York and Los Angeles. The FBI's New York field office unsuccessfully searched for al-Mihdhar and al-Hazmi. The FBI's Los Angeles field office received the search request on September 11, 2001. On September 11, 2001, these two individuals were part of the team that hijacked United Airlines Flight 77 and crashed it into the Pentagon. We will examine in greater detail all of the Intelligence Community's actions regarding al-Midhar and al-Hazmi in a later statement;

- In late summer 2001, the Intelligence Community obtained information that an individual associated with al-Qa'ida was considering mounting terrorist operations in the United States. There was no information available as to the timing of possible attacks or on the alleged targets in the United States; and

- On September 10, 2001, NSA intercepted two communications between individuals abroad suggesting imminent terrorist activity. These communications were not translated into English and disseminated until September 12, 2001. These intercepts did not provide any indication of where, when, or what activities might occur. Taken in their entirety, it is unclear whether they were referring to the September 11 attacks.

Despite these indicators of a possible terrorist attack inside the United States, during the course of interviews, the Joint Inquiry Staff was told that it was the general view of the U.S. Intelligence Community in the spring and summer of 2001 that an attack on U.S. interests was more likely to occur overseas. Individuals in the Intelligence Community interviewed by the Joint Inquiry Staff about this issue mentioned Saudi Arabia and Israel as possible targets. They pointed to intelligence information, the arrests of suspected terrorists in the Middle East and Europe, and a credible report of a plan to attack a U.S. Embassy in the Middle East as factors in the spring and summer of 2001 that shaped their thinking about where an attack was likely to occur. In fact, the FBI agents working in Yemen on the *USS Cole* investigation were told to leave the country because of concern about a possible attack there. One FBI official we deposed said that, based on the intelligence he was seeing, he thought there was a high probability – "98 percent" – that the attack would occur overseas.

During the summer of 2001, the Intelligence Community was also disseminating information through appropriate channels to senior U.S. Government officials about possible terrorist attacks. For example:

- In June 2001, the Intelligence Community issued a terrorist threat advisory warning U.S. Government agencies that there was a high probability of an imminent terrorist attack against U.S. interests by Sunni extremists associated with Usama Bin Ladin's al-Qa'ida organization. The advisory mentioned the Arabian Peninsula, Israel, and Italy as possible locations where an attack

might occur. According to the advisory, the Intelligence Community continued to believe that "Sunni extremists associated with al-Qa'ida are most likely to attempt spectacular attacks resulting in numerous casualties";

- Subsequently, intelligence information provided to senior U.S. Government leaders indicated that Usama Bin Ladin's organization expected near-term attacks to have dramatic consequences on governments or cause major casualties;

- A briefing prepared for senior government officials at the beginning of July 2001 contained the following language: "Based on a review of all-source reporting over the last five months, we believe that UBL will launch a significant terrorist attack against U.S. and/or Israeli interests in the coming weeks. The attack will be spectacular and designed to inflict mass casualties against U.S. facilities or interests. Attack preparations have been made. Attack will occur with little or no warning";

- Later, intelligence information provided to senior government leaders indicated that Usama Bin Ladin's organization continued to expect imminent attacks on U.S. interests;

- The Joint Inquiry Staff has been advised by a representative of the Intelligence Community that, about a month later, in August 2001, a closely held intelligence report for senior government officials included information that Usama Bin Ladin had wanted to conduct attacks in the United States since 1997. The information included discussion of the arrest of Ahmed Ressam in December 1999 at the U.S.-Canadian border and the 1998 bombings of the U.S. embassies in Kenya and Tanzania. It mentioned that members of al-Qa'ida, including some U.S. citizens, had resided in or traveled to the United States for years and that the group apparently maintained a support structure here. The report cited uncorroborated information obtained in 1998 (and previously disseminated) that Usama Bin Ladin wanted to hijack airplanes to gain the release of U.S.-held extremists; FBI judgments about patterns of activity consistent with preparations for hijackings or other types of attacks and the number of Bin Ladin-related investigations underway; as well as information acquired in May 2001 that indicated a group of Bin Ladin supporters was planning attacks in the United States with explosives;

- In August 2001, based on information it had in its possession at the time, the CIA sent a message to the FAA asking the FAA to advise corporate security directors of U.S. air carriers of the following information: "A group of six Pakistanis currently based in La Paz, Bolivia may be planning to conduct a hijacking, or possibly a bombing or an act of sabotage against a commercial airliner. While we have no details of the carrier, the date, or the location of this or these possibly planned action(s), we have learned the group has had discussions in which Canada, England, Malaysia, Cuba, South Africa,

Mexico, Atlanta, New York, Madrid, Moscow, and Dubai have come up, and India and Islamabad have been described as possible travel destinations." While this information was not related to an attack planned by al-Qa'ida, it did alert the aviation community to the possibility that a hijacking plot might occur in the U.S. shortly before the September 11 attacks occurred.

The Joint Inquiry Staff has also reviewed the Senior Executive Intelligence Briefs (SEIBs) distributed by the Intelligence Community in the spring and summer of 2001. A SEIB is a written intelligence briefing provided by the Intelligence Community to senior U.S. Government executives on a daily basis. Each SEIB consists of a series of short articles summarizing political, military, economic, and diplomatic developments around the world of particular interest to the U.S. Government officials. (A SEIB is not the same as the President's Daily Brief, though it often contains similar information. The President's Daily Brief is a more exclusive intelligence summary provided to the President and a small number of his most senior advisors while the SEIB is more broadly distributed.) Our review of the SEIBs from the spring and summer of 2001 confirms the rise in reporting on Bin Ladin between March and June 2001. That review, however, also demonstrates that, while reporting on Bin Ladin was rising, it was still a relatively small portion of the universe of items brought to the attention of policymakers through SEIB reports at the time. For example, the peak in Bin Ladin–related reporting came in June 2001, with Islamic extremists, including Bin Ladin or al-Qa'ida, referenced in 18 of the 298 articles in the SEIBs of that month.

The rise in threat reporting on Bin Ladin, though lacking details on when, where, and how specific attacks would occur, did generate various other government-issued terrorist advisories and warnings. These included:

- An FAA Circular on June 22, 2001, referring to fourteen individuals incarcerated in the U.S. in connection with the 1996 bombing of Khobar Towers and a possible hijacking plot by Islamic terrorists to secure the release of these individuals;

- A public, worldwide caution issued by the State Department on June 22, 2001, warning Americans traveling abroad of the increased risk of a terrorist action;

- Four terrorism warning reports or warning report extensions issued by the Department of Defense on June 22, June 26, July 6, and July 20, 2001, primarily to alert U.S. military forces and agencies and organizations within the Department of Defense to indications that Usama Bin Ladin's network was planning a near-term, anti-U.S. terrorist operation;

- A State Department demarche to Taliban representatives in Pakistan, on June 26, 2001;

- A communication from the FBI on July 2, 2001 advising federal, state, and local law enforcement agencies of an increased volume of threat reporting

emanating from groups aligned with or sympathetic to Usama Bin Ladin, the majority of which indicated a potential for attacks against U.S. targets abroad. The communication noted that the FBI had no information indicating a credible threat of a terrorist attack in the United States, but that the possibility of an attack in the United States could not be discounted.

Bin Ladin-related threat reporting began to decline in July 2001. Our review has confirmed that the Intelligence Community did, however, continue to follow up on some of the information in its possession at the time. For example:

- In August 2001, the DCI's CTC was issuing requests to the State Department, INS, and U.S. Customs Service at a rate significantly higher than previous months that the names of specific, suspected terrorists be added to these agencies' respective watchlists and that these individuals be denied entry into the United States;

- On August 24, 2001, the DCI's CTC had sent a message to several stations and bases overseas requesting information concerning Zacarias Moussaoui, who was being detained for immigration violations. The message said that the FBI was investigating Moussaoui for possible involvement in the planning of a terrorist attack and mentioned Moussaoui's efforts to obtain flight training. The message also said that Moussaoui might be "involved in a larger plot to target airlines traveling from Europe to the United States." At that time, CTC personnel apparently did not connect the Moussaoui case to the search that had been initiated for al-Mihdhar and al-Hazmi (described above), at least one of whom CTC had concluded, the day before, was likely in the United States; and

- On September 4, 2001, the FBI sent a lengthy teletype to the FAA and key components of the Intelligence Community setting forth facts about Moussaoui. The teletype noted that Moussaoui was being held in custody but did not describe any particular threat that the FBI thought he posed. The teletype also did not recommend that the addressees take any action or look for any additional indicators of a terrorist attack.

The so-called "Phoenix memo," actually an electronic communication, from the FBI's field office in Phoenix to a unit within FBI headquarters in Washington is also of interest because it was dated July 10, 2001 and received at FBI headquarters later that month, during the same timeframe in which the Intelligence Community was detecting indications of an impending terrorist attack, some relating to airliners. The communication stands apart from the documents above, however, in that it did not contain information indicating an impending terrorist attack. Instead, it proposed that the FBI open investigations into named individuals of Middle Eastern nationalities who were attending flight colleges and universities in the U.S. because of their possible linkages to terrorist organizations overseas. In our view, the document is significant because an FBI agent on the ground in Phoenix had seen a pattern and laid out the prescient idea that

foreign terrorists may use facilities and other resources inside the United States for training and preparation of attacks. We will report in greater detail on our review of the Phoenix memo in a future statement.

Intelligence Information on Possible Terrorist Use of Airplanes as Weapons

Central to the September 11 attacks was the terrorists' use of airplanes as weapons. In the aftermath of the terrorist attacks, there was much discussion about the extent to which our Government was, or could have been, aware of the threat of terrorist attacks of this type and the extent to which adequate precautions were taken to address that threat. We therefore asked the question: Did the Intelligence Community have any information in its possession prior to September 11, 2001 indicating that terrorists were contemplating using airplanes as weapons?

Based on our review to date of the requested information, we believe that the Intelligence Community was aware of the potential for this type of terrorist attack, but did not produce any specific assessments of the likelihood that terrorists would use airplanes as weapons.

Our review has uncovered several examples of intelligence reporting on the possible use of airplanes as weapons in terrorist operations. As with the intelligence reports indicating Bin Ladin's intentions to strike inside the United States, the credibility of the sources is sometimes questionable, and the information is often sketchy. Nevertheless, we did find reporting on this kind of potential threat, including the following:

- In December 1994, Algerian Armed Islamic Group terrorists hijacked an Air France flight in Algiers and threatened to crash it into the Eiffel Tower. French authorities deceived the terrorists into thinking the plane did not have enough fuel to reach Paris and diverted it to Marseilles. A French anti-terrorist force stormed the plane and killed all four terrorists;

- In January 1995, a Philippine National Police raid turned up materials in a Manila apartment indicating that three individuals – Ramzi Yousef, Abdul Murad and Khalid Shaykh Mohammad – planned, among other things, to crash an airplane into CIA headquarters. The Philippine National Police said that the same group was responsible for the bombing of a Philippine airliner on December 12, 1994. Information on the threat was passed to the FAA, which briefed U.S. and major foreign carriers;

- In January 1996, the Intelligence Community obtained information concerning a planned suicide attack by individuals associated with Shaykh Omar Adb al-Rahman and a key al-Qa'ida operative. The plan was to fly to the United States from Afghanistan and attack the White House;

- In October 1996, the Intelligence Community obtained information regarding an Iranian plot to hijack a Japanese plane over Israel and crash it into Tel Aviv. An individual would board the plane in the Far East. During the flight, he would commandeer the aircraft, order it to fly over Tel Aviv, and then crash the plane into the city;

- In 1997, one of the units at FBI headquarters became concerned about the possibility of a terrorist group using an unmanned aerial vehicle (UAV) for terrorist attacks. The FBI and CIA became aware of reporting that this group had purchased a UAV. At the time, the agencies' view was that the only reason that this group would need a UAV would be for either reconnaissance or attack. There was more concern about the possibility of an attack outside the United States, for example, by flying a UAV into a U.S. Embassy or a visiting U.S. delegation;

- In August 1998, the Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center. The information was passed to the FBI and the FAA. The FAA found the plot highly unlikely given the state of that foreign country's aviation program. Moreover, they believed that a flight originating outside the United States would be detected before it reached its intended target inside the United States. The FBI's New York office took no action on the information, filing the communication in the office's bombing repository file. The Intelligence Community has acquired additional information since then indicating there may be links between this group and other terrorist groups, including al-Qa'ida;

- In September 1998, the Intelligence Community obtained information that Usama Bin Ladin's next operation could possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it; this information was provided to senior U.S. Government officials in late 1998;

- In November 1998, the Intelligence Community obtained information that the Turkish Kaplancilar, an Islamic extremist group, had planned a suicide attack to coincide with celebrations marking the death of Ataturk. The conspirators, who were arrested, planned to crash an airplane packed with explosives into Ataturk's tomb during a government ceremony. The Turkish press said the group had cooperated with Usama Bin Ladin. The FBI's New York office included this incident in one of its Usama Bin Ladin databases;

- In February 1999, the Intelligence Community obtained information that Iraq had formed a suicide pilot unit that it planned to use against British and U.S. forces in the Persian Gulf. The CIA commented that this was highly unlikely and probably disinformation;

- In March 1999, the Intelligence Community obtained information regarding plans by an al-Qa'ida member, who was a U.S. citizen, to fly a hang glider into the Egyptian Presidential Palace and then detonate the explosives he was carrying. The individual, who received hang glider training in the United States, brought a hang glider back to Afghanistan. However, various problems arose during the testing of the glider. He was subsequently arrested and is in custody abroad;

- In April 2000, the Intelligence Community obtained information regarding an alleged Bin Ladin plot to hijack a 747. The source, who was a "walk-in" to the FBI's Newark office, claimed that he had been to a training camp in Pakistan where he learned hijacking techniques and received arms training. He also stated that he was supposed to meet five to six other individuals in the United States who would also participate in the plot. They were instructed to use all necessary force to take over the plane because there would be pilots among the hijacking team. The plan was to fly the plane to Afghanistan, and if they would not make it there, that they were to blow up the plane. Although the individual passed an FBI polygraph, the FBI was never able to verify any aspect of his story or identify his contacts in the United States; and

- In August 2001, the Intelligence Community obtained information regarding a plot to either bomb the U.S. Embassy in Nairobi from an airplane or crash an airplane into it. The Intelligence Community learned that two people who were reportedly acting on instructions from Usama Bin Ladin met in October 2000 to discuss this plot.

The CIA disseminated several of these reports to the FBI and to agencies that would be responsible for taking preventive actions, including the FAA. The FAA has staff assigned to the DCI's CTC, the FBI's Counterterrorism Division, and to the State Department's Diplomatic Security Service to gather relevant intelligence for domestic use. The FAA is responsible for issuing information circulars, security directives and emergency amendments to the directives alerting domestic and international airports and airlines of threats identified by the Intelligence Community.

Despite these reports, the Intelligence Community did not produce any specific assessments of the likelihood that terrorists would use airplanes as weapons. Again, this may have been driven in part by resource issues in the area of intelligence analysis. Prior to September 11, 2001, the CTC had forty analysts to analyze terrorism issues worldwide, with only one of the five branches focused on terrorist tactics. As a result, prior to September 11, 2001, the only terrorist tactic on which the CTC performed strategic analysis was the possible use of chemical, biological, radiological and nuclear weapons (CBRN) because there was more obvious potential for mass casualties.

At the FBI, our review found that, prior to September 11, 2001, support for ongoing investigations and operations was favored, in terms of allocating resources, over long-term, strategic analysis. We were told, during the course of our FBI interviews, that

prevention occurs in the operational units, not through strategic analysis, and that, prior to September 11, the FBI had insufficient resources to do both. We were also told that the FBI's al-Qa'ida-related analytic expertise had been "gutted" by transfers to operational units and that, as a result, the FBI's analytic unit had only one individual working on al-Qa'ida at the time of the September 11 attacks.

While focused strategic analysis was lacking, the subject of aviation-related terrorism was included in some broader terrorist threat assessments, such as the National Intelligence Estimates (NIE) on terrorism. For example, the 1995 NIE on terrorism mentioned the plot to down 12 U.S.-owned airliners. The NIE also cited the consideration the Bojinka conspirators gave to attacking CIA headquarters using an aircraft loaded with explosives. The FAA worked with the Intelligence Community on this analysis and actually drafted the section of the NIE addressing the threat to civil aviation. That section contained the following language:

> "Our review of the evidence... suggests the conspirators were guided in their selection of the method and venue of attack by carefully studying security procedures in place in the region. If terrorists operating in this country [the United States] are similarly methodical, they will identify serious vulnerabilities in the security system for domestic flights."

The 1997 update to the 1995 NIE on terrorism included the following language:

> "Civil aviation remains a particularly attractive target in light of the fear and publicity the downing of an airliner would evoke and the revelations last summer of the US air transport sectors' vulnerabilities."

As a result of the increasing threats to aviation, Congress passed Section 310 of the Federal Aviation Reauthorization Act of 1996, requiring the FAA and the FBI to conduct joint threat and vulnerability assessments of security at select "high risk" U.S. airports and to provide Congress with an annual report. In the December 2000 report, the FBI and FAA published a classified assessment that suggested less concern about the threat to domestic aviation:

> "FBI investigations confirm domestic and international terrorist groups operating within the U.S. but do not suggest evidence of plans to target domestic civil aviation. Terrorist activity within the U.S. has focused primarily on fundraising, recruiting new members, and disseminating propaganda. While international terrorists have conducted attacks on U.S. soil, these acts represent anomalies in their traditional targeting which focuses on U.S. interests overseas."

In short, less than a year prior to the September 11 attacks and notwithstanding historical intelligence information to the contrary, the FBI and FAA had assessed the prospects of a terrorist incident targeting domestic civil aviation in the United States as relatively low.

After September 11, 2001, the CIA belatedly acknowledged some of the information that was available regarding the use of airplanes as weapons. A draft analysis dated November 19, 2001, "The 11 September Attacks: A Preliminary Assessment," states:

> "We do not know the process by which Bin Ladin and his lieutenants decided to hijack planes with the idea of flying them into buildings in the United States, but the idea of hijacking planes for suicide attacks had long been current in jihadist circles. For example, GIA terrorists from Algeria had planned to crash a Air France jet into the Eiffel Tower in December 1994, and Ramzi Yousef – a participant in the 1993 World Trade Center bombing – planned to explode 12 US jetliners in mid-air over the Pacific in the mid-1990s. Likewise the World Trade Center had long been a target of terrorist bombers."

Despite the intelligence available in recent years, our review to date has found no indications that, prior to September 11, analysts in the Intelligence Community were:

- Cataloguing information regarding the use of airplanes as weapons as a terrorist tactic;
- Sending requirements to collectors to look for additional information on this threat; or
- Considering the likelihood that Usama Bin Ladin, al-Qa'ida, or any other terrorist group, would attack the United States or U.S. interests in this way.

A Key Al-Qa'ida Leader Involved in the September 11 Attacks

Information obtained by the U.S. Intelligence Community since September 11, 2001 suggests that a particular al-Qa'ida leader may have been instrumental in the attacks of September 11, 2001. The Joint Inquiry Staff therefore asked what the Intelligence Community knew about this individual prior to September 11, 2001 and what it did with that information. Based on our review to date, we believe that the Intelligence Community has known about this individual since 1995, but did not recognize his growing importance to al-Qa'ida and Usama Bin Ladin and did not anticipate his involvement in a terrorist attack of September 11's magnitude. Prior to September 11, 2001, there was little analytic focus given to him and coordination amongst the intelligence agencies was irregular at best.

The DCI has declined to declassify the information we developed on the grounds that it could compromise intelligence sources and methods and that this consideration supercedes the American public's interest in this particular area. We are therefore unable to present a complete description of what the Intelligence Community knew prior to September 11, 2001 about this individual.

Conclusion

Mr. Chairmen, our purpose this morning was to report on the information that the Intelligence Community possessed, prior to September 11, 2001, about terrorist attacks of the kind America witnessed on that fateful day. In closing, let me just say that for all of us who have been conducting this review, the task has been and continues to be not only a daunting one, but, in all respects, a sobering one. We are ever mindful that lost lives and shattered families were the catalyst for this Inquiry. We know, as I have heard Ms. Pelosi say many times, that we are on "sacred ground."

We also have come to know – from our review of the intelligence reporting – the depth and intensity of the enemy's hatred for this country and the relentless zeal with which it targeted American lives. We understand not only the importance, but also the enormity of the task facing the Intelligence Community. As my statement this morning suggests, the Community made mistakes prior to September 11 and the problems that led to those mistakes need to be addressed and to be fixed. On the other hand, the vengeance and inhumanity that we saw on that day were not mistakes or afterthoughts for Usama Bin Ladin and others like him. The responsibility for September 11 remains squarely on the shoulders of the terrorists who planned and participated in the attacks. Their fervor and their cruelty may be incomprehensible, but it is real, it persists, and it is directed at Americans. We are convinced that it is no longer a question of whether the Intelligence Community can do better – it must do better. America can afford no less.

Mr. Chairmen, the Joint Inquiry Staff intends to do its best to help you and these Committees achieve that goal. That concludes my statement.

Date: 17 Sep 2002

Memorandum for the Record

I have reviewed the attached document titled Joint Inquiry Staff Statement, Part I dated September 17, 2002 consisting of 30 pages and certify that it is appropriate for public release with suggested edits.

Cross annotated "DOJ" portions and passages concerning Zacarias Moussaoui

x Patrick E. Kelly
Signature

x Trial Attorney DOJ/CTS
Attorney/Advisor DOJ/OLA
Position

Date: 9/17/02

Memorandum for the Record

I have reviewed the attached document titled Joint Inquiry Staff Statement, Part I dated September 17, 2002 consisting of 30 pages and certify that it is unclassified and cleared for public release. I have initialed each page to confirm that it has been reviewed and cleared for public release.

This release for public dissemination is dependent upon department of Justice review.

Signature

Congressional Liaison Officer
Position

STATEMENT OF ELEANOR HILL, STAFF DIRECTOR, JOINT INQUIRY COMMITTEE

Ms. HILL. Good morning, Chairman Graham, Chairman Goss, Members of the Committees. Before I proceed with my statement, I have a long written statement which I would like to submit for the record, and I'm going to orally summarize it, given the length of what we have here.

Chairman GRAHAM. The full statement will appear in the record.

Ms. HILL. Thank you.

Before I get into the main part of the statement, I do want to make clear to you and members of the committees that the information that's in this statement that we're going to present this morning has been cleared for public release. As I think most of you know, much of the information that our staff has been working on over the last several months is obviously highly classified or has been highly classified.

In the course of the last two months, we have been working with the Intelligence Community in a long and what I would call very arduous process to declassify much of the information that we have reviewed and that we believe is important to the public's understanding of why the Intelligence Community did not know of the September 11 attacks in advance.

And I would point out that that process—we want to say for the record that we appreciate the many long hours that have been put into that process and what I believe for the most part has been very constructive cooperation with the Executive branch on that process. A good number of professionals from the community have been brought together in working groups and have gone over with our staff the details of this information to put it in a form where it could be released publicly. So we have made very good progress.

But I do need to report that by late last night we were able to resolve all but two issues where we believe relevant information to the inquiry has not yet, despite our discussions with the Executive branch, been declassified. And I want to make reference to those two issues because this statement has been prepared recognizing that those two areas remain classified.

The two areas are any references to the Intelligence Community providing information to the President or the White House, and the identity of, and information on, a key al-Qa'ida leader involved in the September 11 attacks.

According to the White House and the DCI—Director of Central Intelligence—the President's knowledge of intelligence information relevant to this inquiry remains classified, even when the substance of that intelligence information has been declassified.

With respect to the key al-Qa'ida leader involved in the September 11 attacks, I am advised this morning that the White House and not the DCI has declined to declassify his identity despite an enormous volume of media reporting on this individual that has been out there for some time.

The Joint Inquiry staff disagrees on both of those issues. We believe the public has an interest in this information and that public disclosure would not harm national security.

However, as I believe you know, we do not have the independent authority to declassify intelligence information short of a lengthy

procedure in the U.S. Congress, and we therefore have prepared this statement without detailed descriptions of our work in those two areas.

Mr. ROEMER. Mr. Chairman?

Chairman GRAHAM. Mr. Roemer?

Mr. ROEMER. Mr. Chairman, parliamentary inquiry.

Chairman GRAHAM. Mr. Roemer?

Mr. ROEMER. Are the Committees bound by the classification decisions made in these two instances?

Chairman GRAHAM. It is our advice from staff director and counsel that we do not independently have the authority to declassify material, and therefore we are constrained by the decisions made by those who have that legal responsibility.

Mr. ROEMER. A further parliamentary inquiry, Mr. Chairman. Is there a process then that either the Committee or the Congress can undertake to challenge a classification decision such as that?

Chairman GRAHAM. The answer is yes, and I would like—Ms. Hill alluded to the fact that there was such a process. I think she described it as being cumbersome. If you or counsel might briefly explain what the option is to Congress.

Ms. HILL. Mr. Chairman, I am not an expert on the Committee process regarding declassification. As I understand it, from speaking with the full Committee counsel on this, it would require the Congress to vote. I'm not sure if it's the full Congress or the Senate or House, but there's a vote involved. The Congress itself would have to override that classification decision.

We did not originate this information, and under the classification system, the agency that originates it makes the classification and declassifies it, and in this case, that would not be the Congress. So the only alternative would be to go through what I am told is a lengthy, rather prolonged process.

I should point out that right before the hearing this morning I was advised by the White House that they were going to look at these two issues again and they thought they would review it again within the next 48 hours. And I advised them that if their position changes, please advise the committees and we could always issue a supplemental statement on those two issues for the record. So my assumption is they are still reviewing it.

Mr. ROEMER. Final parliamentary inquiry, Mr. Chairman. Does the Chairman intend to have this Committee consider or debate that kind of process? I'm not advocating that we challenge it at this point, but certainly understanding more from the Joint Inquiry staff that strongly disagrees with the decision as to why might be helpful in a deliberative sense for the committee.

Chairman GRAHAM. I think there are two questions in your inquiry. One is whether we might consider utilizing the currently existing process in this or future instances in which we have a disagreement as to whether the information which is being withheld is, in fact, classified information—i.e., that it relates to the national security.

Second question might be, as part of our final report, we might want to recommend to our colleagues a change in the law that relates to the congressional role in declassification so that it would be more available as an alternative in the event that there was a

disagreement between Congress and an executive classifying agency.

Mr. ROEMER. Well, Mr. Chairman, thank you. I hope we do have a robust discussion of this, and I appreciate your patience.

Ms. PELOSI. Mr. Chairman?

Chairman GRAHAM. Yes, Ms. Pelosi.

Ms. PELOSI. Thank you, Mr. Chairman.

I want to join you in your earlier comments commending Eleanor Hill and Rick Cinquegrana and the Joint Inquiry staff for their fine work. And I want to inquire if it's possible, just on this point, that the parliamentary inquiry that Mr. Roemer brought up, if Ms. Hill could just clarify.

It says, "Any reference to the Intelligence Community providing information to the president or the White House." Could you give us an example of that?

Ms. HILL. What we're referring to is, and it's clear as you go through this statement that I'm about to present, that we are talking about a number of intelligence reports, which we have had declassified through this process. And part of our role was not just looking at what was the reporting, but where the reporting went.

And you will note that this statement includes many intelligence reports and in some instances says they were provided to senior government officials—I believe that is the wording that's used—but there's no reference on any of the pages as to whether the President received that information or not. And we have been told that that information—in other words, not what is in the report, but rather whether or not it went to the President—would be classified under this decision.

Ms. PELOSI. And when you say the President, you mean any President.

Ms. HILL. That's correct. And clearly if you look at this statement, the reporting is not just reporting that would have been under the current administration, but also reporting that was made under the prior administration. And the decision, in fairness, obviously, to the White House is not simply as to this sitting President, but as to any President.

Ms. PELOSI. Well, I would hope, Mr. Chairman, whoever's presiding here, that Mr. Roemer's comments will be taken seriously by the Chairmen and that the committee should consider the options under existing Committee rules to make this information public, depending on how it goes in the next 48 hours. I think that the White House should be aware that there is strong interest among many of us to have this be the most open process possible in fairness to those families who are affected, we heard from this morning, and really in the interest of a democratic society.

Thank you, Mr. Chairman.

Mr. LAHOOD. Mr. Chairman.

Chairman GOSS [presiding]. Chairman Graham had to step out for a moment. He'll be back. But I assure you, Ms. Pelosi, that he will be attentive to that request, as will I.

Is it a point of inquiry or on this matter?

Mr. LAHOOD. On this matter.

Chairman GOSS. Mr. LaHood.

Mr. LAHOOD. Mr. Chairman, I wonder if the two Chairmen could approach the White House within the next 48 hours since they have this under consideration to encourage them to make this information public and to relay the will of—I believe it's the will of the joint committee that, based on what our staff director has said, that this information is important to be released. And it sounds like they're trying to make a political decision. And the joint committee would encourage them to release the information.

I say that because it's under consideration. And I think it's important, particularly given the testimony that was provided by the first two witnesses. Thank you.

Chairman GOSS. Thank you, Mr. LaHood. I assure that this is not a matter of first impression for the two Chairmen or actually the four of us. We have made this case before.

And just so all members of the committee and the public will know, there are approximately three generalized areas that we feel there is legitimacy to withhold information to the public. Otherwise we feel the burden is on the administration to prove to us why we should not give it to the public. We take the position the public deserves it.

Those three exceptions are, of course, sources of methods, particularly those are still active; plans and intentions that would be involving any actions we might take, which might put our personnel at harm by giving advance information about what they're up to; and the third area is in the active prosecutions ongoing by the Department of Justice. We don't want to in any way mess up a prosecution that is going forward by saying something inadvertent that would create a problem for the prosecution.

I think other than those three areas the public has a right to know and a need to know. Because part of the reason we're going public here is the awareness curve of what this enemy looks like, what they can do to us, and why we need to have a better system and why we are going to be asking for the support of our constituency, the American people, to give us a better intelligence system and all that that means.

I hope that's a satisfactory answer. And your request is duly noted and will be dealt with.

Would you please proceed, after I advise the Members that we have about 12 minutes left on a vote in the House? Is it one vote or two? Do we know? I believe it is one vote. Do the members of the Senate wish to continue.

Senator FEINSTEIN. Mr. Chairman.

Chairman GOSS. Yes, Senator.

Senator FEINSTEIN. Might I ask a question? Will there be a brief recess over the lunch hour for those of us that have commitments?

Chairman GOSS. It had been intended that there would not be. And I would suggest that when Senator Graham comes back that you confer with him on that.

The Members of the House are now going to vote. And we will be away for about 20 minutes. And perhaps in that time you can decide how you wish to carry forward.

Vice Chairman SHELBY. Mr. Chairman, do you want us to wait and suspend the hearing, because you won't have the benefit of her testimony?

Chairman GOSS. What is the view of the Members? Do you want them to suspend or——

Vice Chairman SHELBY. Until you get back. I think so.

Chairman GRAHAM [presiding]. Okay. We'll take a suspension until you return. The hearing will suspend until the members of the House return.

[Whereupon, from 11:38 a.m. until 12:04 p.m., the hearing recessed.]

Chairman GRAHAM. I call the hearing back to order.

Ms. Eleanor Hill was in the early stages of providing us with the report of the Joint Inquiry staff. For purposes of people's schedules, it is our plan, after Ms. Hill completes her statement, to then call upon Members in the order in which they arrived for five minutes of either questions or comments.

I recognize that we'll be running through the lunch hour. If Members have to leave for previous commitments or the pangs of hunger become overwhelming, they are encouraged to do so, but also encouraged to return so that they can have their opportunity to ask questions or make their comments.

Ms. Hill.

Ms. HILL. Thank you, Mr. Chairman.

Senator FEINSTEIN. Excuse me, Mr. Chairman, could you read the list so we might know where we are?

Chairman GRAHAM. Yes, ma'am. After the Chairs and Vice Chairs, they are, in this order, Senator DeWine, Congressman Boehlert, Senator Wyden, Congressman Bereuter, Congressman Bishop, Senator Levin, Senator Inhofe, Congressman Peterson, Congressman Kramer, Congressman Boswell, Congressman Castle, Congressman Roemer, Congresswoman Harman, Congressman Burr, Senator Bayh, Senator Rockefeller, Senator Feinstein, Senator Mikulski, Congressman LaHood, Congressman Hoekstra, Senator Edwards, Congressman Gibbons, Congressman Everett.

Mr. HOEKSTRA. Mr. Chairman.

Chairman GRAHAM. Yes.

Mr. HOEKSTRA. Would it be appropriate to ask unanimous consent of the members that if individuals do have to leave, if they have statements that they could be included as part of the record?

Chairman GRAHAM. They will be included in the record.

Mr. HOEKSTRA. I thank the Chair.

Chairman GRAHAM. Are there any other comments before we return to Ms. Hill?

Ms. Hill.

Ms. HILL. Thank you Mr. Chairman.

Before I forget, I do want to ask that—we have two versions of this statement. It's the same statement, but we have two copies, one of which has been signed and certified as releaseable, cleared for public release by the chair of the declassification working group for the Intelligence Community, and each page has been initialed by that individual.

And the second copy that I would also like to make available and part of the record is a similar copy that was signed and certified by the representative of the Department of Justice and initialed, indicating that they agreed and concurred that it was suitable for

public release. Because, as you know, the Justice Department has some litigation concerns related to ongoing cases.

So I'd ask that those be made part of the record.

Chairman GRAHAM. Without objection.

[The documents referred to contain classified information and were made a part of the classified record and retained in the files of the Joint Inquiry.]

Ms. HILL. I appreciate the opportunity to appear here today to advise the Committees and the American public on the progress to date of the Joint Inquiry staff's review of the activities of the U.S. Intelligence Community in connection with the September 11 terrorist attacks on the United States.

As the horror and sheer inhumanity of that day engulfed this nation, all of us struggled with shock, with the utter disbelief, and the inevitable search for answers. The questions, if not the answers, were obvious. How could we have been so surprised? What did our government, especially our intelligence agencies, know before September 11, 2001? Why didn't they know more? What can we do to strengthen and improve the capabilities of our intelligence agencies and as a result help save ourselves and our children from ever having to face this again?

On February 14, 2002, the leadership of these two Committees announced their resolve to come together to find credible answers to those sobering but critically important questions. The Committees joined in an unprecedented, bicameral and bipartisan joint inquiry effort to meet that challenge. To conduct the review, the Committees assembled a single staff, that we call the Joint Inquiry staff, of 24 highly skilled professionals with experience in such areas as intelligence collection, analysis, management, law enforcement, investigations and oversight.

My testimony this morning is intended to address the inquiry's initial task, which was to conduct a factual review of what the Intelligence Community knew or should have known prior to September 11, 2001, regarding the international terrorist threat to the United States.

I caution that the inquiry remains a work in progress, and that we may be developing additional relevant information as our work continues. That being said, we feel it is important to share with the American people, through these hearings, what we have found through our efforts to date.

Let me briefly describe the way in which we have approached this review. We decided to target our search on categories of information that would most likely yield any intelligence material of relevance to the September 11 attacks.

Specifically, our teams requested and reviewed from the Intelligence Community agencies these categories of information: any information obtained before September 11 suggesting that an attack on the United States was imminent, and what was done with it; any information obtained before September 11 that should have alerted the Intelligence Community to this kind of attack—that is, using airplanes to attack buildings—and what was done with it; any information obtained before September 11 about the 19 dead hijackers and what was done with it; and any information obtained after September 11 about the hijackers and their backgrounds, in-

cluding their involvement with al-Qa'ida, entry into this country and activities while in this country, as well as why they never came to the attention of the United States Government.

And I would point out on the issue of the hijackers that we do intend—we will not address that this morning, but we do intend to have an additional statement at subsequent hearings that are focused on that issue.

As part of this review of the evolution of the international terrorist threat against the United States, the Joint Inquiry staff produced a chronology that begins in 1982 and ends on September 11, 2001. And that chronology I believe has been reproduced and handed out, and is also depicted on these charts here in the room this morning.

And I would request that the chronology also be part of the record.

Chairman GRAHAM. Without objection, so ordered.

Ms. HILL. The chronology notes significant events in international terrorism, significant counterterrorist actions that were taken by the U.S. Government in response to the threat, and information received by the Intelligence Community that was potentially relevant to the September 11 attacks.

The chronology underscores several points regarding what the U.S. Government, specifically the Intelligence Community, knew about the international terrorist threat to the United States and U.S. interests prior to September 11, 2001. And these are those points.

September 11, while indelible in magnitude and in impact, was by no means America's first confrontation with international terrorism. While the nature of the threat has evolved and changed over time, it has long been recognized that United States interests were considered prime targets by various international terrorist groups.

In response to a number of terrorist attacks on U.S. interests abroad during the 1980s, the U.S. Government initiated a focused effort against terrorism, including the establishment by the director of Central Intelligence, William Casey, of the Counterterrorism Center, or CTC, at CIA headquarters in 1986. In 1996, 10 years later, the FBI created its own counterterrorism center at FBI headquarters.

Both in terms of attempts and actual attacks, there was considerable historical evidence prior to September 11 that international terrorists had planned and were in fact capable of conducting major terrorist strikes within the United States. The 1993 attack on the World Trade Center, the subsequent discovery in 1993 of plots to bomb New York City landmarks, and the arrest in 1999 during the millennium of an individual with al-Qa'ida connections intending to bomb Los Angeles International Airport should have erased any doubts, to the extent they existed, about that point.

From 1994 through as late as August 2001, the Intelligence Community had received information indicating that international terrorists had seriously considered the use of airplanes as a means of carrying out terrorist attacks. While this method of attack had clearly been discussed in terrorist circles, there was apparently lit-

tle, if any, effort by Intelligence Community analysts to produce any strategic assessments of terrorists using aircraft as weapons.

Usama bin Ladin's role in international terrorism came to the attention of the Intelligence Community in the early 1990s. While bin Ladin as initially viewed as a financier of terrorism, by 1996 the Intelligence Community was aware of his involvement in directing terrorist acts, and had begun actively collecting intelligence on him.

Bin Ladin's own words indicated a steadily escalating threat. In August 1996, Usama bin Ladin issued a public fatwa, or religious decree, authorizing attacks on Western military targets in the Arabian peninsula. In February 1998, bin Ladin issued another public fatwa authorizing and promoting attacks on U.S. civilians and military personnel anywhere in the world.

Following the August 1998 bombings of two U.S. embassies in East Africa, Intelligence Community leadership recognized how dangerous bin Ladin's network was. In December 1998, Director of Central Intelligence George Tenet provided written guidance to his deputies at the CIA declaring in effect a "war" with bin Ladin.

While counterterrorism was a resource priority from the time of the DCI statement onward, it was competing with several other intelligence priorities, such as nonproliferation. Despite the DCI's declaration of war in 1998, there was no massive shift in budget or reassignment of personnel to counter-terrorism until after September 11, 2001.

By late 1998, the Intelligence Community had amassed a growing body of information, though general in nature, and lacking specific details on time and on place, indicating that bin Ladin and the al-Qa'ida network intended to strike within the United States. And concern about bin Ladin continued to grow over time and reached peak levels in the spring and summer of 2001, as the Intelligence Community faced increasing numbers of reports of imminent al-Qa'ida attacks against U.S. interests.

In July and August 2001, that rise in intelligence reporting began to decrease, just as three additional developments occurred in the United States—the Phoenix memo, the detention of Zacarias Moussaoui, and the Intelligence Community's realization that two individuals with ties to bin Ladin's network, Khalid al-Mihdhar and Nawaf al-Hazmi, were possibly in the United States.

The two individuals turned out to be two of the 19 hijackers on September 11. The Intelligence Community apparently had not connected these individual warning flags to each other, to the drum beat of threat reporting that had just occurred, or to the urgency of the war effort against bin Ladin.

Our review today provides further context for each of these points. And my written statement addresses in great detail each point. For purposes of this review, I'm going to focus not on the historical sections, but rather on our review of more recent intelligence reporting.

And the first point in that regard would be intelligence reporting on bin Ladin's intentions to strike inside the United States. Central to the September 11 plot was Usama bin Ladin's idea of carrying out a terrorist operation within the United States.

It has been suggested that prior to September 11, 2001, information available to the Intelligence Community had, for the most

part, pointed to a terrorist threat against U.S. interests abroad. Our review confirms that shortly after Usama bin Ladin's May 1998 press conference, the Intelligence Community began to acquire intelligence information indicating that bin Ladin's network intended to strike within the United States.

These intelligence reports, which I'll go through in a minute, should be understood in their proper context. First, they generally did not contain specific information as to where, when and how a terrorist attack might occur, and generally they are not corroborated by further information.

Second, these reports represented a small percentage of the threat information that the Intelligence Community obtained during this period, most of which pointed to the possibility of attacks against U.S. interests overseas. Nonetheless, there was a modest but relatively steady stream of intelligence information indicating the possibility of terrorist attack within the United States.

Third, the credibility of the sources providing this information was sometimes questionable. While one could not, as a result, give too much credence to some individual reports, the totality of information in the body of reporting clearly reiterated a consistent and critically important theme—bin Ladin's intent to launch terrorist attacks inside the United States.

And I will summarize several of these reports. And I should stress again, these are in declassified versions. They have been declassified.

In June 1998, the Intelligence Community obtained information from several sources that bin Ladin was considering attacks in the United States, including Washington, DC, and New York. This information was provided to senior U.S. government officials in July 1998.

In August 1998, the Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center. The information was passed to the FBI and the FAA. The FAA found the plot highly unlikely, given the state of that foreign country's aviation program. Moreover, they believed that a flight originating outside the United States would be detected before it reached its intended target inside the United States. The FBI's New York office took no action on the information, filing the communication in the office's bombing repository file.

The Intelligence Community has acquired additional information since then indicating there may be links between this group and other terrorists groups, including al-Qa'ida.

In September 1998, the Intelligence Community prepared a memorandum detailing al-Qa'ida infrastructure in the United States, including the use of fronts for terrorist activity. This information was provided to senior U.S. Government officials in September 1998.

In September 1998, the Intelligence Community obtained information that bin Ladin's next operation would possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it. This information was provided to senior U.S. Government officials in late 1998.

In October 1998, the Intelligence Community obtained information that al-Qa'ida was trying to establish an operative cell within the United States. This information indicated there might be an effort under way to recruit U.S.-citizen Islamists and U.S.-based expatriates from the Middle East and North Africa.

In the fall of 1998, the Intelligence Community received information concerning a bin Ladin plot involving aircraft in the New York and Washington, DC, areas.

In November of 1998, the Intelligence Community obtained information that a bin Ladin terrorist cell was attempting to recruit a group of five to seven young men from the United States to travel to the Middle East for training. This was in conjunction with planning to strike U.S. domestic targets.

In November of 1998, the Intelligence Community received information that bin Ladin and senior associates had agreed to allocate reward money for the assassinations of four top intelligence agency officers. The bounty for each assassination was $9 million. The bounty was in response to the U.S. announcement of an increase in the reward money for information leading to the arrest of bin Ladin.

In the spring of 1999, the Intelligence Community obtained information about a planned bin Ladin attack on a U.S. government facility in Washington, DC.

In August 1999, the Intelligence Community obtained information that bin Ladin's organization had decided to target the Secretary of State, the Secretary of Defense and the Director of Central Intelligence. "Target" was interpreted by Intelligence Community analysts to mean assassinate.

In September 1999, the Intelligence Community obtained information that bin Ladin and others were planning a terrorist act in the United States, possibly against specific landmarks in California and New York City. The reliability of the source of this information was unknown.

In late 1999, the Intelligence Community obtained information regarding the bin Ladin network's possible plans to attack targets in Washington, D.C., and New York City during the New Year's millennium celebrations.

On December 14, 1999, an individual named Ahmed Ressam was arrested as he attempted to enter the United States from Canada. An alert U.S. Customs Service officer in Port Washington stopped Ressam and asked to search his vehicle. Chemicals and detonator materials were found in his car. Ressam's intended target was Los Angeles International Airport.

In February 2000, the Intelligence Community obtained information that bin Ladin was making plans to assassinate U.S. intelligence officials, including the Director of the FBI.

In March 2000, the Intelligence Community obtained information regarding the types of targets that operatives in bin Ladin's network might strike. The Statue of Liberty was specifically mentioned, as were skyscrapers, ports, airports and nuclear power plants.

In March 2000, the Intelligence Community obtained information indicating bin Ladin was planning attacks in specific West Coast areas, possibly involving the assassination of several public offi-

cials. The Intelligence Community had concerns that this information might have come from a source known to fabricate information.

And in April 2001, the Intelligence Community obtained information from a source with terrorist connections who speculated that bin Ladin would be interested in commercial pilots as potential terrorists. The source warned that the United States should not focus only on embassy bombings, that terrorists sought "spectacular and traumatic" attacks and that the first World Trade Center bombing would be the type of attack that would be appealing. The source did not mention a time frame for any attack. Because the source was offering personal speculation and not hard information, the information was not disseminated within the Intelligence Community.

Bin Ladin's declaration of war in 1998 and intelligence reports indicating possible terrorist plots inside the United States did not go unnoticed by the Intelligence Community which, in turn, advised senior officials in the U.S. Government of the serious nature of the threat.

The staff has also reviewed documents other than individual intelligence reports that demonstrate that, at least at senior levels, the Intelligence Community understood that bin Ladin posed a serious threat to the domestic United States.

Here are five examples. A December 1, 1998, Intelligence Community assessment of Usama bin Ladin read, in part, "UBL is actively planning against U.S. targets. Multiple reports indicate UBL is keenly interested in striking the U.S. on its own soil. Al-Qa'ida is recruiting operatives for attacks in the U.S. but has not yet identified potential targets."

On December 4, 1998, in a memorandum to his deputies at the CIA, the Director of Central Intelligence summed up the situation in this way: "We must now enter a new phase in our effort against bin Ladin. Our work to date has been remarkable and in some instances heroic. Yet each day we all acknowledge that retaliation is inevitable and that its scope may be far larger than we have previously experienced. We are at war. I want no resources or people spared in this effort, either inside CIA or the community."

A classified document signed by a senior U.S. Government official in December 1998, read, in part, "The Intelligence Community has strong indications that bin Ladin intends to conduct or sponsor attacks inside the United States."

In June 1999 testimony before the Senate Select Committee on Intelligence and in a July 1999 briefing to House Permanent Select Committee on Intelligence staffers, the Chief of the CTC described reports that bin Ladin and his associates were planning attacks in the United States.

And a classified document signed by a senior U.S. Government official in July 1999, characterized bin Ladin's February 1998 statement as, "a de facto declaration of war" on the United States.

What is less clear is the extent to which other parts of the government, as well as the American people, understood and fully appreciated the gravity and the immediacy of the threat.

For example, officials at the National Security Agency whom we have interviewed were aware of DCI Tenet's December 1998 dec-

laration that the Intelligence Community was at war with bin Ladin. On the other hand, relatively few of the FBI agents interviewed by the joint inquiry staff seem to have been aware of DCI Tenet's declaration.

There was also considerable variation in the degree to which FBI-led joint terrorism task forces, or JTTFs, prioritized and coordinated field efforts targeting bin Ladin and al-Qa'ida. While the FBI's New York office was the lead office in the vast majority of counter terrorism investigations concerning bin Ladin, many other FBI offices around the country were unaware of the magnitude of the threat.

There are also indications that the allocation of Intelligence Community resources after the DCI's December 1998 declaration did not adequately reflect a true war effort against bin Ladin. In 1999, the CTC had only three analysts assigned full time to bin Ladin's terrorist network worldwide. After 2000, but before September 11, 2001, that number had risen to five.

On a broader scale, our review has found little evidence prior to September 11 of a sustained national effort to mobilize public awareness and to harden the homeland against the potential assault by bin Ladin within the United States, with the possible exception of a heightened focus on weapons of mass destruction.

The second point that I want to cover is strategic warning—indications of a possible terrorist attack in the spring and summer of 2001.

Let me briefly describe what we have found regarding the level and the nature of threat information that was obtained by the Intelligence Community during the spring and summer of 2001. During that time period, the community experienced a significant rise in information indicating that bin Ladin and al-Qa'ida intended to strike against United States interests in the very near future.

Some individuals within the community have suggested that the increase in threat reporting was unprecedented, at least in terms of their own experience. While the reporting repeatedly predicted dire consequences for Americans, it did not provide actionable detail on when, where and how specific attacks would occur.

Between late March and September 2001, the Intelligence Community detected numerous indicators of an impending terrorist attack, some of which pointed specifically to the United States as a possible target.

In March 2001, an intelligence source claimed a group of bin Ladin operatives were planning to conduct an unspecified attack in the United States in April 2001. One of the operatives allegedly resided within the United States.

In April 2001, the Intelligence Community obtained information that unspecified terrorist operatives in California and New York State were planning a terrorist attack in those states for April.

Between May and July, the National Security Agency reported at least 33 communications indicating a possible imminent terrorist attack. None of these reports provided any specific information on where, when or how an attack might occur, nor was it clear that any of the individuals involved in these intercepted communications had any firsthand knowledge of where, when or how an attack might occur. If they did know, it was not evident in the inter-

cepts. These reports were widely disseminated within the Intelligence Community.

In May 2001, the Intelligence Community obtained information that supporters of bin Ladin were reportedly planning to infiltrate the United States via Canada in order to carry out a terrorist operation using high explosives. The report mentioned an attack within the United States, though it did not say where in the U.S., or when or how an attack might occur.

In July 2001, this information was shared with the FBI, the Immigration and Naturalization Service, the U.S. Customs Service and the State Department, and was included in a closely held intelligence report for senior government officials in August 2001.

In May 2001, the Department of Defense acquired and shared with other elements of the Intelligence Community information indicating that seven individuals associated with bin Ladin had departed various locations for Canada, the United Kingdom and the United States.

In June 2001, the DCI's CTC had information that key operatives in Usama bin Ladin's organization were disappearing, while others were preparing for martyrdom.

In July 2001, the DCI's CTC was aware of an individual who had recently been in Afghanistan who had reported, "everyone is talking about an impending attack." The Intelligence Community was also aware that bin Ladin had stepped up his propaganda efforts in the preceding months.

On August 16, 2001, in Minneapolis, Minnesota, the INS detained Zacharias Moussaoui. Prior to that date, in August 2001, Mr. Moussaoui's conduct had aroused suspicions about why he was learning to fly large commercial aircraft, and had prompted the flight school he was attending in Minneapolis to contact the local FBI office. FBI agents believed that Moussaoui may have been intending to carry out a terrorist act.

On August 23, 2001, the Intelligence Community requested that two individuals, Khalid Al-Mihdhar and Nawaf Al-Hazmi, who had first come to the attention of the community in 1999 as possible associates of bin Ladin's terrorist network, be added to the U.S. Department of State's watch list for denying visas to individuals attempting to enter the United States.

Working levels of INS and U.S. Customs had determined that at least one of them was likely in the United States, prompting FBI headquarters to request searches for them in both New York and Los Angeles. The FBI's New York field office unsuccessfully searched for Al-Mihdhar and Al-Hazmi. The FBI's Los Angeles office received the search request on September 11, 2001.

In late summer 2001, the Intelligence Community obtained information that an individual associated with al-Qa'ida was considering mounting terrorist operations within the United States. There was no information available as to the timing of possible attacks or the alleged targets.

And on September 10, 2001, NSA intercepted two communications between individuals abroad suggesting imminent terrorist activity. These communications were not translated into English and disseminated until September 12, 2001. These intercepts did not provide any indication of where or what activities might occur.

Despite these indicators of a possible terrorist attack inside the United States, during the course of interviews the Joint Inquiry staff was told that it was the general view of the U.S. Intelligence Community in the spring and summer of 2001 that an attack on U.S. interests was more likely to occur overseas. Individuals in the Intelligence Community pointed to intelligence information, the arrests of suspected terrorists in the Middle East and Europe and a credible report of a plan to attack a U.S. embassy in the Middle East as factors that shaped their thinking about where an attack was likely to occur. One senior FBI official said that based on the intelligence he was seeing, he thought there was a high probability, "98 percent," that the attack would occur overseas.

During the summer of 2001 the Intelligence Community was also disseminating information through appropriate channels to senior U.S. government officials about possible terrorist attacks.

For example, in June 2001, the community issued a terrorist threat advisory warning U.S. Government agencies that there was a high probability of an imminent terrorist attack against U.S. interests by Sunni extremists associated with bin Ladin's al-Qa'ida organization. The advisory mentioned the Arabian peninsula, Israel and Italy as possible locations. According to the advisory, the community continued to believe that Sunni extremists associated with al-Qa'ida are most likely to attempt spectacular attacks resulting in numerous casualties.

Subsequently, intelligence information provided to senior U.S. government leaders indicated that bin Ladin's organization expected near-term attacks to have dramatic consequences on governments or cause major casualties. A briefing prepared for senior government officials at the beginning of July 2001 contained the following language, "Based on a review of all-source reporting over the last five months, we believe that UBL will launch a significant terrorist attack against U.S. and/or Israeli interests in the coming weeks. The attack will be spectacular and designed to inflict mass casualties against U.S. facilities or interests. Attack preparations have been made. Attack will occur with little or no warning."

Later intelligence information provided to senior government leaders indicated that bin Ladin's organization continued to expect imminent attacks on U.S. interests.

The Joint Inquiry staff has been advised by a representative of the Intelligence Community that about a month later, in August 2001, a closely held intelligence report for senior government officials included information that bin Ladin had wanted to conduct attacks in the United States since 1997.

The information included discussion of the arrests of Ahmed Ressam in December 1999 and the 1998 bombings of the U.S. embassies in Kenya and Tanzania. It mentioned that members of al-Qa'ida, including some U.S. citizens, had resided or traveled in or traveled to the United States for years and that the group apparently maintained a support structure here. The report cited uncorroborated information obtained in 1998 that bin Ladin wanted to hijack airplanes to gain the release of U.S.-held extremists; FBI judgments about patterns of activity consistent with preparations for hijackings or other types of attack and the number of bin Ladin-related investigations under way; as well as information ac-

quired in May 2001 that indicated a group of bin Laden supporters was planning attacks in the United States with explosives.

In August 2001, based on information it had in its possession at the time, the CIA sent a message to the FAA asking the FAA to advise corporate security directors of U.S. air carriers of the following information. "A group of six Pakistanis currently based in Bolivia may be planning to conduct a hijacking or possibly a bombing or an act of sabotage against a commercial airliner. While we have no details of the carrier, the date or the location of this or these possibly planned actions, we have learned that the group has had discussions in which Canada, England, Malaysia, Cuba, South Africa, Mexico, Atlanta, New York, Madrid, Moscow and Dubai, have come up, and India and Islamabad have been described as possible travel destinations."

While this information was not related to an attack planned by al-Qa'ida, it did alert the aviation community to the possibility that a hijacking plot might occur in the U.S. shortly before the September 11 attacks occurred.

Now, I want to turn to intelligence information on possible terrorist use of airplanes as weapons.

Central to the September 11 attack was the terrorist use of airplanes as weapons. In the aftermath of the attacks, there was much discussion about the extent to which our government was or could have been aware of the threat of terrorist attacks of this type and the extent to which adequate precautions were taken to address the threat. Based on our review to date, we believe that the Intelligence Community was aware of the potential for this type of terrorist attack but did not produce any specific assessment of the likelihood that terrorists would use airplanes as weapons. Our review has uncovered several examples of intelligence reporting on the possible use of airplanes as weapons in terrorist operations.

In December 1994, Algerian armed Islamic Group terrorists hijacked an Air France flight in Algiers and threatened to crash it into the Eiffel Tower. French authorities deceived the terrorists into thinking the plane did not have enough fuel to reach Paris and diverted it. A French antiterrorist force stormed the plane and killed all four terrorists.

In January 1995, a Philippine national police raid turned up materials in a Manila apartment indicating that three individuals planned, among other things, to crash a plane into CIA headquarters. The Philippine national police said that the same group was responsible for the bombing of a Philippine airliner on December 12, 1994. Information on the threat was passed to the FAA, which briefed U.S. and major foreign carriers.

In January 1996, the Intelligence Community obtained information concerning a planned suicide attack by individuals associated with Shaykh Omar Abdel Rahman and a key al-Qa'ida operative. The plan was to fly to the United States from Afghanistan and attack the White House.

In October 1996, the Intelligence Community obtained information regarding an Iranian plot to hijack a Japanese plane over Israel and crash it into Tel Aviv. An individual would board the plane in the Far East. During the flight, he would commandeer the

aircraft, order it to fly over Tel Aviv and then crash the plane into the city.

In 1997, one of the units at FBI headquarters became concerned about the possibility of a terrorist group using an unmanned aerial vehicle, UAV, for terrorist attacks. The FBI and CIA became aware of reporting that this group had purchased a UAV. At the time, the agencies' view was that the only reason that this group would need a UAV would be for either reconnaissance or attack. There was more concern about the possibility of an attack outside the United States, for example, by flying the UAV into a U.S. embassy or a visiting U.S. delegation.

As noted previously, in August '98, the Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center.

Also noted previously, in September '98, the Intelligence Community obtained information that bin Ladin's next operation could possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it.

In November 1998, the community obtained information that a Turkish Islamic extremist group had planned a suicide attack to coincide with celebrations marking the death of Ataturk. The conspirators, who were arrested, planned to crash an airplane packed with explosives into Ataturk's tomb during a government ceremony. The Turkish press said the group had cooperated with Usama bin Ladin. The FBI's New York office included this incident in one of its Usama bin Ladin databases.

In February 1999, the Intelligence Community obtained information that Iraq had formed a suicide pilot unit that it planned to use against British and U.S. forces in the Persian Gulf. The CIA commented that this was highly unlikely and probably disinformation.

In March 1999, the Intelligence Community obtained information regarding a plan by an al-Qa'ida member, who was a U.S. citizen, to fly a hang glider into the Egyptian presidential palace and then detonate the explosives he was carrying. The individual, who received hang glider training in the United States, brought the hang glider back to Afghanistan.

In April 2000, the Intelligence Community obtained information regarding an alleged bin Ladin plot to hijack a 747. The source, who was a walk-in to the FBI's Newark office, claimed that he had been to a training camp in Pakistan where he learned hijacking techniques and received arms training. He also stated that he was supposed to meet five to six other individuals in the United States who would also participate in the plot. They were instructed to use all necessary force to take over the plane because there would be pilots among the hijacking team. The plan was to fly the plane to Afghanistan, and if they could not make it there, that they were to blow up the plane.

Although the individual passed an FBI polygraph, the FBI was never able to verify any aspect of his story or identify his contacts in the United States.

And, in August 2001, the Intelligence Community obtained information regarding a plot to either bomb the U.S. embassy in Nairobi from an airplane or crash an airplane into it. The Intelligence Com-

munity learned that two people who were reportedly acting on instructions from bin Ladin met in October 2000 to discuss this plot.

Despite these reports, the community did not produce any specific assessments of the likelihood that terrorists would use airplanes as weapons. This may have been driven in part by resource issues in the area of intelligence analysis. Prior to September 11, 2001, the CTC had 40 analysts to analyze terrorism issues worldwide, with only one of the five branches focused on terrorist tactics. Prior to September 11, 2001, the only terrorist tactic on which the CTC performed strategic analysis was the possible use of chemical, biological, radiological and nuclear weapons, because there was more obvious potential for mass casualties.

At the FBI, prior to September 11, 2001, support for ongoing investigations and operations was favored in terms of resources over long-term strategic analysis. We were told during the course of our FBI interviews that prevention occurred in the operational units, not through strategic analysis, and that prior to September 11 the FBI had insufficient resources to do both.

We were also told that the FBI's al-Qa'ida-related analytic expertise had been "gutted" by transfers to operational units and that as a result the FBI analytic unit had only one individual working on al-Qa'ida at the time of the September 11 attacks.

While focused strategic analysis was lacking, the subject of aviation-related terrorism was included in some broader terrorist threat assessments, such as the National Intelligence Estimate on Terrorism. For example, the 1995 NIE on Terrorism cited the consideration the Bojinka conspirators gave to attacking CIA headquarters with an aircraft. The document contained the following language: "Our review of the evidence suggests that the conspirators were guided in their selection of the method and venue of attack by carefully studying security procedures in place in the region. If terrorists operating in this country, the United States, are similarly methodical, they will identify serious vulnerabilities in the security system for domestic flights."

The 1997 update to that report on terrorism included the following language: "Civil aviation remains a particularly attractive target in light of the fear and publicity the downing of an airliner would evoke and the revelations last summer of the U.S. air transport sector's vulnerabilities."

In a December 2000 report, the FBI and the FAA published a classified assessment that suggested less concern about the threat to domestic aviation. "FBI investigations confirm domestic and international terrorist groups operating within the United States but do not suggest evidence of plans to target domestic civil aviation. Terrorist activity within the U.S. has focused primarily on fundraising, recruiting new members and disseminating propaganda. While international terrorists have conducted attacks on U.S. soil, these acts represent anomalies in their traditional targeting, which focused on U.S. interests overseas."

After September 11, 2001, the CIA belatedly acknowledged some of the information that was available and had been available regarding the use of airplanes as weapons. A draft analysis dated November 19, 2001, entitled "The September 11 Attacks: A Preliminary Assessment," states: "We do not know the process by which

bin Ladin and his lieutenants decided to hijack planes with the idea of flying them into buildings in the United States. But the idea of hijacking planes for suicide attacks had long been current in jihadist circles. For example, GIA terrorists from Algeria had planned to crash an Air France jet into the Eiffel Tower in December 1994. And Ramzi Yousef, a participant in the 1993 World Trade Center bombing, planned to explode 12 U.S. jetliners in mid-air over the Pacific in the mid-1990s. Likewise, the World Trade Center had long been a target of terrorist bombers."

Despite the intelligence available in recent years, our review to date has found no indications that prior to September 11 analysts in the Intelligence Community were cataloging information regarding the use of airplanes as weapons as a terrorist tactic, sending requirements to collectors to look for additional information on this threat, or considering the likelihood that Usama bin Ladin, al-Qa'ida or any other terrorist group would attack the United States or U.S. interests in this way.

Mr. Chairman, our purpose this morning was to report on the information that the Intelligence Community possessed prior to September 11, 2001, about terrorist attacks of the kind America witnessed on that fateful day. In closing, let me just say that for all of us who have been conducting this review, the task has been and continues to be not only a daunting one, but in all respects a sobering one. We are ever mindful that lost lives and shattered families were the catalyst for this inquiry. We know, as I have heard Ms. Pelosi say many times, that we are on sacred ground.

We also have come to know from our review of the intelligence reporting the depth and the intensity of the enemy's hatred for this country and the relentless zeal with which it targeted American lives. We understand not only the importance, but also the enormity, of the task facing the Intelligence Community. As my statement this morning suggests, the community made mistakes prior to September 11. And the problems that led to those mistakes need to be addressed, and they need to be fixed.

On the other hand, the vengeance and the inhumanity that we saw on that day were not mistakes for Usama bin Ladin and for others like him. The responsibility for September 11th remains squarely on the shoulders of the terrorists who planned and participated in the attacks. Their fervor and their cruelty may be incomprehensible, but it is real, it persists and it is directed at Americans. We are convinced that it is no longer a question of whether the Intelligence Community can do better. It must do better. America can afford no less.

Mr. Chairman, that concludes my statement this morning. Thank you.

Chairman GRAHAM. Ms. Hill, I would like to extend my congratulations to you and the staff for an excellent, sobering assessment of the events prior to September the 11th. I recognize this is the first of what will be a series of publicly released statements of the results of our inquiry to date, and we look forward to your future reports.

Ms. HILL. Thank you, Mr. Chairman.

Chairman GRAHAM. We will now proceed to questions and comment from members, starting with Senator DeWine.

Let me just state who the next questioners will be: Mr. Boehlert, Senator Wyden, Mr. Bereuter, Mr. Bishop, Senator Levin, Senator Inhofe, Mr. Peterson, Mr. Cramer.

Senator DEWINE. Mr. Chairman, thank you very much.

Ms. Hill, thank you for your very good statement and your good work. Mr. Chairman, thank you for the opportunity to make some brief remarks at this very important public hearing.

Let me also thank our witnesses who testified this morning. While none of us can understand what you have been through, I have seen how tragic the events of September 11 had been for my own state director, a very good friend of mine, Barbara Schenck. Barbara lost her brother, Doug Cherry, to the terrorist attacks.

Before talking about what I hope comes out of these hearings, let me express a concern. I've been concerned from the outset of this investigation that the time deadlines under which this Committee is operating would not be conducive to producing the product that we want. The artificial deadline I believe is making it extremely difficult to get the job done. It's simply a lack of time, it's a lack of resources.

However, Mr. Chairman, there still are things that we can accomplish, even with the current constraints of this investigation. First, it is important to report, and we have begun this today, it's important to report to the American people what intelligence failures did occur, not so we can assess blame but so we can learn from the specific mistakes that were made.

But there is more to it than that. Yes, we need to gather the facts and take time to examine what they mean with regard to what happened on September 11, but we certainly cannot stop there. We also need to figure out what these facts tell us about the current structure of our overall Intelligence Community. What are the shortcomings? Where do we need reform?

And I thought Mr. Push's testimony earlier was very excellent. I thought he talked about some of the big picture issues that we're not going to resolve on this Committee, but at least that we can begin to look at and begin a national dialogue about these issues. So I thought his testimony was particularly telling.

I think, for example, Mr. Chairman, in investigating these issues, we must take a serious look at the role of the Director of Central Intelligence. I believe it's time to give the DCI the necessary authority and the ability to truly direct our overall intelligence operations. Quite simply, we need to empower the DCI to do the job.

I believe we also must seriously examine the long-term resource issues that confront us, not just now but over the long haul, over the next decade or two decades. Do we have the human resources available within the agencies themselves? Do we have the right technology, and enough of it, to get the job done in the new world that we live in? Do we have a long-term commitment to intelligence?

I think we need to discuss that commitment and what we are looking at and make it very plain to the American people the sacrifices that are going to have to be made if the Intelligence Community is to do its job, and what kind of resources they need.

And finally, I believe that we need to re-examine the Foreign Intelligence Surveillance Act, or the FISA statute, and determine

what changes are needed to make sure we are getting the intelligence from this source to help prevent future attacks. FISA deserves and requires a great deal of attention and oversight from the joint committee, from the Senate and House Intelligence Committees and, frankly, from the entire Congress. We must focus on our congressional duty for oversight because we simply have not had, in my opinion, effective oversight since FISA was instituted approximately a quarter of a century ago. Somehow, we've got to figure out, Mr. Chairman, how to do that.

Finally, this Committee's job, I believe, is really to kick off, to launch, a serious national debate about what changes must be made in our Intelligence Community. Because, if we've learned anything from September 11, it is that our security, our safety, the safety of our loved ones, is intrinsically linked to the quality of that intelligence.

I thank the Chair.

Chairman GRAHAM. Thank you, Senator.

Congressman Boehlert.

Mr. BOEHLERT. Mr. Chairman, let me ask about procedure. Are we just to have an opening statement or to go right to questions?

Chairman GRAHAM. It is your choice; you have five minutes.

Mr. BOEHLERT. All right, thank you very much Mr. Chairman.

Ms. Hill, let me thank you for an excellent presentation, and let me begin where you ended. You said we are convinced that it is no longer a question of whether the Intelligence Community can do better, it must do better. America can afford no less. I could not agree more with that statement.

Your summation of our 10 closed hearings and the revelation of the information in the public domain is somewhat difficult to deal with because so much of what we've had, obviously, during those closed hearings has been highly classified, dealing with sensitive national security information.

But it appears to me that the alarm was sounded not once, but several times, but too many gave it a deaf ear. I'm not ascribing any sinister motives; I'm just saying too many were not paying attention. A lot of reasons for that, resource deficiencies, lack of adequate staff. Some of the revelations in your testimony are just absolutely mind-boggling.

But let me ask something. Back in '98, when the Director of Central Intelligence declared war on al-Qa'ida, sent a memorandum to his agency people, was that a unilateral declaration of war? Was that memorandum shared with anyone but the in-house people at the CIA? Did it go to the FBI? Did it go to all the other agencies in the Intelligence Community?

Ms. HILL. We have been following that question in the course of our interviews and we've been basically asking those questions. We're dealing with a lot of the agencies in the Intelligence Community and we're trying to find out how much the entire community was aware of that declaration of war.

And what we're finding is that some people were. I think certainly senior levels in the CIA were, and probably elsewhere in the CIA, but as I mentioned, if you go out to the field offices of the FBI they were not aware of it.

Other people in the federal government were not aware of it. The Defense Department—we've interviewed some people there who were not aware of it that might have been interfacing with the community.

So I would say it appears to be, it was the DCI's decision. It was circulated to some people but certainly not broadly within the community. And what I find disturbing about it is that it was distributed at senior levels, but sometimes the operative level, the level in the field, is where it actually is critical that they know what the priorities should be and have to be, particularly in combating something like al-Qa'ida. The field offices of the FBI, in terms of domestic activity, are crucial because they are the ones who are going to be in the front lines in the United States dealing with those kinds of groups.

And, at least in that respect, what we're finding is that many of them were not aware of that declaration of war and some of them really were not focused very much at all on al-Qa'ida and bin Ladin.

Mr. BOEHLERT. Well, I find that incomprehensible, quite frankly. Because a key operative in our Intelligence Community, a leader, issues something as important as a declaration of war against an organization that has openly declared its determined effort, a fatwa, the religious decree to destroy America and Americans, and that information is not shared at the highest level down to the lowest level.

Which brings me forward to the Phoenix memo and the Minneapolis case involving Mr. Moussaoui. And I've checked with counsel to see if it's all right to reveal some of this stuff, because the problem is, I have difficulty, and I've had for all the years I've served on the Committee, in recalling where I learned the information that I have. Was it from a highly secure, highly sensitive briefing, or did I read it in the front page of the newspaper? And so my practice has been just not talk to the media at all about this very important assignment.

But we go forward to the Phoenix memo, which was sent up to headquarters, at a time we had a declaration of war in the Intelligence Community, and the memo was marked "Routine."

Ms. HILL. And it was not only at the time of the declaration of war, it was in the summer of 2001; it was at a time when the threat level was very high also.

Mr. BOEHLERT. And so the memo was marked "Routine" and it was given the most routine handling and it never got above mid-level. And then we go out to Minneapolis in the Moussaoui case, and that was treated in a somewhat cavalier, very routine manner.

I fail to see how, with all the alarms that were sounded, why—what do we know? There was not the proper coordination, there was not the proper information sharing.

You have indicated some corrective action has been taken—but boy, God, we would only hope so—since September 11, but I would suggest a lot of corrective action should have been taken well before September 11th.

Let me ask you this. With our first two witnesses, Ms. Breitweiser and Mr. Push—and their testimony was very poignant——

Chairman GRAHAM. Your time is expired.

Mr. BOEHLERT. That's a fast five minutes. All right, just let me finish the one question; I'm in the middle of it.

Chairman GRAHAM. We'll be compassionate.

Mr. BOEHLERT. Did you spend an extended amount of time with both of these witnesses? Because they both have statements that are forever seared in our souls. Some deal with opinion, others deal with alleged fact. And so did you spend a good amount of time with them? And have you checked up on the alleged facts that they presented?

And I'm not questioning those facts; I just want to make sure we're dealing with the same information.

Ms. HILL. I have met with Ms. Breitweiser several times since I joined this effort with the Committee, with her and her group. And Mr. Push, I believe, I've met with him once. I have not checked up on all the specifics in their statements because I didn't see the statements until yesterday—I mean, we got those statements yesterday. But I've had a lot of discussions with them and some of the things, you know, that they mentioned I am aware of, some of them I'd want to look into in more detail, obviously.

Mr. BOEHLERT. Thank you very much.

Thank you, Mr. Chairman, for your indulgence.

Chairman GRAHAM. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Ms. Hill, as you know, there were years of history indicating that airplanes would be used as a tool of terrorism. And yet you state on page 30, and I'll quote here, "Our review to date has found no indications that prior to September 11th analysts in the Intelligence Community were cataloguing information regarding the use of airplanes as weapons, as a terrorist tactic, sending requirements to collections to look for additional information this threat or considering the likelihood that bin Ladin, al-Qa'ida or other terrorist groups would attack the United States or U.S. interests in this way."

That is a remarkable statement, given the history going back, I believe, to 1994 at least. And my question, to begin with, is when you asked the Intelligence Community why this was the case, why they didn't catalogue this information regarding the use of planes as weapons or consider the likelihood that they would be used as terrorist tools, what was the response of the Intelligence Community when you asked them why?

Ms. HILL. Well, I think a couple of things. We've spoken to many people over there and gotten, you know, opinions and reactions on this.

You have to understand, the reason we have been able to catalogue all these instances is because one of the things we did was ask the community to go back and find anything that related to aircraft as weapons. So we went back and consolidated and went through their databases to pull it all out so you could see it all together. And I don't believe that had been done, obviously, before we focused on it, given September 11.

So, one, it had not been all pulled together for them to see it, you know, other than in piecemeal fashion over time. Secondly, I think what they will tell you on many of these things in the terrorism

field is that they were overwhelmed. The people who were looking at al-Qa'ida and bin Ladin will complain to you about resources, about the amount of information that was coming in. They were overwhelmed by almost a flood of information. Because, as you can see from our statements, there's a lot of reporting in there just on these topics. And of course, that reporting is but a small amount of the overall amount of reporting that the community deals with.

So I think the reasons that they would give you were that it was spread out over time, they were overwhelmed by limited resources and other priorities, and they were overwhelmed by the amount of information they were getting and dealing with responses to other areas.

Senator WYDEN. What is so hard to swallow, however, is how anything could be a higher priority than this. And for you to state that the Intelligence Community was not considering the likelihood that bin Ladin, al-Qa'ida would attack the United States in this way is, of course, exactly the kind of thing we've got to address in these inquiries.

In your testimony and also from the victim's families we have heard about the failure to place Khalid Al-Mihdhar and Nawaf Al-Hazmi—and by the way, Mr. Al-Hazmi is listed in the phone book in San Diego, I gather—on a watch list that would have prevented their entry into the United States.

I offered an amendment on the intelligence bill this year to create a terrorist tracking system that would help ensure that this information would finally actually get shared to everybody in the intelligence, everybody in the law enforcement area, and would actually get to local law enforcement officials.

In your view, to make this kind of a system effective, what sort of policies need to be included so that finally we can respond to what Mr. Push has asked for, and that is to have a system that on an ongoing basis makes as a top priority tracking the most dangerous individuals who threaten this country?

Ms. HILL. Well, I think part of it is, you have to get people's attention. I mean, you have to get people focused on the need to do that—people in the system, in the agencies, in the group that is working on those issues. We're going to go into that particular case in much more detail when we present our testimony or statement on the hijackers; that would relate to the case you're talking about. So we will go into it in a lot more detail and tell you what we've heard from people who were handling that information at the time and why it slipped by them.

But I think you may hear anything from they had too many things to do, it wasn't considered that significant, they were overwhelmed and it was simply a mistake—they made a mistake.

Senator WYDEN. Mr. Chairman, my time has expired. I would only want to add one last point with respect to where I think we are in terms of our inquiry.

As we all know there are many, both on this Committee and off, who think that essentially this Committee ought to punt to an independent effort. I'm of the view that the bar is very, very high now in terms of establishing the credibility of this effort and to show that we're capable of attacking these fundamental problems. This is not something that's going to be solved by just moving the

boxes around on the organizational chart and people going up with pointers and saying the problem is solved.

So I think Ms. Hill has helped us, with the families, get off to a good start. And I look forward to working with my colleagues.

Chairman GRAHAM. Thank you very much, Senator.

Mr. Bishop.

Mr. BISHOP. Thank you.

This is, indeed, a historic occasion when the two Intelligence Committees working together on a matter of great importance like this comes to pass. And I'm sure, however, that given the nature and the circumstances which require our attention, the destructive attacks on our country September 11, it's a task which all of us wish that we didn't have to face. But we are most appreciative today for the well-prepared, thoughtful and helpful testimony presented by Ms. Breitweiser and Mr. Push.

We have a responsibility to thoroughly and professionally gather, assess and present the facts about September 11 as they relate to performance of the intelligence agencies. And as we enter these public hearings there remains a general sense of disappointment and disbelief within the American people that those agencies, particularly the CIA and the FBI, were not better positioned to detect the conspiracy and to prevent the attacks.

We must try to address the many questions which have arisen about why better intelligence was not collected, or why better use was not made of the information which was available. And now, publicly examining the performance of the communities and the decisions that were made in the Executive branch and perhaps in Congress about the establishment of priorities within the Intelligence Community, we will be conducting the type of oversight which these committees are at present uniquely situated to provide.

It is my continued hope that these hearings and our final report will result in a marked improvement in our understanding of the events that led up to 9/11 and most importantly, in our ability to protect the American people from terrorist attacks such as these.

I look forward to working with the joint leadership and all of our scheduled witnesses. And I want to thank Ms. Hill and her staff for the tremendous work that they have done under very difficult circumstances, with some muzzling and bridling and limitations and with great time constraints. It has, I think, been a valiant effort. And we will certainly, as a Committee, work with you to try to secure the cooperation that you need from the Executive branch and the agencies in getting access and being able to explain to the American people, and have this Committee explain to the American people, in the kind of detail which does not compromise sources and methods, plans and intentions, or active ongoing prosecutions, so that they can understand, as well as we hope to understand, what happened, why it happened, and what we can do to make sure it does not happen again.

With that, I have no questions, but I did want to share those comments and thank again the witnesses for taking the time and the effort, which must have been extremely difficult, given the exigencies of your lives over the past year, to have come forward and done the magnificent job that you did today.

Chairman GRAHAM. Thank you, Mr. Bishop.

Our next questioner, or discussant will be Senator Levin. After Senator Levin, Mr. Boswell, Mr. Castle, Mr. Roemer, Ms. Harman, Mr. Burr, Senator Bayh, and Senator Rockefeller.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

First, let me thank you, Ms. Hill, and your staff for getting us to the point where we are finally analyzing and presenting to the American people the significant intelligence failures which occurred prior to September 11. At this stage of the inquiry, much is already evident.

First, the Intelligence Community said that it was at war with Usama bin Ladin, and had said so for three years prior to the attack of September 11.

Second, despite National Security Adviser Condoleezza Rice's assertions to the contrary, the use of a plane as a terrorist weapon capable of causing mass casualties was neither ingenious nor novel but, rather, a method of attack that the Intelligence Community knew that the terrorists were considering as early as the early and mid-90s.

Third, there is much troubling evidence that information crucial to preventing attacks by al-Qa'ida terrorists was not shared or acted upon by intelligence officials prior to September 11. Those intelligence failures will haunt loved ones and their families and should also haunt us and motivate us to very strong and necessary reforms.

Here is just a few examples that I'm summarizing from your report. In January of 2000, the U.S. Intelligence Community was alerted to a meeting of al-Qa'ida members in Malaysia, including two of the eventual hijackers of American Airlines Flight 77. The hand-off of that information from the CIA to the FBI was bungled. The individuals were not tracked and, inexplicably, were not promptly placed on a watch list. Ten days later, the two accomplices entered the United States on a flight to Los Angeles. The location of the individuals after they were finally placed on the watch list was also mishandled.

Second, a July 10, 2001 memorandum from an FBI field agent in Phoenix to the Usama bin Ladin unit and the radical fundamentalist unit at FBI headquarters requesting that an investigation be opened into foreign terrorists training at flight schools in the U.S. was never acted upon. Nor was the Phoenix field investigation shared with the CIA as specifically suggested by the FBI agent.

And this is not in your memo, but this is what we learned, that nearly a year after the Phoenix memo, the FBI Director was unable to explain to our Committee who saw that request from the Phoenix FBI agent, what was done with the request, and who, if anyone, had been held accountable for letting that important information fall between some crack.

Third, the August 16, 2001 arrest of Zacarias Moussaoui and the suspicions of the FBI agents in Minneapolis that he might be planning to undertake a terrorist attack using a plane and the urgent request that a warrant to search his computer and other belongings were not acted upon by FBI Headquarters.

And I want to emphasize a point here. These were not some reports by unreliable sources. These were not unconfirmed statements. These were FBI agents that were asking for action. Their requests were ignored.

Now I believe it is critically important for the Administration to release the Phoenix memorandum, documents relating to the Minneapolis FBI office request, and other documents that will allow the American people to judge for themselves the significance of these missed signals and the failures to share information between and within the intelligence and law enforcement communities.

The Committee, I understand, has asked for declassification of those documents. That request is under consideration, I understand, by the Administration in preparation for next week's hearings.

We've had discussion about this already this morning, but I do hope that the leadership of these Committees, our committees, will let the administration know that our Committees will seek congressional authorization, by legislation if necessary, to declassify appropriate information if the Executive branch refuses.

We have Chairmen and Vice Chairmen of our committees who've agreed on some matters. It seems to me that is enough for us as committees to automatically authorize them to seek legislation should the Executive branch refuse. And that would go to future refusals, not just to previous ones.

The American people understand that perfection is unattainable. But they also believe, as I do, that when errors are made, accountability, accountability is essential if lessons are to be learned for the sake of the future security of our nation.

Is my time up?

Chairman GRAHAM. Thank you, Senator, for those very thoughtful——

[Applause.]

Chairman GRAHAM [continuing]. And obviously well-received suggestions of actions by the Committee. We will take those under advisement.

Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman.

I think the word that hit me hardest today has been the word sobering. And as I heard the testimony of Kristen and Stephen it caused me to do a little flashback in my earlier life when I had to spend a lonely night, as some of the rest of you have done, to write to the loved ones why their loved one was lost in the battlefield that day. I've sensed your pain. I love you, respect you, and want you to have relief. And I see the relief for you is to see that these lessons learned are learned and filed and not have to be learned again.

I used to work for Admiral Fluckey, probably the most decorated living American. He said, "Put that in your lessons learned file and you don't have to learn it again." And that's what I hope we accomplish here.

I feel like maybe my colleague from the Senate that said that maybe we don't need this extra blue-ribbon panel. After listening to Kristen and Stephen, I think you made a pretty good case maybe we do need it. And I wonder about the time and the resource and

availability to us to finish this job, though I trust that the days lying ahead of you, Mr. Chairman, you're going to be dealing with that, with this side of the operation, and I know you'll give it serious consideration.

A couple of questions, Ms. Hill, if I might ask. And I'll just ask them all and then I can refresh if you need them. Do you intend to have further statements of fact as we go forward from here today?

Ms. HILL. Not today, but we do in future hearings.

Mr. BOSWELL. I mean in the future. All right.

Would you want to elaborate a little bit on what, or could you, what agencies had the responsibility to respond to the warnings? We've heard so much about the warnings for two, three years. Would you have any comment from your research and your study that who should have been responding—military, who?

Ms. HILL. Well, it would depend on what you mean—a warning from the Intelligence Community or the reports?

Mr. BOSWELL. Well, a combination. Did we fail as part of our lesson learned, if we can, in the area of maybe there should have been some responses going out to somebody else?

Ms. HILL. Well, some of this—it depends. I mean, some of this information was disseminated further, some was not disseminated. Some, for instance, that we talked about, some went to the FAA in certain cases, and then they in turn would put out a warning.

For instance, I talked about the one instance of the terrorist attack to the private commercial airline industry. So it depends on the nature of what the threat was and who they would warn.

Mr. BOSWELL. I think in your further analysis and maybe what I'm asking is that you share with us as you look at it and have more time, if there's some things that we can put in this——

Ms. HILL. I can say that we are pursuing the whole issue about questions of warnings and dissemination of information. It is not just sharing information, as Senator Levin was talking about, within the Intelligence Community, between the FBI and CIA, for example, but also sharing threat information beyond the Intelligence Community to the agencies within government, outside the community and also to the private sector, which gets into the warning and how far this information went.

And that is an area we are looking at, and we haven't yet, you know, come back with a report on it. But we are looking at that. And you know, that's a valid point because the job of the Intelligence Community is not only to get the good intelligence and to analyze it, but then to disseminate it to people who can use it in a timely manner.

Mr. BOSWELL. Thank you. I've got a little bit of time left. Do you have any comment about the—and all the emphasis on bin Ladin and his activities and his lack of being able—prior to September 11 that is—lack of ability to bring damage to us. Did that lure our people into complacency, even at the senior levels?

Ms. HILL. I think part of it is, as I alluded to earlier, is that the community, you know, does get so much information. And as I said in this statement, there were a lot of these threats coming in, but a lot of them they couldn't really corroborate. They didn't know if some of them were true or not true. So I think, you know, it may

be human nature if you keep hearing this stuff all the time and nothing happens and you never really know if it's accurate, you tend to start disregarding it.

And the problem is that buried in the middle of all that where some may be accurate, some maybe not, there may be something that really is important that needs to be looked at.

So it may be that when the threat level was very high and all the chatter was coming through it was hard to distinguish what was really legitimate and something they needed to be concerned about.

Mr. BOSWELL. Thank you very much. My time is up. I appreciate the hard work that you've presented to us, the straightforwardness, and I'm looking forward to what you further have to say as we go on from here.

Ms. HILL. Thank you.

Chairman GOSS. Thank you, Mr. Boswell.

Mr. Castle.

Mr. CASTLE. Thank you, Mr. Chairman.

I would also like to thank Ms. Breitweiser and Mr. Push for their testimony on their own behalf and on behalf of the others who have endured this. You're brave to be here. But you also had a lot to say and from a perspective that's different than we've heard so far.

And I also thank Ms. Hill for making sure that we started off with this testimony. I think it is vitally important that we hear this.

And some of my—these are sort of statements/questions. Let me go through a few of them, and if we have time perhaps you could respond to some of them, Ms. Hill, based in large part on matters that both Kristen and Stephen referenced.

But one that has concerned me for some time, and Mr. Boehlert referenced it too, and that is the whole business of public versus private or classified information versus non-classified information. I, for one, have felt for some time, having served on this Committee for a while, that we over-classify terribly in the world of intelligence. You read about it the next day in the New York Times. It's about 90 percent of what you'd heard about the day before. And I just have serious questions about that. But the point was made in some of their testimony about the failure to warn the public. And I would imagine the public really didn't know much about bin Ladin. Based on what you said, I'm not even sure the Intelligence Community knew what it should have known about bin Ladin when September 11 came in 2001.

We saw what the President has been able to do with Saddam Hussein, who is probably in the forefront of the minds of almost every American today. We know what can be done if there is a greater public awareness as to what is going on.

And a lot that's happened since September 11 of last year has caused us all to be much more aware of possible terrorist activities or whatever. I would hope that as our Committee looks at all of this, we look at the public aspect of it. The American public is very intelligent and very cognizant of what's going on in the world. And, if they're given a chance to know what the potential problems are, my sense is that perhaps we can prevent some of the problems that

we've had so far. And we shouldn't be so closed as far as intelligence is concerned.

Now I understand there are circumstances in which that can not happen. I well understand that, and I'm not trying to go too far in saying that. But I really think we need to visit that question in terms of speeches being given by people in the Intelligence Community perhaps could be more open in terms of information that could be released, that kind of thing. And I'm very interested in pursuing that at some point.

Something that Mr. Push said I had heard earlier when I visited the Homeland Security. And that is that the officials here in Washington were struck by how much the local law enforcement officers know about what's happening in their communities, about the individuals in their communities, perhaps troubled individuals in their communities, various things that we probably would never know in Washington, DC. There are a whole lot of them, you know, well over half a million state and local law enforcement officers who have a tremendous world of knowledge.

And I think that Homeland Security is looking at trying to develop and to cultivate that knowledge, and make it part of a central—not a central bank system necessarily but the ability to be able to have that information go up and be digested and used in dealing with terrorists and other activities in this country. I think that's vitally important. We don't hear much about that.

We hear about the CIA and the FBI and NSA and various major federal agencies. When you're dealing overseas, that's probably what it's all about. But when you're dealing in America, and also even when you're dealing overseas, you're dealing with some sort of a cell or a pod or somebody who's here locally, it's very helpful to have that information. And I hope as we go about our business of this particular Committee and what we're doing, that we incorporate that into it as well. So that also concerns me.

And another area is much broader too than anything we've talked about and that's the area of prevention overall. I am vitally concerned about the hatred that exists in the Middle East, apparently at least in certain pockets of the Middle East, for America and perhaps for Israel and other portions of the world.

And I don't know how to go about this. I'm not suggesting that we should be starting to formulate policy with respect to diplomacy and education. But it seems to me its something we should be paying attention to. If we could get to the root causes of this, of why that is there, if we could start to build the relationships that might change some of this, this might take 10, 15 or 25 years, but I don't think we should ignore it. And perhaps it's a little bit beyond what we are doing on this Committee, but the bottom line is I think it's a very important function of what we're doing as American citizens to try to prevent terrorism activities as far as the future is concerned.

And I do have a specific question. I'd like your comment on any of those things. And then a specific question—I've got about 10 seconds here I think—and that is, just how far along are we in terms of all of your work? Are we going to be able to get our work done by the completion of this Congress?

Ms. HILL. I am optimistic that we will be able to get through what we have in our minds as our schedule in terms of treating various topics that we think need to be treated. Where no one can ever be sure is that things are still coming up as we investigate. You know, once you start looking at an agency and you're going through files, what tends to happen is the more you get into it, the more you start finding more things. And as we find things, we want to follow those where the facts lead and make sure we understand what did or did not happen. And that takes time.

So there are some things like that, that we are now working on that are going to take us more time, because we haven't planned for that. But I'm cautiously optimistic we can make what I think would be a significant contribution on this whole front in terms of really understanding what did and didn't happen here before the eleventh and why, why we didn't know more in terms of what were the systemic problems that were preventing people from knowing more.

So I would be foolish to sit here and tell you we're going to look at every single document on terrorism that the United States Government had for the last 20 years, because we haven't tried to do that. We've tried to narrow it to where we get to the relevant material that pertains to September 11. And I think we have a good shot at doing that.

Mr. CASTLE. Thank you, Ms. Hill. We'll take my other statements and perhaps we can discuss them further at some point in terms of what we can do with them.

I yield back, Mr. Chairman.

Chairman GRAHAM. Thank you, Mr. Castle.

Senator Rockefeller.

Senator ROCKFELLER. Thank you, Mr. Chairman.

Thank you, Ms. Hill, very much for your distinguished work. In the interests of time, Mr. Chairman, I would like to make just three points.

First, the fundamental question is what did the Intelligence Community know, and then what did they do with what they knew. The work of the Committee has not to this point unearthed any single piece of information or smoking gun, if you will, that would have in and of itself prevented the attack. But we have found far too many breakdowns in the intelligence-gathering and processing method.

My own conclusion is that, given the events and signals of the preceding decade, the Intelligence Community could have, and in my judgment should have, anticipated an attack on U.S. soil on the scale of 9/11.

We had witnessed attacks on Americans overseas, as you laid out—the USS *Cole,* Kenya, Tanzania, Khobar, the 1993 attack on the World Trade Center. We knew beyond any doubt that al-Qa'ida wanted to strike the United States. We were just sort of stuck in our classic American innocence that anything that happens is going to happen overseas. But there was information and plenty of it, disseminated or not disseminated, that something was going to happen here. Yet the Intelligence Community, for a whole host of reasons, did not launch the all-out effort that is its responsibility, that might have detected and potentially prevented 9/11.

Second, the FBI is an outstanding law enforcement agency. But I have serious questions about whether it is the right place to do intelligence work necessary in our country. Law enforcement is not necessarily compatible with intelligence gathering; in fact, it is not. It's not the same skills, not the same mission. Going forward, we must not undermine the FBI's ability to carry out its fundamental responsibilities, because they're very important, and they do it very well.

And we must not give short-shrift to new intelligence demands. So we have to ask ourselves, can the problem be addressed by reforming the FBI? I don't think so. Or is this a case where we need to find a wholly different solution? This is a tough question, obviously, which I hope this Committee will be tackling in the coming months, and it leads me to my final point.

Are we ready, as a committee, as a Congress, as a government, as a people, not only to pose the tough questions—it's easy to do—but also to find and to implement the tough solutions? It is clear to all of us that we must make serious changes in how we gather, process and react to intelligence in this country. Our existing agencies came into being in the Cold War. That's fine, but that structure no longer matches the threat that we face. Lines of authority are, in my judgment, blurred intentionally for the sake of turf, for the sake of all kinds of things which in some cases have justification, in many cases do not. The whole process leading up to today has been an interesting example of how difficult it is, in a very common purpose, to get people to agree on some relatively simple things.

So lines of authority are blurred, information gets lost, and the mission is unfocused, the intelligence mission is unfocused. It might best be described as trying to do everything and in the process doing little well.

Far-reaching change isn't just a goal, it's a necessity. Unfortunately, it's a very controversial and very uncomfortable necessity. It's something that they don't want to do here in Congress, they don't want to do at the White House, they don't want to do at the Defense Department, they don't want to do in the non-defense intelligence aspect of what we carry on in this country.

But are we going to find the political will to create an intelligence system that works? Or are we going to say that this is going to be politically impractical, or probably not doable, and therefore cut our goal by 50 percent and then get leveraged down from there?

So are we as a committee, in which we have our own differences and our own conflicts, as a Congress where the same exists, and as a government where the same exists, in the Intelligence Community where the same exists, do we have the political will and the strength and the determination to do the job right?

Nothing else counts.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman.

I want to thank Ms. Hill for an excellent presentation and outline this afternoon to help us understand this issue a bit more after several months of this investigation.

I want to compliment your top-notch staff for their sacrifices and their hours of service to the country. And Mr. Chairman, you and Mr. Goss, on my side, I want to compliment both of you for bringing together in a bipartisan way this committee to launch an unprecedented bicameral investigation into the worst terrorist attack in our nation's history. And it is with pride and confidence that I know that we will produce a good product on this committee.

In listening to the very moving testimony from Kristen and Steve this morning, I'm even more convinced, I'm even more compelled to work hard. I'm even more persuaded that an independent blue-ribbon commission is the right way to go.

It's the right way to go because if this committee, with its jurisdiction and its might and insight and experience and dedication to intelligence, does its job, and by the very nature of an investigative inquiry staff doing their job over an eight-month period, unearthing facts, uncovering data, asking tough questions, they will produce even more questions for us to try to answer over the next year.

So I think there is a compelling case, by the very effectiveness of this committee to do its job near perfectly and assume its jurisdiction as a body of Congress to take on this tough task, we make the case in a very convincing way for follow-up and a thread attached to this for an independent blue-ribbon commission to continue to look at these very, very tough questions as to how to reorganize an Intelligence Community that made mistakes, that committed failures, that saw warnings, and reorganize it in a time when we are threatened by a brand new source that wants to kill Americans in massive numbers very quickly. And they can do it in this kind of world environment.

I think the case is made compellingly for an independent blue-ribbon commission. And I think that compliments us, and I think it adds into the history of this committee, the Intelligence Committee, which has had independent commissions such as Aspin-Brown, Hart-Rudman, the NRO, Rumsfeld on ICBMs, and even in the Senate bill, a brand new commission to study something else.

Ms. Hill, I do have a question or two that I wanted to ask about the classification of data. On page 16 there is a reference to information provided to senior U.S. Government officials in September of 1998, and on page 28 mentioning senior government officials in July of 2001.

Now without getting into breaking our classification—and we don't want to do that—one would be a Democratic administration, one would be a Republican administration. Is there the possibility that those references might be, could be, to a White House?

Ms. HILL. Well, obviously given the classification——

Mr. ROEMER. I'm just asking in the realm of possibilities.

Ms. HILL. Well, I guess are you asking about the term "senior government officials"? I mean, I guess the term "senior government officials" would be anyone at a senior level in the entire U.S. Government, but I cannot, as I understand the rules on this, we are not allowed——

Mr. ROEMER. But your case, Ms. Hill, is that it's important for the American people to know when we get intelligence that it's not only the intelligence agencies that act upon it, it's the administration, as to what they do with it, with the military, with other branches of government——

Ms. HILL. Right.

Mr. ROEMER [continuing]. The FAA, the border control, and so forth and so on.

Ms. HILL. That's absolutely right. Because, I mean, to make intelligence really the way it should be, to make it important and valuable, it has to be not only collected and analyzed, but it has to be disseminated to the people who can use it in a timely manner.

That's the whole point of having intelligence.

Mr. ROEMER. Part of our bipartisan efforts would be to get in a bipartisan way this access to declassifying that kind of references. Is that your argument?

Ms. HILL. Well, I mean, our argument on this issue about the White House is that if you've declassified the information itself, it seems to us we don't see the national security interest in declassifying where it goes from there. If you declassify that it goes to some people, you should be able to declassify that it goes to everybody, whoever it went to.

Mr. ROEMER. I would hope our committee would have a long, very serious discussion about what to do on this declassification issue.

Finally, Ms. Hill, if I could ask one final question, you mention the CTC and the number of analysts that they had, and I think mentioned a number of three to five.

Ms. HILL. Right.

Mr. ROEMER. Yet as we've looked at the CTC budget over the 1990s and a question of resources, without mentioning a specific number, which is classified, the trend which we can talk about, right——

Ms. HILL. Right.

Mr. ROEMER [continuing]. Is a quadrupling in the CTC budget. So why isn't more money put into analysts in that budget when it's quadrupling?

Ms. HILL. I think it's a priority question. What we found and we're saying is that the resources—they were getting more resources for counterterrorism prior to September 11 and after the DCI declared war on bin Ladin, it was going up. But there was no massive shift. It was a gradual thing.

Mr. ROEMER. Quadrupled.

Ms. HILL. And in terms of analysis, there was not a significant amount of resources dedicated to it. So I assume it is like every other research allocation. It's depending on where your priorities are, and obviously there was not a big priority on the analysis.

Mr. ROEMER. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Mr. Roemer.

Mr. LaHood.

Mr. LAHOOD. Thank you, Mr. Chairman.

Ms. Hill, thank you for your service to our Committee and to your staff too. I know they've worked long hours.

Ms. HILL. That's very true, and they've done an excellent job.

Mr. LAHOOD. They really have; I agree with that.

And to Kristen and Steve, thank you for—if you're still here—for being here and the people that you represent. Obviously, our hearts go out to all of you.

Ms. Hill, if you take all of the information that's in your report today, and you analyze all of that information and then you look at the notion that there was a lot of information prior to 9/11, there were a lot of people in separate ways who saw it, and if you took that information, and it was analyzed correctly, and the people responsible, whether it be the President, the Vice President, the National Security Adviser, the CIA Director, FBI Director, if they had had all of the information that you've collected and documented in your report, could 9/11 have been prevented—if they had seen the Phoenix memo, if they had seen the memo from Minnesota, if they had really had all of these documents that had come over the transom for any number days?

I mean, there has to be some idea about—because the criticism is that a lot of information came, but it wasn't shared. A lot of information was available, but wasn't shared, and the right people didn't know it. Well, if you take all of that information, and if it had been shared with the highest elected people in our government and the highest appointed people in our government who have responsibility for counteracting these activities, could 9/11 have been prevented?

Ms. HILL. My own view is that I don't think anyone will ever be able to say—no one will ever really know whether 9/11 would have been prevented. Because what we're talking about here is we not only would have to know what everyone would have done with the information they had in the Intelligence Community in terms of law enforcement and intelligence, you would also have to know how bin Ladin and the hijackers would have reacted. We don't know that.

I mean, it's all—we're hypothesizing. And there's been so much emphasis on, was there a smoking gun? Was there a where, when, how, that sort of thing.

We haven't found that. What we have found is a lot of information, a lot of things that weren't put together. And to me maybe the biggest issue is, and we say it somewhat in the statement, not only that they weren't put together, but that they weren't recognizing their importance given everything else they should have known, for instance, in the summer of 2001. That's the summer that you had Mihdhar and Hazmi. You had Phoenix. You had Moussaoui. You had a high threat level. Well, you would think that with all of that, when you got Phoenix or you got Moussaoui—it would have even been more important—you would have been more aggressive with it. And that didn't happen.

So there's a lot of unknowns. There's questions about if you had caught one hijacker, would they have replaced him with someone else? There's questions about if you had gotten on to one of these cases, could you have surveilled and perhaps found what was going on?

All of those are hypothetical. So we're never going to know, but I think what we do clearly know is that the community could have

done a lot better—the intelligence side and the law enforcement side.

Mr. LAHOOD. But your answer is that the community could have done a lot better. But knowing what we know about information that was there and the dots were never connected in a lot of these different areas, you're not saying though that the community could have prevented this. They could have done a lot better, but they couldn't have prevented it.

Ms. HILL. No, I didn't say they—I never said they couldn't have——

Mr. LAHOOD. Well, I want to know. I want you to be able to tell us pretty definitively here for these people that are here that if all of the dots were connected and if all of the information was shared and all of the right people would have known it, could we have prevented 9/11?

Ms. HILL. I would say——

Mr. LAHOOD. I mean, that's the criticism all of this town and all over the country and all over the world that we, that you know we collected a lot of information, but it wasn't connected, that people didn't connect the dots, they didn't share information.

And my question is, and I think it's a question on the minds of the American people, if it had been done correctly, could it have been prevented? And people that are promoting a blue ribbon committee, which I am not, are saying that that's the way we get to the bottom line.

But I want to know from you, who have been working at this now for several months, could it have been prevented?

Ms. HILL. I can't say, guaranteed, that it could have been prevented. There could have been some things done that it would have been possible that they might have been able to uncover some of this plot—if they had had the information on individuals, and they had followed them, and they had surveilled them, and the individuals had talked about something and they might have picked it up.

I mean, all of those are ifs. It's one if after another. You're never going to know that. But you need to get beyond that point to the point that they could have done better. You know, that's what they have to do the next time. Because if they don't, you're not going to have a shot at preventing this the next time. That's where the issue is, not so much preventing what's already happened. It's preventing what may happen in the future that we have to focus on. That's my own view.

And I think to prevent what may happen in the future, there's a lot of things that have to be done to get us there.

Chairman GRAHAM. Thank you, Mr. LaHood.

Let me say tomorrow we're going to have two panels with five persons in total, all of whom have had extensive experience at the highest level of actually making decisions based on intelligence. And I would suggest the question you just asked of Ms. Hill would be a very appropriate question to ask of those panelists to get their assessment of whether there was enough information from the experience and perspective that they have had and can provide as to whether there was enough to have avoided September the 11th.

Mr. Hoekstra.

Mr. HOEKSTRA. Thank you, Mr. Chairman.

And I'd like to thank the Chairmen for how they started off these public hearings with Steve and Kristen today, a very appropriate way to begin the process by remembering those whose families paid the ultimate sacrifice on September 11 and recognizing the sense of urgency and the importance with which this Committee has to go through and conduct its work.

And Ms. Hill, thank you for your work.

Ms. HILL. Thank you.

Mr. HOEKSTRA. Having gone through some other investigations on other committees, recognizing the importance of how you approach this work and the intensity and the professionalism and having to put up with Members of Congress. So thank you for being willing to go through that process.

As you've gone through and done the analysis, have you also taken a look at other attempted terrorist activities during this timeframe which may have been prevented because of knowledge that we had beforehand and things that might not be part of the public record? Have you uncovered anything like that?

Ms. HILL. You mean other actions by other groups or——

Mr. HOEKSTRA. By al-Qa'ida or other groups that—you know, where they had been planning on attacking the United States and for one reason or another, those attacks were thwarted.

Ms. HILL. We have heard some of that. I mean, we have not focused on that because we have been focusing on the information on aircraft as weapons and the September 11 plot.

But certainly, in talking to people, there were successes by the Intelligence Community against al-Qa'ida and other terrorist groups. There were also, you know, failures.

Mr. HOEKSTRA. There were other failures.

Ms. HILL. So I didn't read that part of it, but in our statement we talk about the fact that it was a very difficult target for the Intelligence Community. Al-Qa'ida had a lot of operational security. They were hard to penetrate. It was hard to get them to talk about things that would help you. It was difficult. There were resource problems.

But despite all of that, the community did amass a lot of information on them, and they were engaged in operations against Al-Qa'ida. And there were some successes, but there were also some failures.

Mr. HOEKSTRA. As you go though this process, will you also overlay policy decisions that were made either in Congress or at the Executive level? Specifically, I think this morning, Steve talked about—and I'm not sure exactly what the words were—the inability to penetrate organizations like al-Qa'ida with human intelligence and recognizing that during parts of the '90s, you know, there were decisions that were made that changed the way that the CIA and other organizations could actually recruit human intelligence.

Ms. HILL. I think that area, I mean those are all valid policy questions, and it's relevant to how you combat terrorism in groups like this obviously, because penetrating a group like this is tremendously important. It's a valuable source of intelligence.

But I think those are issues that we will probably address. As I understand the Chairmen, one of the things we want to do as we

get further away from the facts—we're trying to get the factual review out first—is to go to the systemic problems and then look at possible ways to reform the community and changes and policy issues and those sorts of things.

So I would guess that those issues would be addressed once we get into where do we go from here in terms of reform.

Mr. HOEKSTRA. Because it's very, very clear that the Intelligence Community and the various agencies don't operate in a vacuum. There are policy decisions that are over a period of time that will have an impact on the culture within the various agencies as to their ability to recruit or how they will use or who they will access for human intelligence. There are also decisions that are made by Congress in terms of the funding levels and direction and those types of things.

And as the report moves forward, we will get a fuller context of where the breakdowns will be, some of which may have occurred within the intelligence agencies, some of which may have occurred in the Executive, other parts of the Executive branch or some of which may have occurred in Congress because of decisions that have been made over here, so that we get that full picture of what went on.

Ms. HILL. Right.

Mr. HOEKSTRA. Those are all areas that you plan on looking at?

Ms. HILL. The game plan, so to speak, is to look at the factual review, get through that, then look at the systemic issues and then decide how those systemic issues can be addressed through reform. And what you're talking about I think would be in the review of systemic problems, restrictions on our ability to penetrate human sources, and then where we go from here in terms of reform.

Mr. HOEKSTRA. Thank you.

Mr. Chairman, I yield back my time.

Chairman GRAHAM. Thank you very much.

Senator Shelby.

Vice Chairman SHELBY. Thank you. I've missed some of this because, like everybody else, we have to do other things during the meetings.

Would it be fair to say at this point in the inquiry, the investigation, that we're a long way from finishing our inquiry; are we not?

Ms. HILL. I like to be optimistic rather than pessimistic, and I would say I think we've made a significant good start down the road. We're not finished, but I think we've done a fair amount of work here, and we have a good record on the facts so far.

Vice Chairman SHELBY. But you are a veteran investigator, veteran prosecutor, Inspector General of DOD, we all know this and we have a lot of respect for you. In any investigation, you don't know what's going to turn up next, do you?

Ms. HILL. Right.

Vice Chairman SHELBY. And you're not telling us here today and the American people that you see the end of this investigation?

Ms. HILL. No, I think I said previously in response to another question that any investigation, the more you dig, you find things and then you have to have time to go through those things.

Vice Chairman SHELBY. Analyze it.

Ms. HILL. That is happening. It's happening to us like it happens in any investigation, and we're trying to follow those facts to where they lead. Now, whether all of that will be finished by whenever this is determined to end, I don't know. But I think we'll make a significant contribution, and we'll have made available a good body of knowledge.

Vice Chairman SHELBY. Well, I think you're already making a significant contribution, and I think the staff is. My concern is that we don't know what we don't know.

Ms. HILL. That is correct.

Vice Chairman SHELBY. And I have the feeling that there's more out there because I raised this morning—I raised the issue in my opening statement that I don't believe, as a member of the Committee, that we've had the utmost support by the agencies that we're investigating. And I don't believe that we've had the support that was promised at the outset, you know, by the Administration.

Having said that, I want to focus just what little time I have on the FBI. You may have talked about this earlier—I know you addressed it—and that is the analytical component of the FBI. We know that the FBI has got good people. We know that they're great on investigations. They have no peer, I believe. But on analysis of intelligence information, some of us have been on the Committee—and this is my eighth year here—we've been concerned with that for a long time. It's hard to put an intelligence division or component together and make it work.

Tell us in your judgment, what was the state of the analytical component of the FBI before September 11 as far as terrorism is concerned?

Ms. HILL. The FBI, I mean, our figures—we have the figures in the statement—they, I think, had one individual working al-Qa'ida analytically.

Vice Chairman SHELBY. One individual working al-Qa'ida before September 11 in the analysis.

Ms. HILL. Analysis, right.

And, you know, my own personal view, and you alluded to it, is based on the fact that I have worked with the FBI for many, many years starting when I was a prosecutor——

Vice Chairman SHELBY. I know you have.

Ms. HILL. And I agree with you. I think they are tremendous investigators. And in terms of law enforcement, they can be the best on some cases and prosecutions. But that's their mission. Their mission is to do an investigation, to do a prosecution, do a case. If it's their case and their mission, their prosecution, they will go to the nth degree and they're very aggressive and we need that.

But they are not, at least in my experience, their training and their mission does not focus on going beyond that into the broader analytical world and looking at the big picture. They are focused on their case, and it's too bad because their aggressiveness would be very valuable if they could also channel it, at least in issues like terrorism, in a little broader way, onto the analytic view.

Vice Chairman SHELBY. But before September the 11, they only had one person in the whole Bureau working on that, you just testified to—is that correct—on al-Qa'ida?

Ms. HILL. Yes, and I just have a note from our staff, who has done a lot of these interviews, that at the FBI they had one individual doing strategic analysis. That is what we're talking about.

Vice Chairman SHELBY. That's right.

Ms. HILL. They did have some others that were doing, as she calls it, operational analysis, which I would interpret to mean that was connected with prosecutions and cases. And so, there were individuals doing that.

Vice Chairman SHELBY. Do you think that there is a way to get the FBI changed, or at least part of it, toward strategic analysis of information dealing with terrorism in the future? I know we talked to the Director about this, but that's harder to do than it is to say, isn't it?

Ms. HILL. Well, I think it's not only getting them to expand their focus. I mean, it's like any job or profession in an agency; they have to be able to give people incentives in terms of career and progression and those sorts of things to make the analysis positions in the FBI important positions that people want to do.

Vice Chairman SHELBY. Well, my light's on. I guess I'll wait another round, Mr. Chairman.

Chairman GRAHAM. Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman.

I want to join others in commending Ms. Hill on the excellent work that she and the members of her very able staff have performed.

Ms. HILL. Thank you.

Ms. PELOSI. I hope that it is a comfort to the families to know how persistent and thorough the staff is in this investigation, in this inquiry. However limited it is, it's strictly to intelligence. And as was mentioned earlier, there are other agencies of government beyond the Intelligence Community that need some review as well.

The question of could it have been prevented, of course, is one that will haunt us as long as we exist as a country, and there's no good answer. The good news is the bad news. If the answer is no, it could not have been prevented, that means we're very exposed in the future. If it means yes, it could have been prevented, that's good news because that bodes well for the future, but is a tragedy, obviously, for the families. It's a tragedy in any event. But if it could have been prevented, we'll all be haunted by the guilt associated with that, and that's not even good enough punishment for us. There will be hell to pay. That's going up to September 11.

Post-September 11, if any of these agencies of government in the Intelligence Community are not dealing honestly with us—and by that I mean, being forthcoming with information—if, as Mr. Shelby says, there's other information to come that we don't know about now, I believe there will be hell to pay for them because we all assume that everyone is doing their best to protect our country, and they must help us get to the bottom of this. I trust that they are helping us all they can, but we must continue the inquiry.

I think, as one who originally supported an independent commission—I was the original author of it and we passed in Committee, we failed on the floor—the idea, I think, is an important one. However, it does not in any way undermine the important work of this

inquiry. As Mr. Roemer has said, and others have said, this piece of it that goes into the Intelligence Committee is very important.

We could have had the best intelligence in the world, though, and what we've found out since September 11 is that the hijackers and the al-Qa'ida knew something about us that we did not know about ourselves, and that is we had tremendous exposure at the airports. That all four of these hijackings could have been successful is remarkable. I find it remarkable that maybe one would get by, but four of them to succeed, in their words "succeed," is remarkable to me.

So my question to you, Ms. Hill, is on this subject your report is clear, but I'd just like to see if you could shed some further light. As you were looking into this issue of the hijackers, and we'll go more into it in a couple of days, but did you see a distinction made between hijacking—of course, that's a predictable threat to us—and using airplanes as weapons as two distinct threats, because from the perspective of many of us, a hijacking is still the loss of many, many lives and should have been taken as seriously as hijacking with intent to do further damage?

Ms. HILL. We certainly, when we went out looking for information and requesting information from the agencies, distinguished it because we were asking for information on the use of aircraft as weapons. So that would imply more than the usual attempt to just hijack a plane to get somewhere or take hostages or whatever.

But in terms of being prepared to address it—and your comments about why they were able to hijack all four of these planes and why our defenses were down—there's probably less of a distinction, and I point to the FAA and FBI assessments that we quote in this staff statement. I think for that year, which was I believe 2000, they were looking at the whole terrorist threat to civil aviation, so they were not distinguishing between aircraft as weapons or hijacking. And what was interesting about it is they were concluding that there was a very small domestic threat. So they were not too concerned about any sort of terrorist threat to domestic U.S. aviation here in the United States as late as 2000.

Ms. PELOSI. Well, I find that to be a serious shortcoming separate and apart from not knowing the time and place and date.

Ms. HILL. Right.

Ms. PELOSI. The fact that the entire threat was minimized to that extent. So I do see the need, as I had said before, to assess the performance of any agency, beyond the intelligence agencies, which have a responsibility to protect against acts of terrorism and to shed—to look with fresh eyes and some innovative thinking on our intelligence and all other aspects of protecting the American people in this regard. And of course, as Senator Rockefeller said, we must do it right, but I think doing it right also means protecting our civil liberties.

So we have quite a challenge, and your presentation this morning and the work of your staff has been a valuable contribution. Thank you.

Ms. HILL. Thank you.

Ms. PELOSI. I look forward to following hearings.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Ms. Pelosi.

Mr. Goss.

Chairman GOSS. Thank you. Let me advise members of the House that there's ten minutes left on a vote in the House, so my wrap-up will be very quick.

First of all, I want to thank Ms. Hill for a very excellent presentation.

Ms. HILL. Thank you.

Chairman GOSS. I like the version that we had before it had been redacted better, and I expect that we are going to continue to press on because I do believe that there is more that can be revealed.

And along that area, is it fair for me to make a statement that, because of the joint staff, we now know some things that we otherwise certainly would not have known. Is that a fair statement?

Ms. HILL. I would hope so, yes. I would say so.

Chairman GOSS. It is certainly my feeling as well, and I would hope that much of that can be shared with the American people.

The second question I wanted to ask provides some guidance from my perspective. It was in your excellent report this morning on intelligence reporting on bin Ladin's intentions to strike inside the United States on pages 14 and 15 of your report—15 and 16. There are a series of specifics that cries out to say, why was all this ignored? Where was the audience? Why was nobody listening?

And one of the issues that I would like to have further amplification on this is, if this was 2 percent of the reporting, what was the other 98 percent of the reporting that was consuming the analysts' time in the Intelligence Community? I'm not asking for an answer now. I think that's going to be helpful for our report.

The next question, I think, is self-evident and others have said it. There's no doubt that some of the questions Members here have addressed today to you are more appropriate for witnesses that will be forthcoming, and I want to make sure that we understand that there will be other witnesses forthcoming. We will try and have as much of that as public as we can, as it should be.

But the very penetrating questions that were asked by Ms. Breitweiser and Mr. Push, and the recommendations I think are excellent points. Each one of them deserves consideration and we'll get them at some point. In fact, some of them have already been given consideration, as I'm sure you know.

And finally, with regard to the remarks by Senator Levin and Senator Rockefeller on declassification, my view is that the burden is on the Administration to tell us why we must preserve classification, unless it's in those areas, those exempt areas that I spoke to—sources, methods, plans and intentions, and ongoing prosecutions by the Justice Department.

The final point I would make is that the work of this Committee will be done. There is no question about that, and there will continue to be oversight by the United States Congress in a number of areas, including in the Intelligence Committees, no matter who the members are of that committee. So this is an issue that is not going to be dropped merely because another date flips up on a calendar or there is a change of personnel somewhere in the establishment. This will go forward because the American people deserve the answer, and they will get the answer.

I thank you very much for your participation today. An excellent job, Ms. Hill.

Ms. HILL. Thank you.

Chairman GOSS. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Mr. Goss.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I certainly concur with the remarks that have been made about the excellence of the report.

Ms. HILL. Thank you.

Senator FEINSTEIN. I'm just sorry I couldn't get it until the meeting so I had to spend my time reading it during the meeting, which Mr. Chairman, I would suggest is not the best way of enabling us to carry out our duties.

Chairman GRAHAM. Senator, as you know, we made the original non-redacted version available in both the House and the Senate Intelligence Committee rooms, and I understand that you took advantage of that. Unfortunately, it was only within the last less than 36 hours that we got back from the declassification agencies the version that we could make public. I hope that in the future we and they will do a better job and a more expeditious job so that will give us an opportunity to know what's going to be public with more lead time.

Senator FEINSTEIN. I thank you, Mr. Chairman.

Ms. Hill, on December 4, 1998, the DCI told his deputies in a memo about bin Ladin and al-Qa'ida that, "We are at war. I want no resources or people spared in this effort, either inside CIA or the community." Yet, in your testimony, you indicate that when it came time to translate that declaration of war into real resources, the government's efforts fell woefully short.

Specifically, you concluded that the allocation of Intelligence Community resources did not adequately reflect a true war against bin Ladin. For example, you point out in 1999 the CTC of CIA had only three analysts assigned to the bin Ladin network worldwide. And after 2000 that number had risen to just five, and that things were even worse outside the CIA. The international terrorism analytic unit at the FBI had in place only one analyst to address al-Qa'ida, this out of an intelligence budget of literally billions of dollars every year.

Now, it really concerns me because I was one that felt very strongly that the warnings that something was going to happen were there. And certainly, by July—I mean, this was just based on what I heard in this Committee—100 percent certain that something was going to happen. I even said that on national television, that I thought it was going to happen within the next three months. And my question really goes to the fact that whether today even we have enough to do what we need to do.

Why do you think so little attention, even after these declarations of "We're at war," were really paid when it came to devoting real resources and what was taking a higher priority?

Ms. HILL. I think that we have asked that to many people in the community—and again I have to be careful with the details of it because we're in a public session—but I think what we are hearing is that there were other priorities for intelligence. One reaction

would be that people would tell you is that the Intelligence Community responds to its customers, customers being other parts of government that are tasking them to come up with intelligence on certain items. And that, in some respects, there were customers that they had to satisfy, they felt they had to satisfy, and were told to satisfy on other topics other than al-Qa'ida. So that was one issue that we've heard.

We have heard in the FBI on the resources, as we just discussed with Senator Shelby, that there were not many. There was like one strategic analyst for al-Qa'ida in the FBI. There were some more analysts on operations, and there was a much bigger emphasis in the FBI on operations, on cases, investigations, as opposed to strategic analysis even though it was on al-Qa'ida, which was a high threat. But their mission was more focused on actual prosecutions and cases.

So I think, as with any resource issue, it was a question of other priorities, customers demanding other things and the agencies responding to that.

Senator FEINSTEIN. Do you believe that today there are sufficient resources?

Ms. HILL. Senator, we know some of the details as to how things have jumped since September 11 in terms of resources, but we have not focused intently on what is going on post-September 11 because our job has been to try and find out what was happening before September 11. So I really would not feel, you know, probably qualified to start guessing as to whether it's adequate now.

Senator FEINSTEIN. On page 15.

Chairman GRAHAM. Senator, we will have another round after this round.

Senator FEINSTEIN. I don't even get the time that our question took up. Never mind, that's all right. Thank you.

Chairman GRAHAM. Senator Mikulski.

Senator MIKULSKI. Thank you very much, Mr. Chairman. Mr. Chairman, a few words to the families, and then a question for Ms. Hill.

To the families, first of all, my name is Barbara Mikulski. I'm a United States Senator and I'm from the State of Maryland. I had people die at the World Trade Center, and I also had 60 Marylanders die at the Pentagon when a plane created the inferno there. I also believe I owe my life to the gallantry of the men and women who fought back on flight 93 because I do believe the plane was heading towards us. And I have two constituents who died in the anthrax attack on us.

So know that I'm absolutely on your side. And I want you to know I thank you today for coming because you show such inspirational strength and courage, and I believe you have a right to know about what happened. You have a right to be heard in any public forum, and I believe that Americans have a right to be protected. I know that you're still looking for answers on why this happened, how it happened and how it doesn't happen again.

Know I would support a vote to establish an independent commission. I believe my Committee has done an outstanding job. But I believe when such an impact happens to America and its families,

we need more than one opinion on how to make sure it never happens again.

I find many things about what happened troubling, but what I find most troubling is that four of the terrorists were stopped by local law enforcement—four for speeding and one for not having a driver's license. They were actually in the hands of law enforcement. But when they were stopped and the police went to check the databases, nothing alerted them to detain these men. Something is wrong here.

State troopers, like the one in my own state that stopped one of these thugs and other police officers, know more when they check their database, know more about men being behind in their child support the database will tell them, than they will do about men who are possibly around a terrorist attack. There are more than 50 different watch lists to keep track of people dangerous to the United States.

But guess what? If you're a watch list, you don't talk to other watch lists. If you're a watch list, you like live in one of those caves. You might not know if there are other watch lists out there. You don't tell anyone that you are a watch list, and you certainly don't talk to each other, make friends with the other watch lists or make friends with law enforcement. That's really, I think, unacceptable.

And these will be the questions I'm going to direct to Ms. Hill, because, like you, I want to be sure that this Committee gets answers for you and the rest of America on how we can detect, deter, disrupt and defeat any attack on the United States of America.

And having said that, Ms. Hill, you know about these watch lists. You know that they're all over the place and they're nowhere. In our work with you and my colleagues, I wanted to see if there was a smoking gun. I wanted to know what were the systemic problems and what were the solutions. I'm not sure there's a smoking gun, but these watch lists are definitely a systemic problem.

Could you elaborate on them what you can or where you would see solutions going on this watch list issue?

Ms. HILL. The watch list issue, Senator, I am aware of it. We are going to go into that in more detail when we get to the hearing on the hijackers because as you alluded to that is an issue regarding Mihdhar and Hazmi. I mean, that's a very big issue. It's an issue of getting in on the right watch list, getting it to the right people. But even before that, it's also an issue of getting it between the Intelligence Community and the law enforcement community and breaking down the reluctance sometimes to share information across—from the Intelligence Community to the criminal investigators and law enforcement on the other side.

And that, I think, may also play in some of this. But those are issues that we will talk about when we look at the hijacker case. And you're right, they are problems.

Senator MIKULSKI. Well, let me just say this before the yellow goes to red. I raised the issue of a smoking gun. I've been at many hearings. Do you believe that there is a smoking gun on what went wrong or were there just a series of total disconnects?

Ms. HILL. Well, of course, I'm handicapped in answering that because we are in a public session and we are still looking at a num-

ber of other issues that have come up. But I don't think in any of what we have seen here there is a smoking gun—if you mean by smoking gun that somebody in the United States Government had information on when, where, and how this was going to happen in the United States Government. We have not found that.

But I had a discussion actually with one of our staff on this the other day and he pointed out wisely that there's been so much discussion about looking for a smoking gun. The truth is, you hardly ever get a "smoking gun," in not just terrorism, but in a criminal case, et cetera, et cetera. And if by focusing all of the time on whether we have the smoking gun, you know, we focus on how we have to be ready to go if we have a smoking gun, the truth is that most of the time you'll never have a smoking gun. It's a lot harder to find it when you don't have one.

So what we ought to be focusing on is how to get our system ready to find these guys when you don't have a smoking gun, which is what you're going to be faced with most of the time. You know, the odds are, you're not going to have a smoking gun. And we need to have our intelligence and law enforcement people good enough and bright enough and aggressive enough that they can track these guys down and find this even when there is no smoking gun, because, you know, in my own experience, at least in law enforcement, that's what you have most of the time.

Senator MIKULSKI. Thank you.

Chairman GRAHAM. Thank you, Senator.

Senator Kyl has submitted an opening statement which will be placed in the record.

Senator KYL. Thank you, Mr. Chairman.

By the way, I think that last point is a very important point and needs to be underscored. And it's one of the most important things that comes from your statement today, Ms. Hill.

Ms. HILL. Thank you, Senator.

Senator KYL. I was this morning detained in my office waiting for a couple of phone calls, but I had my television on the entire time and was privileged to hear not only the statements of the Chairmen of our committee, but also the statements made by Ms. Breitweiser and Mr. Push. And, as has been expressed by others here, my heart goes out to them and the families and friends that they represent. And I think that I should state that I am certain that every American shares their grief and their anger and even their frustration. And I also share their view that there's more we could have done to try to prevent the terrorism we experienced on September 11.

I also agree with Eleanor Hill that at the end of the day it's doubtful we'll ever find a smoking gun, but as she said, the important point is to be in a better position to deal with the other pieces of information in order to try to prevent this in the future.

I do think, Mr. Chairman, that it is very unclear whether the joint investigation, the Joint Committee investigation that we're engaged in here and whatever report we eventually submit will satisfy these witnesses and those that they represent or whether they will satisfy members of this Committee, let alone the other members of the House and Senate.

As you know, Mr. Chairman, I've expressed serious reservations about the direction of our investigation, including the allocation of time and resources to holding open hearings at this time before we've finished our work. Ours is a large undertaking, and we've got a lot more work to do before our fast-approaching deadline. And yet we're proceeding with public hearings in spite of not having completed that investigation.

What was presented today was only a staff document. I'm talking now about the testimony of Ms. Hill. It was not a consensus product of the Committee. Members had no practical input into interim report, I think the public should know. Ordinarily, we investigate, we write our report and then we present our recommendations.

The staff's presentation of its interim report before Member vetting is, therefore, in my view, premature as well as a diversion of the joint staff from the investigation that we have given them the job to do. The interim statement from our Joint Inquiry staff provides some very valuable information about what has been done to date—a chronology of events leading to the September 11 attacks and some background information about the growing threat of al-Qa'ida over the last decade. It is very useful to have this history, and it's important to make it public, but the Committee should have approved it first. And in any event, the release of the report could have been done without taking the time to have it read by the staff director.

But more importantly, I believe the questions fundamental to our investigation have yet to be pursued adequately. These include, but are not limited to, whether part of the pre-September 11 problem was the result of a culture of risk aversion in the Intelligence Community and/or an inadequate allocation and improper prioritization of resources to those on the front lines of our counter-terror efforts.

Mr. Chairman, you know I've expressed before my concern that Committee members have been able to play only a limited role on this inquiry. It's largely being conducted by the Joint Committee staff with little input by or to our own Committee staffs, let alone the Members themselves. And that will make it difficult to concur in the final product without reservations. We will not know what we haven't been told, and, therefore, we will not be able to vouch unequivocally for the final product.

Questions about this investigative process have led to calls for the creation of a national commission to investigate all of these matters. This would further stress the Intelligence Community at the very time we're trying to fight the war on terrorism. While it may be deemed necessary, it can hardly be deemed desirable.

So I hope, Mr. Chairman, that we can continue to work to resolve these issues. Only by doing our very best will we have done our duty to the victims who are represented here today and to the American people.

Senator, thank you.

Senator Bayh is supposedly en route. Senator Shelby, do you have a comment?

Vice Chairman SHELBY. Yes, sir, if you'll recognize me till he comes.

Chairman GRAHAM. And then I have a couple of questions I'm going to ask at the conclusion of Senator Bayh's questions. Senator Shelby.

Vice Chairman SHELBY. Ms. Hill, I'd like to go back to the FBI and the analytical component we were talking about earlier, or lack thereof. In your investigation regarding the analytical ability of the FBI, do you know if the FBI prior to September 11 ever did an analysis of terrorist tactics—that is terrorist tactics with a possible use of airplanes as weapons?

Ms. HILL. I don't believe so. We, as I think the statement says——

Vice Chairman SHELBY. You're saying no? You go ahead and answer.

Ms. HILL. As the statement says, we haven't found any analysis of the use of aircraft as weapons in the community, as far as I know, including the FBI.

Vice Chairman SHELBY. In the community—you're talking about the Intelligence Community——

Ms. HILL. Yes, but we would include——

Vice Chairman SHELBY [continuing]. Not just the FBI?

Ms. HILL. Right. I think it's safe to say the FBI also on that.

Vice Chairman SHELBY. Now, in our statement, I believe it's on page 28—without reading it all—and I'll quote some of it. It says, "In April 2000 the Intelligence Community obtained information regarding an alleged bin Ladin plot to hijack a 747. The source was a walk-in to the FBI's New York office claiming that he had been to a training camp in Pakistan where he learned hijacking techniques and received arms training. He also stated that he was supposed to meet five or six other individuals in the U.S. who would participate in the plot."

I'll read further. "They were instructed to use all necessary force to take over the plane because there would be pilots among the hijacking team. The plan was to fly the plane to Afghanistan and if they could not make it there, they were to blow up the plane."

This is part of your report, is that right?

Ms. HILL. Right.

Vice Chairman SHELBY. Now, I believe there was another report of August 2001, according to page 28 of your report. "In August 2001 the Intelligence Community obtained information regarding a plot to either bomb the U.S. embassy in Nairobi from an airplane or crash an airplane into it. The Intelligence Community learned that two people who were reportedly acting on instructions from Usama bin Ladin met in October 2000 to discuss this plot."

And then we go back—and you've touched on this I believe; I know we've had hearings on it—about the Philippines '95 situation where there was information that they could use airplanes as weapons and so forth.

In the light of the part of your statement that I just referred to, you're saying that, according to your investigation, there was not any analysis of these terrorists tactics in the Intelligence Community regarding the use of airplanes?

Ms. HILL. There was no analysis of the likelihood of the use of airplanes as weapons as a terrorist tactic.

Vice Chairman SHELBY. I wonder why not.

Ms. HILL. I would hypothesize that, when we've asked questions of people, it's a resource issue. People say they were overwhelmed. The other thing, and I mentioned this earlier, I don't think anyone had pulled together as much information on this as we did. The way we got this information is by going to the agencies and saying we want everything you have on the use of aircrafts as weapons. And we had them pull reports out of this huge amount of data they have and come up with enough to show that there was this trend and this theme going through some of the reporting.

Vice Chairman SHELBY. This was not on September the 11th something new or shouldn't have been something new.

Ms. HILL. No.

Vice Chairman SHELBY. This was stuff that had been out there at least since '95 before then. And I believe you talked about the Paris incident——

Ms. HILL. Right.

Vice Chairman SHELBY [continuing]. Where the French——

Ms. HILL. The Eiffel Tower.

Vice Chairman SHELBY. Oh, yes, the Eiffel Tower deal, the Philippine deal, these reportings that you listed. So, when people come up and they say, gosh, we were shocked that they would use airplanes as weapons and we didn't do any analysis of that in the community, are you kind of shocked or surprised?

Ms. HILL. Well, it was there. The information was there.

Vice Chairman SHELBY. The information was there, if they had analyzed it.

Ms. HILL. Right.

Vice Chairman SHELBY. As far as the potential tactics of the highjackers, is that right?

Ms. HILL. Yes. Based on what we've seen, this was not a new idea as of September 11.

Vice Chairman SHELBY. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman and I apologize for not being here earlier, but I had a Judiciary Committee hearing which ran in conflict with this hearing. And I thank you, Mr. Chairman, Senator Shelby and our counterparts in the House for the time put into this effort and your leadership in bringing us to this moment.

I personally feel that we have identified some things of value in terms of shortcomings from the government's point of view prior to September 11. We have identified a lack of communication among the intelligence agencies and I'm afraid that today, although there's been an improvement, there's still much room for improvement.

I have focused primarily on the issue of information technology and I have been chagrined and disappointed by the reports about the lack of coordination of the computer architecture of the federal government so that intelligence agencies can share information effectively. Governor Ridge referred to this as a force multiplier and it would be, but it is not because of those shortcomings.

We've also considered the results of those shortcomings, not the least of which was the example of the Phoenix Memo, which should have been, but was not, brought to the attention of or analyzed by counterterrorism forces. That memo might have at least helped us

to be better prepared for what occurred on September 11, though I don't want to suggest that anyone saw this coming in its specifics. But it certainly raised questions, which should have been pursued and were not. I think, recalling some of the testimony we received, there was clearly a lack of follow-up at the FBI and a lack of involvement by the CIA. The same thing holds true for the Moussaoui arrest and disclosures that came out of the FBI afterwards—again, evidencing a lack of coordination, a lack of sharing of vital information that could have had us better prepared to defend America.

Those two instances, though, I would like to bring to the attention of this joint inquiry, have come to the public eye because of leaks by the Administration and leaks from Capitol Hill of vital information. It strikes me as unwise and unfair for us to expect there to be a thorough investigation of what led up to September 11 based on the possibility of leaks coming from anywhere.

History has told us that it is far better to have a public hearing, a public investigation and the involvement of third parties when it comes to assigning blame and perhaps suggesting meaningful and painful reforms. But, that has not been the case here. I think we are doing what we set out to do, to try to find ways to improve the workings of the Intelligence Community to avoid a future September 11. But we will never be able to satisfy the needs and curiosity of the American people about whether their government did everything it could to protect them in closed hearings with occasional leaks. That is not going to serve the needs of America.

[Applause.]

Senator DURBIN. I know that earlier today there was testimony of one of the widows of a victim of September 11 and I have met in my office with some of those same victims and their families in painful meetings. There is an anger and a sadness in the message that they bring to Congress, but there is certainly, I think, wisdom in what they've suggested. Let us do our business here. Let us try to find even within closed hearings ways to improve intelligence, but let's not forget our primary obligation to the people of this country.

We do not serve the needs of an open society with closed hearings in relation to an attack on America, virtually unprecedented in our history. It is time for us to acknowledge the obvious. We need a third party investigation, people that we can trust who have no political animus, who are going to come to this as loyal Americans and try to help us be a safer nation.

I commend the staff. They have done heroic work and I know have worked long and hard to bring the report that we have today and we should continue to meet our mandate as best we can. But let us not believe that this chapter has been closed in American history. We have merely addressed the foreword with this investigation. Now we must get into the substance and do it in a public way. That's not to diminish any of the efforts of my colleagues or anyone on this Committee, but I think we owe it to the American people to give them more.

Thank you, Mr. Chairman.

Chairman GRAHAM. I would like to ask a question and then make a comment. The question has to do with the relationship be-

tween intelligence and affecting the operations of a governmental agency. You have five or more pages in which you outline the examples of the use of commercial aviation as a weapon of mass destruction. As I understand the history, generally the taking of an airplane by highjackers has been done for either a political or an economic purpose. In light of that, the standard protocol of what a crew is supposed to do if they are subjected to highjacking is to cooperate, to acquiesce, try to get the airplane on the ground and then start the process of negotiating with the highjackers. From your review is that an accurate statement?

Ms HILL. Yes, I think that's correct and that was traditionally the way you would deal with a hijacking.

Chairman GRAHAM. And I believe it was reflected in the way in which the first three planes that were highjacked on September the 11 reacted. It was not until the information of the first three planes became known to the persons on the fourth plane that there was a resistance to the hijackers and the result that the plane crashed in Pennsylvania.

With the kind of intelligence information then, there might be a shift in the way in which hijackers and aircraft interrelate. That is, instead of they can be airplane for a political or economic purpose, that the plane itself might be converted into a weapon and used in the horrific manner that it was. Was that information from the Intelligence Community transmitted to either the FAA or the commercial aviation industry so that it might affect the way in which they advised crews as to how to respond to a hijack?

Ms. HILL. I cannot say that all that information was transmitted to the FAA, but the FAA did get some of it and we talk about their analysis of the threat to civil aviation. My own read on it is that I don't think that, to the extent the FAA got the information, there was a real recognition that this was a serious threat.

You're correct. If they had changed their focus from highjacking for a ransom or to take the plane and fly it somewhere else or hostages or whatever, if that had changed to the use of an aircraft as weapon, you would have had to change the entire mindset and training that was given to the flight crews, for instance, and the security in the plane and everything. And that, obviously, did not happen, as of September 11; you're absolutely correct. It didn't happen on September 11 until, evidently, the passengers in the fourth plane became aware of what was going on. But the flight crews up to that point, I assume, were following the standard protocol for dealing with a hijacking.

But that issue underscores the importance of someone recognizing in the community, the Intelligence Community, that this was a serious threat and that there was a stream of information there and that perhaps it was serious enough and the likelihood was serious enough that they needed to address not only disseminating it but telling policymakers in those other agencies that this was a threat they now had to be prepared to meet.

Chairman GRAHAM. One of my criticisms of the threats that are being issued to the general public, including the one within the last two weeks, is that what's lacking is the follow-on of what is the citizen who receives this information that they're living in a heightened threat environment supposed to do to protect themselves,

their families, their communities. And here we have a case where intelligence information was sent to a sophisticated industry, commercial aviation, apparently without any direction as to how the industry should use the information and the consequence was they didn't use the information and that contributed to what happened on September the 11.

I'd like to ask if we might pursue that issue, because I think it is a metaphor for the larger issue of how do you get intelligence from the theoretical to actually affecting the way people function and how they use that information to reduce their vulnerability to a particular threat.

Senator Feinstein.

Senator FEINSTEIN. I think Senator DeWine was before me, Mr. Chairman.

Chairman GRAHAM. Oh, I'm sorry. Senator DeWine, I'm sorry.

Senator DEWINE. Mr. Chairman, I don't have any further questions, thank you.

Chairman GRAHAM. Senator Feinstein.

Senator FEINSTEIN. May I, Mr. Chairman?

Ms. Hill, I wanted to kind of follow up on where I was trying to go with this. The year 2001 was a very big year in the early spring with a lot of pieces of intelligence coming in. In reading your report, the year 1998 also appears to have been a very big year for all kinds of pieces. And I wanted to see if we couldn't go into some of those pieces a little bit more. They're contained on page 15 on your written statement.

You talk about the use of fronts for terrorist activities. You talk about flying an aircraft loaded with explosives into an airport and detonating it. Al-Qa'ida was trying to establish an operative cell within the United States, a bin Ladin plot involving aircraft in New York and Washington, recruiting a group of five to seven young men from the United States to travel to the Middle East for training, reward money for assignations of four top intelligence agency officers and on like that. And then of course the war that was declared in the CIA.

Can you go into any more detail on any of these individual pieces of intelligence and how they were used from an intelligence perspective to try to weave an intelligence web? Because it seems to me with this and then, unfortunately, in July of 2001 with the Phoenix Memo and then in August with Moussaoui, I don't know what was in his computer or in his possession, but I would suggest if you took those pieces and the other pieces, one might be able to weave together a rather significant scheme. Can you give us any more information?

Ms. HILL. I can't. I don't think I can give you more information on the actual report because, as I mentioned at the outset, the language that we have in this statement is what has been declassified. So, to venture beyond that language, that is the language that the declassification group basically signed off on as suitable for public release. I can't go into much more detail about the language of the report.

We did go on some of these to the FBI and asked them what they did with some of this information or what happened to it when the report came in, if they got it, and I can tell you, some of them.

We've given them a whole list and some we still have not gotten responses. They are still trying to find out what they did or trying to locate the record. Others they have found. For instance, I think you mentioned the 1998 information concerning a bin Ladin plot involving aircraft in New York and Washington. The FBI, I can tell you, did receive that information and they worked actually with local law enforcement to try to verify the report, but they were not able to corroborate the report and took no further action. That is what we have been told.

In September '98, we had one where we did get a response from the FBI. This was the one indicating that they obtained information that bin Ladin's next operation could involve flying an aircraft loaded with explosives into a U.S. airport and detonating it. We asked the FBI if they got that information and what did they do with it. They did receive the information and they also worked with another government agency to try to verify the information.

The source of the information said that another individual had advance knowledge of some of bin Ladin's operations and had given him the information about bin Ladin's attack that was in this report. The FBI tells us that they tried to work with other agencies and did verify portions of this account, but they were not able to locate the individual who purportedly had the advance knowledge. And after September 11 they actually went back to this report and tried to locate that individual again and were unable to do so.

So, what we tried to do when we got these reports that we felt were significant, there were many in 1998 involving domestic U.S. attacks and on those we went back to the FBI, as I said, and asked them did you get the report? What did you do to verify it or did you take any action? And they have come back to us on some of them. Some of them, there are a number of them, they are still trying to go through the records and come up with an answer as to whether they got it and if so what they did with it. But, those two are examples of the type of thing we're getting from them.

Senator FEINSTEIN. Thank you.

Mr. Chairman, just one quick comment, if I might. I think this report becomes kind of a basic primer on 9/11. I'm sure more will be filled in as time goes on, but I find it a very valuable document in establishing a chronology of what was known, when it was known, the fragmentary messages that come through here, and my hope is as these hearings go on, and particularly when we get to the Phoenix Memo and the Moussaoui case, that we might be able to ask some questions and I don't know in public session if we will about if there had been a FISA warrant on Moussaoui and the information made available, whether that would have been substantial enough to really ring a very strong bell.

But, I wanted to thank the staff and Ms. Hill and also thank the victims who are here today. It's very special and I hope you know that we really do care and you really do have our sympathy and our determination to get at the heart of it.

Chairman GRAHAM. And, Senator, I share those comments and I would say that within the next week or ten days we will have a further specific hearing on the issues that surround the Moussaoui case and that would a very excellent opportunity to bore in at the level of detail that you've indicated your interest.

I didn't get a chance in my first round to make my comments, so I will do so, unless does anyone have any remaining questions or this will be the last word.

To me, one of the lessons that we have been learning and today we've learned it at a new depth is how difficult it is to get an organization which has been doing its business, important business, in a particular pattern for an extended period of time to be flexible enough to recognize that the environment has shifted and it is going to have to change its pattern of business.

In case of the intelligence agencies, they were a child born in 1947 and grew up in the Cold War. Every experience that the U.S. intelligence service had was a post-1947 experience, because we didn't have any civilian intelligence service in the United States prior to 1947. I contrast that with, for instance, the British, who've had an intelligence service since the Napoleonic Wars. So it's not surprising that when the Cold War ended the agencies continued to act pretty much the way they did while the Cold War was still under way because that was the only environment in which they had ever functioned or known.

We've had some examples in, I think, in the report that Ms. Hill has given us today—the difficulty in reestablishing priorities, even though we've declared that terrorism and Usama bin Ladin specifically was such an adversary that we were at war with him. We didn't change resources commensurate with that decision. We did not recognize that terrorism was now becoming a domestic threat, because historically we thought of terrorism as something that happened abroad and the new creative uses that the highjackers were about to make of commercial airliners. No longer were they passive instruments to try to use to secure money or some political advantage; they have themselves become a weapon of mass destruction.

So, I see as one of our challenges as we move from what we're learning to what we're going to prescribe for the future is how can we build in to our Intelligence Community a greater capability of internal adaptation? We certainly don't want to leave this issue for the future that will require a repetition of September the 11 to get to grab us by the sleeves and say you've got to change, because your old ways are threatening the security of the American people. And how we go about doing that, I suggest, will be one of our major tasks and, if we're successful, one of our major accomplishments.

If there's no further statement, as I indicated earlier, the record will be open for 48 hours if anyone has any additional material they would like to submit.

I want to especially thank the families who are represented here today and especially to Kristen, who I see is still with us, and also Stephen for their excellent presentation which started our public hearings with the appropriate recognition of why we are here. We are here because of you. Thank you.

Vice Chairman SHELBY. Mr. Chairman, what's the schedule for the rest of the week?

Chairman GRAHAM. Ms. Hill, do you want to review tomorrow?

Ms. HILL. I believe tomorrow we are going to have a public hearing in this room beginning at 10:00 and there will be two panels of users of intelligence products from the Intelligence Community

and those users will be senior government officials over several Administrations.

I believe tomorrow we will have Mr. Wolfowitz, the Deputy Secretary of Defense, Mr. Armitage, Deputy Secretary of State, Brent Scowcroft, former National Security Adviser, Tony Lake, former National Security Adviser and Sandy Berger, former National Security Adviser.

Vice Chairman SHELBY. Will we start at ten?

Chairman GRAHAM. You'll start at 10:00 and, assuming that the stars line up properly and we can accomplish this, our goal would be to complete the first panel, which will be Mr. Wolfowitz and Mr. Armitage in approximately three hours, have a break and then return at 2:30 and have the second panel run another—I'm corrected. The second panel's going to start at two o'clock so that we can try to finish at approximately 5:00 with both panels.

Ms. HILL. That's correct.

Chairman GRAHAM. Are we at a point, Ms. Hill, we can comment on Friday yet?

Ms. HILL. I think we're still engaged in ongoing discussions regarding Friday.

Chairman GRAHAM. Okay. Thank you, Senator.

The hearing is adjourned.

[Whereupon, at 3:10 p.m., the hearing was adjourned.]

JOINT COMMITTEE HEARING ON THE VIEWS OF CURRENT AND FORMER SENIOR POLICYMAKERS ON THE INTELLIGENCE COMMUNITY'S COUNTERTERRORIST EFFORTS IN REVIEW OF THE EVENTS OF SEPTEMBER 11, 2001

THURSDAY, SEPTEMBER 19, 2002

U.S. SENATE SELECT COMMITTEE ON INTELLIGENCE AND HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE,

Washington, DC.

The committees met, pursuant to notice, at 10:25 a.m., in room 216, Hart Senate Office Building, the Honorable Bob Graham, chairman of the Senate Select Committee on Intelligence, presiding.

Senate Select Committee on Intelligence members present: Senators Graham, Shelby, Levin, Rockefeller, Feinstein, Durbin, Bayh, Edwards, Mikulski, Kyl, Inhofe, Hatch, DeWine and Lugar.

House Permanent Select Committee on Intelligence members present: Representatives Goss, Bereuter, Castle, Boehlert, Gibbons, LaHood, Hoekstra, Chambliss, Everett, Pelosi, Bishop, Harman, Roemer, Reyes, Boswell, Peterson and Cramer.

Chairman GRAHAM. I call the hearing to order. Welcome to this, the second public hearing by the joint inquiry committee into the Intelligence Community's performance before, during and since the attacks of September the 11th.

At the outset I would like to make an announcement about tomorrow. We will have a hearing, and it will probably include a 10:00 morning and 2:00 or 2:30 afternoon session. The subject will be the Malaysia hijackers. We will have a staff report, which is available to be read in both the Hart offices of the Senate subcommittee and at the Capitol offices of the House committee. It is in the process of being declassified. As of 10 o'clock, that process had not been completed, but the classified version is available now. It has been for the past 2 weeks. The declassified version hopefully will be available shortly.

We will have three witnesses representing the CIA, the FBI. Each of them had a particular role in the events that surround the Malaysia hijacking aspect of the September 11 tragedy.

We will have designated questioners for that hearing. The designated Senate Democratic questioner will be Senator Levin. At this time I do not know who the other three questioners will be.

Is there any question relative to tomorrow's schedule?

I again would like to express our joint appreciation for the excellent presentations that were made in yesterday's hearings by representatives of the families of the victims of September 11. Their powerful testimony, probing questions underscored the reason for this inquiry, to ensure that our government is better prepared to fight the threat of terrorism and to avoid repetition of last year's tragedies at the World Trade Center, the Pentagon, and that field in Pennsylvania.

We remain at risk for the very same terrorist organizations. It is our responsibility, as well other important parts of the Federal, State and local governments, to reduce their threat to our homeland.

I would also like to express my appreciation for the outstanding presentation made yesterday by our professional staff under the leadership of Eleanor Hill. Ms. Hill's compelling presentation of the early findings of our inquiry raised many questions, some of which will be posed to witnesses today, and those questions are: how much of a priority has been given within our government to fighting terrorism, particularly since the end of the Cold War; why was there not more attention to the possibility of a terrorist attack on the homeland of America; did the United States Government understand the gravity of the threat of terrorism; and did the Intelligence Community provide adequate warnings to policymakers; based on these assessments, what reforms to the Intelligence Community would you recommend? These are a few of the important questions of our inquiry. We will be addressing these at this and future hearings.

Today we will hear from two panels of distinguished witnesses who will describe for us how well the Intelligence Community has discharged its duty to support senior policymakers. As active consumers of intelligence, these individuals are uniquely qualified to help us determine whether senior policymakers have been well served by the Intelligence Community. In other words, are the senior leaders of our government receiving timely and relevant information, particularly regarding terrorism?

We will also seek to learn from these individuals about the overall direction of the United States Government's effort against terrorism and the efforts that have been undertaken by the current and former administration to assure that the Intelligence Community has had the leadership and resources necessary to focus on this escalating threat.

Deputy Secretary of State Richard Armitage and Deputy Secretary of Defense Paul Wolfowitz will testify before the committee this morning, and we welcome them.

This afternoon the committee will hear from three former national security advisors to the President: General Brent Scowcroft, national security advisor in the Ford and first Bush administration; Dr. Anthony Lake, national security advisor during the first term of the Clinton administration; Mr. Sandy Berger, national security advisor in the second term of the Clinton administration.

Three lead questioners, one from the Senate and two from the House, will ask questions of the witnesses. Senator Rockefeller will take the lead from the Senate side. Representatives Boswell and Bereuter will take the lead from the House side. Other Members will be recognized to ask questions in the order in which they have arrived at the hearing.

We must conclude the first panel by 1 p.m., so some questions may need to wait until this afternoon's session.

Before calling upon our witnesses, I would ask if there are any opening statements from our co-Chair Congressman Goss or from Congresswoman Pelosi.

Chairman GOSS. No, thank you, Mr. Chairman.

Ms. PELOSI. No, thank you, Mr. Chairman.

Chairman GRAHAM. Thank you.

We are honored to have with us this morning Deputy Secretary of State Richard Armitage and Deputy Secretary of Defense Paul Wolfowitz. Mr. Armitage was sworn in as Deputy Secretary of State on March 26, 2001. He previously served our country in senior positions in the Department of State and the Department of Defense, and on the staff of our former colleague Senator Bob Dole of Kansas. From 1993 until his return to government service last year, he had his own business and public policy consulting firm.

Dr. Wolfowitz was sworn in on March 2, 2001 as the 28th Deputy Secretary of Defense. This is his third tour of duty in the Pentagon. He also served in the State Department and was our Nation's Ambassador to Indonesia. For the 7 years prior to his return to government service in 2001, Dr. Wolfowitz was dean of the Paul H. Nitze School of Advanced International Studies at the Johns Hopkins University.

Each of our committees has adopted a supplemental rule for this joint inquiry that all witnesses will be sworn. I would ask the witnesses to rise at this time.

[Witnesses sworn.]

Chairman GRAHAM. Thank you.

Mr. Armitage, welcome, and we look forward to your testimony.

[The prepared statement of Mr. Armitage follows:]

Testimony for Deputy Secretary of State Richard Armitage
Hearing Before the Joint Intelligence Committee
19 September 2002

This year on September 11th, I had the opportunity to hold a commemoration ceremony for State Department employees – a small remembrance for our Department and our posts overseas. It was a difficult day for us all, as Americans and just as human beings. But it was also a difficult day for us as government employees. First, we all heard the explosion at the Pentagon and we knew those people – they were our colleagues and our friends.

But we all felt this personally in another way, as well. Every person who works at the Department of State is in the service because we believe that this nation, our people and our ideals are worth protecting and are worth promulgating in the world. Just as our men and women in uniform risk their lives every day, the employees at the Department of State put their lives on the line – and we do it to prevent such tragedies from happening.

Every day, we hear the echo of September 11th and we feel the impact of the more than 3,000 killed, but we also think of the sacrifice of members of our Department of State family who have died for this nation. We think of Foreign Service Officer Barbara Green and her teenaged daughter, Kristin, who were killed in terrorist attacks in Islamabad in March. We think of our employees -- American, Kenyan and Tanzanian – who perished in the al-Qaida attacks on our embassies in 1998. Far too many of our officers have died at the hands of terrorists in the last three decades.

So, if you ask the question, are we satisfied that we did all we could have to prevent the attacks on 9/11 from happening? The answer is, of course, no. Because they did happen. We are in business to promote this nation, but also to protect it and all its citizens, at home and abroad. Obviously, we did not succeed on September 11th. I for one welcome this Committee's efforts to examine why we failed and to help us put into place the measures to prevent this kind of failure from happening again. We all, all of us who serve in my Department and in public service, are motivated by the desire to do all that is humanly possible to prevent such an attack from ever recurring.

Having said that, can I tell you that the reason this happened to us is that people were doing a bad job? Can I tell you that we will punish those who failed, fix it, and know that this will never happen again? I cannot tell you that; to do so would be dishonest, at best. As Eleanor Hill told you yesterday, there is no question that we could have done better; and I believe we are doing better. And there are more improvements we could and should and will be making. Again, we appreciate the assistance our partners in Congress and on the staff of this Committee are offering us in that regard. But I simply cannot guarantee that we could prevent this from ever happening again; no one can. No one should. Let me explain why.

Before September 11th, our intelligence on the threat from al-Qaida was excellent – at a strategic level. In the summer of 2001, we made several key policy changes at the

Department of State. In brief, we demarched the Taliban and demanded unequivocally and authoritatively that they cease support for terrorism; we told them we would hold them responsible for attacks perpetrated by Afghanistan-based terrorists. We resumed material assistance to the forces of the Northern Alliance. And we fundamentally shifted the focus of our policy in South Asia to counter-terrorism. These actions were not taken in a vacuum: they were based on the intelligence reporting we were getting at the time. Basically, we knew that bin Laden had the means and the intent to attack Americans – both at home and abroad. We knew that the Taliban was not only sheltering but effectively aiding and abetting him. And we knew that we needed to act to change this equation, and to act immediately. We knew the urgency of the threat. Our strategic intelligence continues to be excellent.

What we did not know was at a tactical level. We did not know exactly what target al-Qaida intended to attack and how and when. The Department of State analysis in the immediate aftermath of the attacks, the so-called "culpability cable," found that the intelligence community had linked two of the hijackers to al-Qaida, had transmitted that information to the Department of State's system for alerting consular officers on the 23rd of August, 2001. The next day, every consular office in the world had the information via our TIPOFF system that these individuals were a concern, but by that time, they had already received visas and were in the United States. If we had had the information sooner, it is reasonable to believe these two criminals would never have entered the country in the first place. If we had had these two pieces to the jigsaw puzzle in advance, could we have seen the whole picture and prevented the attacks? Perhaps. But I don't believe that is a question we will be able to answer with any certainty.

We have, however, taken steps to improve information sharing within the intelligence community, including our diplomatic reporting from overseas. We had some track record of improvement in information sharing with the FBI and law enforcement following the attacks on our embassies in 1998; we have put in place measures to improve that cooperation. But our level of interaction – including with local law enforcement – is still not where it needs to be. The channels for sharing information are not well-established. That is a function of the past legal framework, changed by the Patriot Act, a function of the historical record on such cooperation, and a function of culture. This will take time and effort to change. Our coordination with the CIA was good before 9/11, but it is better now. In addition to increasing the numbers of meetings and formal liaison positions between our staff and leadership, we are also trading a much higher volume of information. CIA contributions to our TIPOFF database, for example, have increased by 450 percent since 9/11. Again, we still need to improve the process for sharing and to increase the amounts of information shared, but the channels do exist and are being used.

Probably the most dramatic improvement in our intelligence collection and sharing has come in bilateral cooperation with other nations – those we considered friendly before 9/11, and some we considered less friendly. This is a marked change, and one that I believe results not just from collective revulsion at the nature of the attacks, but

also the common recognition that such groups present a risk to any nation with an investment in the rule of law.

Streamlining information-sharing and improving tactical intelligence – the actual penetration of terrorist cells – will continue to be challenges for the US government and for other nations, as well. A particular challenge for the Department of State will continue to be to how to comb through hundreds of thousands of visa applications looking for a small number of terrorists in a way that doesn't estrange us from the rest of the world. One of the great competitive advantages this nation has always had is the robust exchange of people and brain power from other nations. We simply cannot afford to lose that openness.

The Department of State has long focussed its energy on improving our visa process to protect national security while continuing to capitalize on our ability to attract visitors, foreign workers, and new immigrants. In little more than a decade, we have gone from keeping adverse information about potential visa applicants on index cards, to diskettes, to real-time information available on the desktop computer of every consular officer in the world. But we still lack the capacity to quickly distinguish the dangerous applicants from the desirable, and we must fix this. We must fix this by enhancing the quality of the underlying information from the intelligence community and our consular officers, but also by continuing to streamline our coordination.

I believe that we do have important successes, although it will always be difficult to give you metrics. Unfortunately, when it comes to the threat of terrorism, we are in the position of measuring our success by what has not happened. Consider, for example, that on this September 11th, we closed several of our missions around the world, including in Djakarta, based on credible information about planned attacks. Did we actually prevent an attack on that day? We have no way of knowing for certain. But our quick analysis and action in that case may well have saved lives. Unfortunately, collecting, evaluating and acting on tactical intelligence about terrorists will continue to be difficult. After all, we have to be vigilant and cautious at all times, and evaluate well every single one of the thousands of threat warnings we get every week. We have to be right, all the time, in order to prevent an attack. And the terrorists only need to be right once.

TESTIMONY OF RICHARD L. ARMITAGE, DEPUTY SECRETARY OF STATE, DEPARTMENT OF STATE

Mr. ARMITAGE. Thank you, Mr. Chairman. If you will allow me just to submit my testimony for the record, the purpose of this hearing is for you all to ask questions. The public wants questions asked, we are going to do our best to give you some answers. So I would just like to make three points, if I might.

The first is one that is a question that was not asked in the letter that you kindly sent to Secretary Powell and Secretary Rumsfeld; that is, are we satisfied that we did everything we could do to prevent 9/11 from happening? It is implicit in these hearings, the question I want to pose explicitly, and the answer to that is when you see 3,000 of your brothers and sisters die, when you witness the compelling testimony yesterday, people sitting in the audience holding pictures of their loved ones, no one can say that they were satisfied no matter how splendidly any individual thinks that they were doing their job, and no matter thus far, that I have not been able to ascertain, a single point of failure in the system.

This is not to say that we just sat back for the 9 months or so from the time the administration came in until this tragedy occurred. I will speak, obviously, from the Department of State's point of view. As was noted yesterday by Ms. Hill, the strategic intelligence was not bad. In fact, it was good enough for us to take several steps. We issued, between January and September, nine warnings, five of them global, because of the threat information we were receiving from the intelligence agencies in the summer when George Tenet was around town literally pounding on desks saying, something is happening, this is an unprecedented level of threat information. He didn't know where it was going to happen, but he knew that it was coming.

The strategic information was sufficient to allow us to go out to four specific posts with warnings, and let me be clear, this does not mean we tell our people in the embassy to button up. We are required because of our no dual standard or policy to inform every American who is going to travel to X country and every American that we have registered in that country by e-mail, by consular bulletin, telephonic notification, by bulletins in hotels, et cetera. I make this point because it behooves all travelers to make sure what we long requested that they do; that is, check in with the U.S. Embassy whether you are a visitor or permanent resident.

Second, the administration, I think, as you will see through your questions in their—I believe the first Deputies meeting after Paul and I were both confirmed, set off against al-Qa'ida. As you will see in the questions today, we just didn't want to roll back, we realized that we were in a war. And you will see that through the testimony.

Finally, something that I don't quite know how to verbalize. It is this: I mentioned that we were able to warn some of our embassies. We did it again last week, as you saw, particularly in Southeast Asia, because of specific and, we believe, credible information, and in some cases we buttoned them up, we closed them, we kept people at home. Did we save any lives? I don't know. I hope so. Last summer when we did the same thing. Did we save any lives? I don't know. I hope so.

That is the point I want to make, is, for the Department of State, the metrics to define success in many aspects of this war is in things that didn't happen, things that were avoided. So I guess another way of saying that is that your administration and successive administrations have to be right every time, every single time. The terrorists only have to be right once.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Mr. Secretary.

Secretary Wolfowitz.

[The prepared statement of Mr. Wolfowitz follows:]

Prepared Testimony of Deputy Secretary of Defense Paul Wolfowitz
For the Senate Select Committee on Intelligence and
the House Permanent Select Committee on Intelligence:
Joint Inquiry Hearing on Counterterrorist Center Customer Perspective
September 19, 2002

Chairman Graham, Chairman Goss, and Members of these Committees: You have long provided our country strong leadership and bipartisan support, especially now as America wages its war against terrorism. You demonstrate an example that America's security concerns transcend party or politics. I appreciate the opportunity to discuss with you today some Defense Department perspectives on the very important role of intelligence. I will keep my comments brief, as I believe my primary purpose today is to respond to your particular questions.

Let me first say that our thoughts and prayers are with the families of the victims of last September's attacks, some of whom testified before members of Congress yesterday. Last week, on the anniversary of the Pentagon attack, I was privileged to take part in a ceremony honoring those men and women who have labored so diligently and tirelessly over the last year to rebuild the Pentagon. I told them that their rebuilding of this symbol of America honored all those who died in the war against terrorism—those who died at the Pentagon, in New York, in Pennsylvania, and those who have died and are fighting for us now on frontlines around the world in this war against terrorism. I was able to meet with some of the family members; and while they, too, rejoiced in the outward healing that has taken place at the Pentagon since that day, it was all too evident that there is a hole in their hearts and many others that will never heal, and we grieve with them in their loss. But, seeing these family members whose lives were so fundamentally changed one year ago, I think, served to renew the commitment of each person who works in the Pentagon—military and civilian—to carry out the Department's mission in this war we wage against terrorism.

Yesterday, before a different committee on Capitol Hill, Secretary Rumsfeld addressed a dimension of this war against terrorism, referring to valuable intelligence information we already possess. He referred to President Bush, who said last week at the UN: "We know that Saddam Hussein pursued weapons of mass murder even when inspectors were in his country. Are we to assume that he stopped when they left?" The Secretary concluded, "To the contrary, knowing what we know about Iraq's history, no conclusion is possible except that they have and are accelerating their WMD programs."

Secretary Rumsfeld went on to observe that there are many now who are asking hundreds of questions about what happened on September 11th—poring over thousands of pages of documents, and asking who knew what, when, and why they didn't prevent that tragedy. He concluded, "I suspect that, in retrospect, most of those investigating 9/11 would have supported preventive action to pre-empt that threat, if it had been possible to see it coming."

He went on to make the point that if one were to compare the scraps of information the government had before September 11th to the volumes we have today about Iraq's pursuit of

WMD, Saddam Hussein's history of aggression and hostility toward the United States, and factor in our country's demonstrated vulnerability after September 11th—the case the President made should be clear.

The Secretary then added, "we cannot go back in time to stop the September 11th attack. But we can take actions now to prevent some future threats." Of course, that is precisely why we are here today—to examine how we may all work together to prevent future threats to our nation.

From the beginning, President Bush emphasized that the United States would fight this war using every element of national power—from diplomatic and law enforcement to intelligence and military elements. Certainly, one of the most important elements of national power, one we rely on today to help us prevent future threats, is the U.S. intelligence community. As evidenced by this hearing, these Committees are well aware of the fundamental importance of intelligence to our national security efforts, and have long been dedicated to providing valuable bipartisan support for intelligence-related programs.

Four years ago, I was honored to serve on the Rumsfeld Commission, which was charged with reporting to Congress on its assessment of the ballistic missile threat to the United States. Of course, one of the underlying focuses of our study was intelligence, as a look at such a threat would have been incomplete without considering our intelligence situation. When the Commission released its report in 1998, its nine commissioners—an almost even mix of Democrats and Republicans, holding a wide range of views—unanimously concluded that "U.S. analyses, practices and policies that depend on expectations of extended warning of deployment be reviewed and, as appropriate, revised to reflect the reality of an environment in which there may be little or no warning." While this conclusion came out of an assessment geared toward the ballistic missile threat, it was understood by each commissioner that the conclusion was applicable to all intelligence-related issues.

This was an understanding, I think, shared by those with whom we presented our findings, since members of Congress subsequently requested an Intelligence Side Letter, which elaborated on the Commission's intelligence concerns and made recommendations for change. First, according to the Side Letter, it was evident to all commissioners that resources for intelligence had been cut too deeply and that the United States was entering a period in which the intelligence community was going to be seriously challenged to meet its foremost task—preventing surprise. Second, one of the primary weapons in the endless struggle against surprise is knowing what our enemies don't want us to know. U.S. intelligence capabilities needed to succeed in this task, the letter concluded, were not as robust as they needed to be. Third, when there is more ambiguity in the intelligence material, the system becomes more dependent on analytic resources to discern the potential for surprise. The letter highlighted that in methodological approach, analytic depth and presentation to users, the intelligence community was in a degraded situation.

Following these conclusions, Congress responded with a significant increase in funding for intelligence in the FY1999 budget. Despite the best efforts of this Committee, however, the increases were not sustained in Fiscal Years 2000 or 2001. At the time of the attacks last

September, the Department was preparing a significant increase for intelligence in the FY2003 budget. After the attacks, this figure was doubled to the present proposal.

Lessons Learned from September 11th and its Aftermath

Before I outline some of the lessons drawn from September 11th and its aftermath, I would like to share with you a quote from Thomas Schelling's foreword to Roberta Wohlstetter's superb book, Pearl Harbor:

"Surprise, when it happens to a government, is likely to be a complicated, diffuse bureaucratic thing. It includes neglect of responsibility, but also responsibility so poorly defined or so ambiguously delegated that action gets lost. It includes gaps in intelligence, but also intelligence that, like a string of pearls too precious to wear, is too sensitive to give to those who need it. It includes the alarm that fails to work, but also the alarm that has gone off so often it has been disconnected. It includes the unalert watchman, but also the one who knows he'll be chewed out by his superior if he gets higher authority out of bed. It includes the contingencies that occur to no one, but also those that everyone assumes somebody else is taking care of. It includes, in addition, the inability of individual human beings to rise to the occasion until they are sure it is the occasion, which is usually too late. (Unlike the movies, real life provides no musical background to tip us off to the climax.)....The danger is not that we shall read the signals and indicators with too little skill; the danger is in a poverty of expectations, a routine obsessions with a few dangers that may be familiar rather than likely."

The expectation of the familiar must not guide us as we move forward. Rather the unfamiliar and the unlikely must be our new guides. With this in mind, let me discuss briefly some lessons from September 11th.

First, for past 50 years, US intelligence has concentrated on defeating external, nation-state threats. It is now clear that we must apply the same level of effort to non-state actors and threats that emanate from within our borders

Second, when people threaten openly to kill Americans, we should take them very seriously. That is true of Usama bin Laden and it is true of the regime in Baghdad. We must not assume that our enemies share our views about what is rational and irrational.

Third, we should not underestimate the skill of our enemies or their determination to conceal their activities and deceive us. They understand how we collect intelligence, how we are organized, and how we analyze information. Just like them, our intelligence services must constantly adapt and innovate. Thus, we have aggressive efforts underway to find new ways to discern terrorist "signals" from the background "noise" of society, but we must also recognize that enemies will deliberately create "noise" in the system in order to conceal the real signals.

Fourth, we must adapt our intelligence system to the information age. Old stovepipes must be broken down. A culture of compartmentation needs to be reconsidered. In all that we do, we must emphasize speed of exchange and networking to push information out to people who need it, when they need it, wherever they are.

Fifth, while we must always work to improve our intelligence we should never allow ourselves to believe that we can rely exclusively upon intelligence for our security. We should expect surprises and have capabilities that do not depend on perfect intelligence to defend the nation. As Secretary Rumsfeld observed yesterday, "We have had numerous gaps of two, four, six or eight years between the time a country of concern first developed a WMD capability and the time we finally learned about it."

Intelligence Transformation

Just as we are transforming the U.S. military, efforts are also underway that will ultimately result in the transformation of our intelligence posture.

Capabilities. Our current sources and methods have depreciated badly over the last decade. Sorely needed investments were postponed. Our budgets have been substantially increased as we are playing catch-up. There is no question that we need to recapitalize and introduce new sources of intelligence and novel methods of collecting and analyzing information. But our intelligence sources and methods have also been devalued by a culture of leaks through the Executive and Legislative Branches of government and a number of well-known espionage cases. Leaks and espionage have provided our adversaries, over time, with a very good picture of what we know and how we know it. One well-known instance involves the unauthorized disclosure of information that led Usama bin Laden to stop using a satellite phone that the U.S. had been monitoring. Once that information was out, we never again heard from his satellite phone.

Culture and Doctrine. A culture of excessive compartmentation will hinder our ability to defeat new threats. We need to facilitate greater sharing of information and collaboration with and between intelligence agencies, including law enforcement agencies, and analysts and collectors. Indeed, law enforcement agencies need to see their mission as prevention as much as apprehension. In many cases, our best hope of avoiding surprise will come from recognizing an ominous pattern in a mosaic of information that is collaboratively built. At the same time, it is true that compartmentation is necessary to prevent compromises of sources and methods.

Global terrorism now forces domestic and foreign intelligence systems to link together in order to prevent the enemy from finding a hiding place in the seam between these disciplines. It means that the executive and legislative branches have to work together to redefine the relationships and rules.

We must also accelerate the speed with which information is passed to policymakers and operators. We cannot wait for critical intelligence to be processed, coordinated, edited and approved – we must accept the risks inherent in posting critical information before it is processed.

We need to rethink the intelligence coordination process, whereby information is put through an analytic "filter" before it is passed on to policymakers. We need a more transparent process, one that gets alternative analyses up on the table quickly for policymakers to grapple with. We should not make the mistake of assuming that good intelligence analysis must arrive at

definitive or agreed conclusions.

Finally, we need to avoid making the mistake of thinking that intelligence estimates reached by consensus should routinely trump those of a lone dissenting voice. They don't.

During World War II, the United States and Britain assembled their best minds to crack the German code. These codebreakers, assembled at a place in England called Bletchley Park, defied the odds, accomplishing their vital mission faster than anyone expected. In doing so, they hastened the demise of Nazi Germany and the end of the war. As we seek to defeat terrorists and their supporters, our intelligence culture must renew the sense of urgency in collecting and mining and analyzing intelligence that inspired the codebreakers of Bletchley Park.

Organization. We need to continue to update a Cold War intelligence structure to better address 21st century threats. We are already taking steps to get our DoD house in order, and have proposed the creation of an Undersecretary of Defense for Intelligence (USD(I)) to streamline and integrate disparate DoD intelligence activities. The USD(I) is intended to provide the Department with a single staff office to oversee the various intelligence programs, and will support the existing relationshp between the DCI and DoD seniors and provide a focal point for securing timely and effective support for the DCI from the Defense intelligence establishment.

This change will permit us to accelerate a large number of actions that are already underway. As this Committee knows, many of them are very highly classified, but there are a number that I can mention here.

- Issuing new contingency planning guidance to ensure U.S. forces have up-to-date contingency and operational plans;
- Establishing a Joint Intelligence Task Force for Combating Terrorism (JITF-CT) at DIA to help enhance our terrorist threat warning and analysis capabilities and significantly enhance connectivity and sharing between DIA, the FBI, and the CIA;
- Standing up a capability (the Joint Counterintelligence Assessment Group), in collaboration with the FBI and DoJ, to better identify and track terrorists;
- Standing up force protection detachments (FPDs) in high threat in-transit areas;
- Supporting large increases in personnel and funding for DoD intelligence activities, to include HUMINT, SIGINT, and All-Source Analysis;
- Providing combat air patrol, security augmentation at airports, and support to U.S. Customs Service, Border Patrol, and Immigration and Naturalization Service along our borders and southern borders;
- Establishing a combatant command for homeland defense – U.S. Northern Command (NORTHCOM). NORTHCOM will focus on defending the people and territory of the U.S. against external threats and on coordinating the provision of U.S. military forces to support civil authorities.

We also need to address a relatively new problem, what I'll call "information discovery." Many agencies collect intelligence and lots of agencies analyze intelligence, but no one is responsible for the "bridge" between collection and analysis. Who in the intelligence community is responsible for tagging, cataloguing, indexing, storing, retrieving, and correlating data or for facilitating collaboration involving many different agencies? Given the volume of information that we must sift through to separate signal from noise, this function is now critical. We cannot neglect it.

There is much more that we can do to exploit the full benefits of new information technologies such as data mining and change detection, as well as the steadily decreasing cost of data storage. Partly because of the inescapable need for security of information, the intelligence community lags behind the private sector in its ability to tag and store massive amounts of data, and to mine that information to determine patterns. Again, a culture that discourages collaboration and the sharing of information forfeits these new technological advantages.

One more issue we must consider is how we consider "need to know." We need to break down the access to information so that those who need it, get access to it. It is interesting to recall that, before Pearl Harbor, an ultra-secret code-breaking operation, one of the most remarkable achievements in American intelligence history, an operation called "Magic," had unlocked the most private Japanese communications, but the operation was considered so secret and so vulnerable to compromise that the distribution of its product was restricted to the point that our field commanders didn't make the "need to know" list. But, it is easy to say in hindsight that this information should have been shared more widely. If it had been, and had been compromised as a result, we would have been asking ourselves why it was shared too widely.

Conclusion

In closing, I would emphasize three points. First, as I mentioned, the President has said that the United States would fight this war using every element of national power—from diplomatic and law enforcement to intelligence and military elements, with America's military power not necessarily the first option, but one of a vast array of national resources with which to fight. Certainly one of the most important elements in fighting this war of the shadows involves the U.S. intelligence community and its extraordinary capabilities. Whatever is done to reform or improve the intelligence community should do no harm to our current war effort.

Second, no matter how good intelligence gets to be, we will not win this war simply by going after individual terrorists. We must not only capture and kill terrorists, but we must drain the swamp in which they breed.

In February, 1998, Usama bin Laden published a "fatwa" declaring his intent to kill Americans, a fact that leads to my third conclusion: when our professed enemies declare that they intend to kill us, we must take them at their word, and prepare accordingly. We must avoid the temptation of believing the truth can only be found through classified sources. To do otherwise, despite warnings and signs, would indeed constitute a grave intelligence failure.

Secretary Rumsfeld testified yesterday to some of the signs and signals that now abound, saying that we are on notice. "Let there be no doubt, he said, "an attack will be attempted. The only question is when and by what technique. It could be months, a year, or several years. But it will happen.... If the worst were to happen, not one of us here today will be able to honestly say it was a surprise. Because it will not be a surprise," he said. "We have connected the dots as much as it is humanly possible—before the fact. Only by waiting until after the event could we have proof positive. The dots are there for all to see. The dots are there for all to connect. If they aren't good enough, rest assured they will only be good enough after another disaster—a disaster of still greater proportions. And by then it will be too late."

The President has made clear we will not wait until it is too late and that the one option we don't have is to do nothing. We cannot afford to wait, as the Secretary put it so well, "until we have a smoking gun. For a gun smokes after it's been fired."

We appreciate this Committee's dedication to accomplish meaningful, positive and constructive measures with regard to America's intelligence community. We appreciate your continued bipartisan leadership and guidance. And we look forward to working with you in your fundamentally important task of looking to the future as we improve America's intelligence capability.

TESTIMONY OF PAUL D. WOLFOWITZ, DEPUTY SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE

Mr. WOLFOWITZ. Chairman Graham, Chairman Goss, members of this committee, you have long provided our country strong leadership and bipartisan support, especially now as we wage this war against terrorism. You demonstrate by example that America's security transcends party or politics. I appreciate the opportunity to discuss with you today some Defense Department perspectives on the very important role of intelligence. I will keep my comments brief, as I believe my primary purpose today is to respond to your particular questions.

Let me first say that our thoughts and prayers are with the families of the victims of last September's attacks. Last week, on the anniversary of the Pentagon attack, I was privileged to take part in a ceremony honoring those men and women who labored so diligently and tirelessly over the last year to rebuild the Pentagon, and I was able on that occasion to meet with some of the family members of the victims. And while they, too, rejoiced in the outward healing that has taken place in the Pentagon since that day, it was all too evident that there is a hole in their hearts and many others', a hole that will never heal, and we grieve with them at their loss. But seeing those family members whose lives were so fundamentally changed 1 year ago served also to renew the commitment of each person who works in the Pentagon, military and civilian, to carry out our Department's mission in this war that we wage to prevent future acts of terrorism.

Yesterday, before a different committee in the Congress, Secretary Rumsfeld addressed a dimension of this war against terrorism, referring to valuable intelligence information we already possess. He referred to President Bush, who said last week at the United Nations, and I quote, "We know that Saddam Hussein pursued weapons of mass murder even when inspectors were in his country. Are we to assume that they stopped when they left?"

The Secretary concluded to the contrary. Knowing what we know about Iraq's history, no conclusion is possible except that they have and are accelerating their WMD programs.

Secretary Rumsfeld went on to observe that there are many now who are asking hundreds of questions about what happened on September 11, poring over thousands of pages of documents, and asking who knew what, when, and why they didn't prevent that tragedy. And he concluded, and I quote, "I suspect that in retrospect most of those investigating September 11 would have supported preventive action to preempt that threat if it had been possible to see it coming."

He went on to make the point that if one were to compare the scraps of information that the government had before September 11 to the volumes that we have today about Iraq's pursuit of weapons of mass destruction, its history of aggression and hostility towards the United States, and factor in our country's demonstrated vulnerability after September 11, the case that the President made should be clear.

And the Secretary then added, we cannot go back in time to stop the September 11 attack, but we can take actions now to prevent some future threats. And, of course, that is precisely why we are

here today, to examine how we can all work together to prepare for future threats to our Nation.

From the beginning, President Bush emphasized that the United States would fight this war using every element of national power, from diplomatic and law enforcement to intelligence and military elements, and certainly one of the most important elements of national power, one that we rely on every day now to help us in this war on terrorism, is the U.S. Intelligence Community. As evidenced by this hearing, these committees are well aware of the fundamental importance of intelligence to our national security and have long been dedicated to providing bipartisan support for critical intelligence programs.

Four areas ago I was privileged to serve on the Rumsfeld Commission, which was charged with reporting to Congress on its assessment of the ballistic missile threat to the United States. One of underlying focuses of our study was, of course, intelligence. When the commission released its report in 1998, its nine Commissioners, which were an almost even mix of Democrats and Republicans holding a very wide range of views on policy, unanimously concluded that U.S. analyses, and I quote, "practices and policies that depend on expectations of extended warning of deployment be reviewed and, as appropriate, revised to reflect the realty of environment in which there may be little or no warning."

Well, that conclusion came out of an assessment geared toward the ballistic missile threat. It was understood by each Commissioner that the conclusion was applicable to all intelligence-related issues. This was an understanding, I think, shared by those to whom we presented our findings, since Members of Congress subsequently requested an intelligence side letter that elaborated on the Commission's concerns and recommended some—had some recommendations for change.

First, according to the side letter, it was evident to all of the Commissioners that resources for intelligence had been cut too deeply, and that the United States was entering a period in which the Intelligence Community was going to be seriously challenged to meet its foremost task, preventing surprise.

Second, one of the primary weapons in the endless struggle against surprise is knowing what our enemies don't want us to know. U.S. intelligence capabilities needed to succeed in this task, the letter concluded, were not as robust as they needed to be.

Third, when there is more ambiguity in the intelligence material, the system becomes more dependent on analytic resources to discern the potential for surprise. The letter highlighted that in methodical approach, analytic depth and presentation to users, the Intelligence Community was in a degraded situation.

Following those conclusions, Congress responded with a significant increase in funding for intelligence in the fiscal year 1999 budget. Despite the best efforts of this committee, however, these increases were not sustained in fiscal years 2000 or 2001. At the time of the attacks last September, the Defense Department was preparing a significant increase for intelligence in the fiscal year 2003 budget, and after the attacks this figure was doubled to the present proposal.

Mr. Chairman, members of the committee, in my prepared statement, which I would encourage you to read, there is a very impassioned passage from Thomas Schelling's foreword to Roberta Wohlstetter's superb book about Pearl Harbor, Warning and Surprise, and it underscores that some of the difficulties that we are analyzing today about our ability to discern intelligence, to find signals in noise, to deal with our—projecting our own assumptions about rationality on enemies that have different assumptions about rationality are problems that go back in practically every comparable incident in history and will probably be endemic to the intelligence process. We can work at reducing them, but we can't eliminate them.

One of the most telling lines from Schelling is that the danger, he said, is in a poverty of expectations; a routine obsession with a few dangers, that that may be familiar rather than likely. The expectation of the familiar must not guide us as we move forward. Rather, the unfamiliar and the unlikely must be our new guides.

With this in mind, let me discuss briefly some lessons from September 11. First, for the past 50 years, U.S. intelligence has concentrated on defeating external nation-state threats. It is now clear that we must apply the same level of effort to nonstate actors and threats that emanate from within our borders.

Second, when people threaten openly to kill Americans, we should take them very seriously. That is true of Usama bin Ladin, and it is true of the regime in Baghdad. We must not assume that our enemies share our views about what is rational or irrational.

Third, we should not underestimate the skill of our enemies or their determination to conceal their activities and deceive us. They understand how we collect intelligence, how we are organized and how we analyze information. Just like them, our intelligence services must constantly adapt and innovate. Thus, we have aggressive efforts under way to find new ways to discern those terrorist signals from the background noise of our society, but we must also recognize that enemies will deliberately create noise in our system in order to conceal their real signals.

Fourth, we need to adapt our intelligence system to the information age. Old stovepipes are being broken down and must be broken down. The culture of compartmentation is being reconsidered and must be reconsidered. In all that we do, we must emphasize speed of exchange and networking to push information out to people who need it, when they need it, wherever they are.

Fifth, while we must always work to improve our intelligence, we should never allow ourselves to believe that we can rely exclusively upon intelligence for our security. We should expect surprise and have capabilities that do not depend on perfect intelligence to defend the Nation.

As Secretary Rumsfeld observed yesterday, we have had numerous gaps of 2, 4, 6 or 8 years between the time a country of concern first developed a weapons of mass destruction capability and the time we finally learned about it.

Efforts are under way that will ultimately result in the transformation of our intelligence posture. Our current sources and methods depreciated badly over the last decade, and sorely needed

investments were postponed. Our budgets have been substantially increased, but we are playing catch-up.

There is no question that we need to recapitalize and introduce new sources of intelligence and novel methods of collecting and analyzing information, but our intelligence sources and methods have also been devaluated by a pattern of leaks from the executive and legislative branches of government and through a number of well-known espionage cases. Leaks and espionage have provided our adversaries over time with an unfortunately good picture of what we know and how we know it. One well-known incident involves the unauthorized disclosure of information that led Usama bin Ladin to stop using a satellite phone that we had been monitoring. Once that information was out in public, we never heard again from that satellite phone.

Culture and doctrine. A culture of excessive compartmentation will hinder our ability to defeat new threats. We need to facilitate greater sharing of information and collaboration with and between intelligence agencies, including law enforcement agencies and analysts and collectors. At the same time, it is true that compartmentation is necessary to prevent compromise of sources and methods.

Global terrorism now forces domestic and foreign intelligence systems to link together to prevent the enemy from finding a hiding place in the seam between our disciplines. It means that we have to work together between the executive and legislative branches, within the executive branch, with foreign intelligence services to redefine the relationships and the rules. And we must also accelerate the speed with which information is passed to policymakers and operators.

Finally, we need to avoid the mistake of thinking that intelligence estimates reached by consensus should routinely trump those of a lone dissenting voice. They do not. During World War II, the U.S. and Britain assembled our best minds to crack the German code. Those code breakers assembled in England at a place called Bletchley Park defied the odds of accomplishing their vital mission faster than anyone expected. In so doing, they hastened the demise of Nazi Germany and the end of the war. As we seek to defeat terrorists and their supporters, our intelligence culture must renew that sense of urgency in collecting and mining and analyzing intelligence.

With respect to organization, we need to continue to update the Cold War intelligence structure to better address 21st century threats. We are already taking steps to get our Defense Department house in order, and have proposed to the Congress the creation of an Under Secretary of Defense for Intelligence to streamline and integrate disparate DOD intelligence activities. That Under Secretary is intended to provide the Department with a single staff office to oversee the various intelligence programs and will support the existing relationship between the Director of Central Intelligence and senior DOD officials and provide a focal point for securing timely and effective support for the DCI from the defense intelligence establishment.

This change will permit us to accelerate a large number of actions that are already under way. As members of this committee

know, many of them are very highly classified, but there are a number that are mentioned in my statement. That is there for the record.

We also need to address the relatively new problem, what I would call information discovery. Many agencies collect intelligence, and lots of agencies analyze intelligence, but no one is responsible for the bridge between collection and analysis. For tagging, cataloging, indexing, storing, retrieving and correlating data or facilitating collaboration involving many different agencies, given the volume of information that we must sift through to separate signals from noise, this function is now critical.

There is much that we can do to exploit the full benefits of new information technologies, such as data mining, and change detection, as well a steadily decreasing cost of data storage, but partly because of the inescapable need for security of information, the intelligence world lags behind the private sector in its ability to tag and store massive amounts of data and to mine that information to determine patterns.

And one more issue we must consider is how we consider need to know. We have to break down the access to information so that those who need it get access to it. It is interesting to recall that before Pearl Harbor, the ultra secret code-breaking operation called Magic, one of the most remarkable achievements in American intelligence history, had unlocked the most secret Japanese communications, but that operation was considered so secret and so vulnerable to compromise that the distribution of its product was restricted to the point that our field commanders in Pearl Harbor didn't make the need to know list. But it is easy to say in hindsight that this information should have been shared more widely. If it had been, and if it had been compromised as a result, we would have been asking ourselves why it was shared so widely.

In closing, I would like to emphasize three points. First, as I mentioned, the President has said that the United States would fight this war using every element of national power, from diplomatic and law enforcement to intelligence and military elements, with America's military power by no means necessarily the first option, but one of the vast array of national resources with which to fight.

Certainly one of the most important elements in fighting this war of the shadows involves the U.S. Intelligence Community and its extraordinary capabilities. Whatever is done to reform and improve our Intelligence Community should not do harm to its contribution to the current war effort.

Second, no matter how good intelligence can be, we will not win this war simply by going after individual terrorists. We must not only capture and kill terrorists and break up individual plots, but we must drain the swamp in which terrorists breed.

In February of 1998, Usama bin Ladin published a fatwah declaring his intent to kill Americans, a fact which leads to my third conclusion. When our professed enemies declare that they intend to kill us, we should take them at their word and prepare accordingly. We must avoid the temptation of believing that the truth can only be found through classified sources. To do otherwise, despite warnings and signs, would indeed constitute a grave intelligence failure.

Secretary Rumsfeld testified yesterday to some of the signs of the signals that now abound, saying that we are on notice. Let there be no doubt, he said, an attack will be attempted. The only question is when and by what technique. It could be months, a year, or several years, but it will happen.

If the worst were to happen, not one of us here today will be able to honestly say it was a surprise, because it will not be a surprise. We have connected the dots, he said, as much as it is humanly possible before the fact. Only by waiting until after the event could we have proof positive. The dots are there for all to see. The dots are there for all to connect. If they aren't good enough, rest assured they will only be good enough after another disaster, a disaster of still greater proportions, and by then it will be too late. We cannot afford to wait, the Secretary put it, until we have a smoking gun, for a gun smokes only after it has been fired.

We appreciate this committee's dedication to accomplish meaningful positive and constructive measures with regard to America's Intelligence Community. We appreciate your continued bipartisan leadership and guidance, and we look forward to working with you in your important task of looking to the future to improve America's intelligence capability. Thank you.

Chairman GRAHAM. Thank you, Mr. Wolfowitz and Mr. Armitage. Excellent statements. We appreciate the significant contribution that you have been and are making to our Nation's security.

I would like to call upon Senator Rockefeller for the first round of questions.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Thank you, Secretary Armitage, Secretary Wolfowitz, for being here. Let me just say at the beginning what Eleanor Hill said yesterday; that is, it was not our Intelligence Community, it was not the FBI, it was not anybody else that did the killing at the World Trade Center, the Pentagon and in Pennsylvania. It was the terrorists. That is paramount.

Having said that, I would like to talk a little bit about perceived threats and ask some questions. According to the Department of State publication Patterns of Global Terrorism, there were 274 international terrorist attacks worldwide in 1998, reflecting that the number of attacks, in fact, had been decreasing and were at their lowest point since 1971.

If we measure the threat of terrorism by the number of Americans killed, and, of course, even one death is too many, including the attacks on our African embassies, 12 U.S. citizens died in 1998, 54 were killed in the proceeding 5 years. In 1999, five more Americans died. In 2000, another 19 died, 17 on the USS *Cole*.

These numbers are tragic, but they show a fairly persistent pattern over the past decade. Even with this consistent pattern of activity, George Tenet, who by most Americans, I think, is considered to be the person who runs intelligence in this country—we know that not to be true, I am going to discuss that—but the Director of Central Intelligence kind of evokes an image of real control. He was concerned enough, as both of you mentioned, particularly Secretary Wolfowitz, to mention in 1998 and tell his deputies, and then it was broadly disseminated within the Intelligence Commu-

nity, doesn't say beyond that in our report, that we are at war with al-Qa'ida.

So my first question is what did you think that meant, either or both of you? What did you think that meant? And what should have happened at that point, in your judgment?

The reason I ask that question, Secretary Wolfowitz, you talk a lot about things that must happen, things that cannot happen again, "we should be, we must do, we must make sure that such and such doesn't happen again." But specifically what did that mean, we are at war, to you, as you came into office? And what should have happened at that point, in your judgment?

Mr. WOLFOWITZ. I think it means that you plan for war. And, in fact, over the course of—from the time Secretary Armitage was sworn in, which I think was late March of 2001, which was when we finally had two deputies and could have a deputies committee, in fact, prior to that I believe even, national security advisor Dr. Rice had tasked her staff to begin preparing options for what this would mean.

And as you start to look at it, you realize that war against al-Qa'ida is something different than going after individual acts of terrorism or retaliating against individual acts of terrorism; that it really does involve all of the elements of national power; that it is not just something for the Intelligence Community alone; that, in fact, you can't go to war against al-Qa'ida without recognizing the role that the government of Afghanistan is playing. You can't go after the government of Afghanistan without recognizing the problems in your relationship particularly with Pakistan, but with other neighboring countries, and you can't get serious about this without looking at military options.

And when you start to look at military options, you have to think about something more than a one-off retaliation for an attack. That is the process that we were engaged in over the course of basically the summer of 2001. And, ironically enough, it led to a principals committee meeting in early September before the attacks that produced a recommendation that was not far off from what we ultimately implemented after September 11.

I would like to make one other point.

Senator ROCKEFELLER. I have 12 questions in 20 minutes.

MR. ARMITAGE. I will only add that where we—I think our story is pretty good on going after al-Qa'ida from April 30th on, after the first deputies meeting. However, where we went wrong, where we made a mistake, was that we didn't have the, first of all, a necessary baseline from intelligence on the global aspect and global possibilities of al-Qa'ida, number one. And, number two, although many of us, including Members of Congress, were saying the right words, I don't think that we really had made the leap in our mind that we are no longer safe behind these two great oceans, and even though we had the World Trade Center attack of 1993.

Senator ROCKEFELLER. When you came into office, did you both think, know that we were at war with al-Qa'ida?

Mr. ARMITAGE. I was briefed in January and February, leading to my hearings in March before the U.S. Senate. The term "at war" was, to my knowledge, not used. There was no question, though, that we were in a struggle with al-Qa'ida, and al-Qa'ida was the

very first thing that the administration took on at the deputies level.

Senator ROCKEFELLER. But you were aware that the DCI thought that we were at war?

Mr. ARMITAGE. I was aware of his comments.

Senator ROCKEFELLER. Yes. And did the Intelligence Community clearly warn you what al-Qa'ida was capable of doing, and that it sought to carry out a mass casualty attack on U.S. soil? Did you know that? Had you been informed of that by the Intelligence Community?

Mr. ARMITAGE. The Intelligence Community, as I recall, informed me, one, that we may have an explosion in Kenya from an explosive-laden aircraft. I do not specifically remember a mass casualty event.

However, there were discussions in INR in the State Department from information gleaned from the Intelligence Community that there was the possibility of a chem-bio attack, no location, no time, but that was being discussed.

Senator ROCKEFELLER. What did you two gentlemen perceive the threat to be?

Mr. ARMITAGE. I, in general, perceived the threat to be at our interests overseas, primarily in the Gulf, some in Southeast Asia, and most definitely in Israel. That is from my point of view and the Department of State.

Mr. WOLFOWITZ. I would say near term we perceived the threat to be overseas, as Secretary Armitage says. In the mid to longer term, we perceived the threat to be mass casualties in the United States as a result of chemical or biological or conceivably nuclear attack, and that is why, in the course of developing the Quadrennial Defense Review over the summer of 2001, we identified homeland security as the top priority for transformation.

Senator ROCKEFELLER. Did you take any steps with respect to reacting to these threats that the Clinton administration had not taken at that point in time? Because the Tenet warnings came out in 1998.

Mr. ARMITAGE. We increased, in INR, the number of analysts. We have 4 in general that look at terrorism and crime. We increased the number to eight. It has, since 9/11, been increased to 10. So that is a specific answer.

Mr. WOLFOWITZ. We undertook a number of steps in our development of the defense program to increase our capability to detect or respond to weapons of mass destruction attacks, and I believe there were a number of classified actions taken by other agencies.

Senator ROCKEFELLER. Anything specific you can tell us unclassified?

Mr. WOLFOWITZ. No, not with respect to classified actions. Specifics on what we did with respect to developing our own capabilities to respond, I can give you lots of detail for the record.

Senator ROCKEFELLER. Please do that.

Who, in fact, is responsible for assessing the risk of terrorist attack in the United States of America, and was any strategic assessment or other kind of assessment done when you came into office, both of you?

Mr. WOLFOWITZ. I think what you are putting your finger on, I think, to some extent is that we have certain divisions of responsibility between what the FBI and domestic law enforcement is responsible for and what the CIA is responsible for, and indeed limitations on what the CIA is allowed to do and collect domestically, which I think members of this committee are very familiar with. So there is a problem of where responsibility is assigned.

I am not aware of any specific assessment of what the threat was domestically.

Mr. ARMITAGE. I agree, sir.

Senator ROCKEFELLER. All right. Obviously we had had the 1993 World Trade Center incident and the whole series of other things, which Eleanor Hill delineated yesterday. So there were things going on in this country over a long period of time. The question was were they individually aggregated and taken to a higher level where they reached policymakers who said, oh, this is not just a matter of the international, but this is a matter of domestic?

So America's perception of threat here, as opposed to overseas, was not, you are saying, fully formed when you gentlemen took office?

Mr. ARMITAGE. I think that is a fair statement, but I would like to accompany it with the notation and the notice that when Mr. Bush was a candidate, he specifically spoke about homeland security, and he was drawing on a report that was actually commissioned by the U.S. Congress, the National Defense Panel Report, which spoke about homeland security being a new mission area, and the Pentagon is on top of that as far as I can see; and, second, that we recognized that we couldn't have a policy, certainly in South Asia, as early and—more broadly as early as the end of April when we had a deputies meeting and made decisions and gave instructions to not just roll back al-Qa'ida, but to go after and eliminate them.

Senator ROCKEFELLER. Thank you.

The Intelligence Community—this is sort of about what you were talking about, Secretary Wolfowitz—collects, analyzes and disseminates one kind of intelligence for civilian policymakers and another and different kind for the defense needs to shape our military forces and plan and execute military operations.

Many of our intelligence collection systems used to collect both kinds of intelligence. I mean, there is an overlap. And it is well known—no, in fact, it isn't well known generally out there in the country, but it is a fact that 85 percent of the money for intelligence is within or controlled by the Department of Defense. So it is important to understand the different needs, how they overlap, and how they do not, and what happens when there is a conflict between the civilian policy needs and military needs.

And to that I would just give you something to lop on. If Director Tenet foresaw a requirement to make a change because he needed to have something happen, but that change was not under his budget authority, would he have the ability to go into the Department of Defense and move the money he needed? Or is it the unwritten law that the Director of Central Intelligence, thought to be the controller of intelligence by most of our country, in fact usually loses when he goes up against the Secretary of Defense?

Mr. WOLFOWITZ. I don't think that describes the relationship. In fact, I think Secretary Rumsfeld and Director Tenet have a closer relationship than any previous Secretary of Defense and the DCI. And when these issues come up, this was true before September 11——

Senator ROCKEFELLER. I understand personal relationships. That is not the question I asked.

Mr. WOLFOWITZ. It is not a personal matter; it is a working relationship, it is a professional relationship. They meet regularly. These problems get resolved. We have frequently moved resources to address their needs.

But I think a fundamental point, too, here, Senator, related to a lot of these questions is this is not a game that we will ever win on defense; we will only win it on offense. And I believe that recognition came very early in this administration, and the recognition that going on offense was something that would be a very substantial exercise.

Senator ROCKEFELLER. Thank you.

Mr. Secretary?

Mr. ARMITAGE. Absolutely.

Senator ROCKEFELLER. Under the current structure I think it is fair to say that the Director of Central Intelligence, thought by the American people to control intelligence, doesn't. And I am not arguing that point, but I am raising it. I don't think there have been any recent Central Intelligence Directors who have really wanted to venture beyond their budget authority, and their budget authority is fundamentally 15 percent of the intelligence budget. This raises all kinds of questions about the relationship between the DCI, the DOD, which you say is very good. And I have been at the meetings when people have had their arms around each other and were working very well together, but it doesn't seem to work out necessarily to the best coordination of intelligence activities.

It seems to me, in fact, that the DCI lacks that authority and is not necessarily willing to take on a Secretary of Defense, who controls budgets and personnel. If there is any truth in either of your minds in this, does that, in your judgment, hinder the fight against terrorism?

Mr. WOLFOWITZ. Senator, I don't think it is a matter of taking on the Secretary of Defense. I think there are times when it would be helpful—and this is why we have proposed an Under Secretary of Defense for Intelligence—when the Director has a problem or when his subordinates have a problem, to be able to come to somebody below the level of the Secretary and get these problems sorted out.

When problems are elevated, my experience has been they have been resolved, and I don't think there are basic problems here that flow from some inability of the Director of Central Intelligence to get from the Department of Defense what they need.

But a basic point which the American people also expect is that these vast intelligence resources of ours will be made available to permit our military to win wars when they fight them. And the intelligence resources of the Defense Department have been absolutely critical in this campaign against terrorism.

Senator ROCKEFELLER. And I agree with what you have said, and I also note that in your testimony you talked about stovepiping, and you talked about the proposed new Under Secretary for Intelligence. And I would like to ask that question: how do you think that this is going to help bring clarity, succinctness, precision, sequential accuracy to the variety of 14 different intelligence agencies which exist but which have no sort of central command, even though the American people think that it is that way? How will this proposed new Under Secretary be able to bring clarity to the process of the gathering, dissemination, and strategic assessment of that intelligence?

Mr. WOLFOWITZ. I think the key to breaking down stovepipes is to bring them together at levels below the very top level of the government. When the only place they come together is at the Cabinet level, then inevitably there are going to be the walls and compartments that busy Cabinet officers don't have the time to break down.

Having an Under Secretary for Intelligence whose sole responsibility is overseeing those agencies and precisely looking at those compartments and stovepipes I think is a key to doing it. And the Rumsfeld Commission, looking at the ballistic missile threat, nine of us working part time were able to do an enormous amount in breaking down stovepipes, but it requires people who are focused on that issue and not distracted by many other things. That is what an Under Secretary of Defense for Intelligence will be able to do.

Senator ROCKEFELLER. Talking about stovepipes is something that the Intelligence Community and this committee have done for a very, very long time, and we have seen not much progress. So when you say getting people together at a lower level, I am pleased to hear that.

Could you elaborate a little bit on how you really break down a culture of non-communication of individual campuses spread around within a 3- to 6-mile radius of Washington, which all have their own cultures, their own memorial gardens, their own cafeterias, their own set of histories? I mean, it is an easy thing to talk about, a hard thing to do. How do you think this should be made to happen, Secretary Wolfowitz?

Mr. WOLFOWITZ. Let me try to split it in two different problems. I think, first of all, there is—before you get into the culture problem, there is just simple problems of compartmentation. One reason that the Rumsfeld Commission was able to break down a lot of stovepipes is that we had the authority to go into every compartment, and we could see that information in one compartment was something that people in another compartment needed to have and weren't getting.

That is not a culture issue, that is a—somebody with the oversight, the ability and the time to look into those compartments that can break them down.

You raise a bigger question, which is culture, and you don't change those things overnight, nor do you want to change them entirely. You need organizations with specialized capabilities. I think, though, we have seen a lot over just the last 12 months of agencies, including agencies that have not traditionally worked together—the

FBI, for example, has brought CIA analysts into the FBI. That is a rather radical change. How much it is changing the FBI? You have to ask the Director or the CIA Director.

Senator ROCKEFELLER. Let me use that statement to go into my final question. Regarding the FBI, from my point of view, I really question—I would like both of your responses on this—whether the FBI ought to be heavily involved in the intelligence business.

They are trained differently, their skill sets are totally different, their habits are different. Everything is different about them. They do a superb job at prosecuting and putting people in jail. But the intelligence function on a domestic basis—which raises serious questions of what would an alternative be, which is what we need to discuss—is something that I worry about a lot.

You indicated the FBI reported to you, but was the FBI really monitoring some of these domestic groups in a way which was satisfactory to you? Did they have the mindset, skill set to do that?

Mr. ARMITAGE. I am going to give you two answers. One is a perspective, Senator. I was involved in the setting up of the CTC in the mid-1980s. There has been a light year's difference between the FBI now and the FBI then.

But the direct answer to your question is, absolutely. The FBI must be more than an investigation and prosecutorial arm who comes in after an event. They have to be involved in the investigation and the monitoring. There is no way around it, nor should there be.

Senator ROCKEFELLER. My time is up. I thank you, gentlemen.

Chairman GRAHAM. Thank you, Senator Rockefeller.

Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. Gentlemen, good morning. Thank you for your initial statements and your responses thus far. Because of a change in the committee's schedule yesterday, I was not able to be here for a part of it that I expected to be. And I want to take a minute or two in my available questioning time to say something, and it is that I am concerned about the total preoccupation on intelligence failures. And that's the headlines, of course, and that was the theme of all day yesterday and in general.

Of course there are inadequacies, gaps, and deficiencies in intelligence collection and analysis. We all understand that very well. But what is not being focused upon are the failures in the law enforcement agencies and the other entities that could have averted terrorist acts and need to avert future terrorist attacks.

I have been amazed to find thus far there has been no place in the Federal Government where there was a responsibility for examining all the potential terrorist scenarios and then making plans to avoid them with the domestic agencies. I think most citizens would have assumed that capacity existed. I certainly, with some knowledge of the Federal structure, would have expected it existed. It apparently didn't.

It doesn't take too much imagination, it seems to me, to imagine that a commercial airliner would be used as a flying bomb. And we know from the committee's report yesterday, there were many indications this was being considered by al-Qa'ida—Tom Clancy had it as a part of one of his books, with an airliner being crashed into

the Capitol dome—and if it wasn't specifically assigned to an entity or an interagency group, it looks like it would have been done in the National Security Council. Now we have a homeland security director, and we know where the responsibility is placed and will be developed.

Gentlemen, I want to focus first on I guess, you, Secretary Armitage. I am generally aware of the recommendations for changes in the intelligence agencies within the Department of Defense. But looking at the State Department's own intelligence—internal intelligence capacity, INR, how do you think it interfaces? How has it interfaced in fact with the other collectors and analytical capabilities of the Federal Government, and what changes have been made or would you contemplate, would you recommend, Secretary Armitage?

Mr. ARMITAGE. Thank you. In INR we are primarily almost exclusively involved in analysis and not in gleaning intelligence. And I believe the excellent staff of this committee has determined that much of the analysis at INR was pretty damn good, number one. Number two, that means that primarily it's limited by the information end. So one might contemplate whether State itself wants to have a larger, sort of more active role in the gleaning of intelligence.

Now, primarily, the intelligence we get is open source, or comments of one embassy officer with some host country official or another, and the other is gleaned from open sources. And Paul was careful and I think right to draw our attention to that. We have put both INR and DS, Diplomatic Security agents with the Counterterrorism Center. This is good at breaking down the culture. It also helps us a bit. We have had before 9/11, and continue to have, FBI officers who serve in our Counterterrorism Center. In the main, I have to do a little more with the budget for INR. As I said, we've now got 10 analysts strictly devoted to terrorism, which is up from before, but it is clearly not sufficient. But the analysis they've given was judged, by your own Commission, to be pretty much on the mark.

Mr. BEREUTER. Secretary Wolfowitz, you generally quote the President, in the conclusions of your testimony this morning, as saying that every element of national power must be used against the terrorists—military, law enforcement, diplomatic intelligence. And I don't think anyone would dispute that.

Looking back at this small boat attack on the USS *Cole* in the previous administration, looking back and determining what was done at that point or not done, why—first of all, was there a military response planned to respond to the attack on the USS *Cole?* And if not, why not? Was there an expectation that the problems of al-Qa'ida and the Taliban would be handled by the intelligence agencies or covert operations? Why was there no attack? And was there any military planning to attack and respond to the USS *Cole* attack?

Mr. WOLFOWITZ. Congressman, I can't tell you what happened in the immediate aftermath of the attack. I can tell you 6 months later when we came into office, or when Secretary Armitage and I came into office, it was clear that terrorism had to be dealt with in a different way. It is not a law enforcement problem, and it can't

be dealt with simply by retaliating against individual acts of terrorism. As we said earlier, we understood this was an entity that was at war with us, and taking them on involved more than just an individual retaliatory response. That wasn't going to stop the problem.

You, I think, expressed your puzzlement, and undoubtedly the puzzlement of many Americans, of why the FBI didn't provide some of this information. In fairness to the FBI, it ought to be pointed out, that for very good, substantial reasons, they are not supposed to report information on Americans to intelligence agencies. This is an issue we have to confront now. It's not that they were stupid. They are there under a different set of rules, rules that require people to be very careful about information that can be prosecuted.

But if I could, just two points: We are not going to win this war on defense. No matter how good our intelligence is, we have got to go on offense. And offense does not just mean one-off military retaliation; it means the kind of campaign we are conducting now against terrorism. It means a war.

Mr. BEREUTER. Secretary Wolfowitz, we are well aware of the limitations properly imposed upon the Federal Bureau of Investigation and that there is no excuse for the failure to communicate what the agents in the Phoenix office had uncovered, which therefore caused a failure to respond properly to the agents in the Minneapolis field office. There is an absolute failure in that bureaucracy and the information technology failure, to say the least. And so it's important we don't divert by telling us that this is not in their area of responsibility from their real failures in this instance.

And, of course, yesterday the family witnesses pointed out to us about the 11 minutes, or perhaps 12 minutes, that seemed to have taken place in FAA control, New York, after they knew that the second airliner was headed for the second tower but no alert was given to the port authority.

I would like, Secretary Armitage, if you would respond to this question: Do you feel U.S. foreign policy in the Middle East has contributed to the rise of al-Qa'ida?

Mr. ARMITAGE. No, Senator.

Mr. BEREUTER. I would say to you that many people believe that it does; and many people in the Middle East, more importantly, believe that it does.

Mr. ARMITAGE. That's a different question.

Mr. BEREUTER. In light of this attitude of so many people living in the Middle East, and indeed some of our citizens, what is the State Department's role to correct errors in perception—I guess I will put it that way—or to change their attitude about the United States and their attitude about the terrorists?

Mr. ARMITAGE. I know you understand this explicitly, but I want to make the point that Usama bin Ladin was planning these attacks at a time when the Israeli/Palestinian question was in a much more benign state, when our President was meeting here at Camp David and they were very close to a resolution. So I do not buy the argument that our policy in the Middle East is responsible for al-Qa'ida, Usama bin Ladin. And it was only laterally, it was

only after the World Trade Center attacks that Usama bin Ladin could even say the word "Palestinian" out loud publicly.

Now, the question of what should we do to fix it? I think we are trying to work a very difficult equation, to address the humanitarian situation, particularly in the occupied territories, to work with our closest ally, the Government of Israel, who even today suffered yet again from terrorism and, finally, to have a political change in the Palestinian Authority that will allow the Palestinians to be governed by the type of government the people deserve. And that is all ongoing, and that was the subject of Secretary Powell's meeting 2 days ago in New York.

Mr. BEREUTER. Secretary Armitage, would you speak to the role of public diplomacy that would have an impact upon attitudes of the population of the Middle East, particularly the Arab countries?

Mr. ARMITAGE. This is an area that we have done historically, we know now, a bad job. And the Secretary brought in Charlotte Beers to really try to address this; and I am delighted, particularly Frank Wolf's Appropriations Committee in the first instance, have been so supportive to give us the resources for this. But we had to learn what the questions to ask were before we could start addressing them, and Charlotte Beers has done that, and we are off and running in the Middle East. And I think over time, you will be able to judge whether we have been effective or not. I don't think I can judge that today.

Mr. BEREUTER. It's an important priority. We wish you well in this respect and much success.

Mr. ARMITAGE. Thank you.

Mr. BEREUTER. I would like to ask both of you if you would give us your own observations about the weaknesses that you have observed with regard to intelligence collection and analysis. And let me just stipulate, we all seem to agree that there is an inadequacy of human intelligence and a risk aversion perhaps in some of the people involved in HUMINT which we are trying to address. But setting that aside, what other kinds of weaknesses have you seen in your experience in government, going back over some years now and contributing to this day in the intelligence collection and analysis function of the Federal Government? And, of course, I am talking about foreign intelligence collection.

Mr. ARMITAGE. I think the questions of human intelligence, agents and all of this, this committee, both the House and the Senate, have delved into it at great length. And the point that has always bothered me was related to by Paul, and that is that the Intelligence Community is in the analysis business, which is where I am. I am the consumer. It's very rare that we get the one-off voice or the dissident voice that Paul was talking about. For a policymaker, the dissident voice is very helpful to either confirm what you think or really open up a new area, and this is not generally done. If I had to say the one biggest weakness in the analysis area, I would say that's it.

Second, it's the way analysis in the Intelligence Community is generally put forth, and it's related, and that is consensus.

Mr. BEREUTER. We found a dissident voice in the DIA that seemed to be discouraged from being able to present his viewpoints, and I would guess that's a common problem. So you bring

up an interesting point. And how do we protect that, how do we make sure that those dissident voices that sometimes have part of the answer, or the answer, are heard?

Mr. ARMITAGE. I must say I remember when Director Gates was the deputy director. I remember vividly. I was in the Pentagon. He set down something on Africa and it had to do with the community view on HIV/AIDS in Africa. And he said, I want to give you the view of one analysis, it is not a community product—which was dramatically different and, by the way, dramatically correct, as was seen by the virulence of the spread of AIDS. And that's the kind of thing that has to be encouraged.

Mr. BEREUTER. Secretary Wolfowitz, would you like to focus in your observations on any weaknesses other than HUMINT, which we can probably agree on?

Mr. WOLFOWITZ. I really would just enforce this observation about the need to get alternative views up, because almost everything that's important here is shrouded in ambiguity and uncertainty. There's nothing that is flat black and white. There is a tendency to want to get things scrubbed out to get the differences eliminated.

I remember the first national intelligence estimate I ever read, which I'm embarrassed to say was nearly 30 years ago, in which—it was on the critical issue of Soviet strategic capabilities. And I believe it was the Director of Central Intelligence in forwarding the report said, very proudly, how—what a great job these people had done in producing a report on such an important subject without a single footnote; in other words, without a single voice of disagreement. And I was just appalled. I thought, how could you address a subject of that importance without differences?

So I think get those differences up on the table, get the raw information up a little faster. Understandably, some of it is going to be wrong and you don't want people rushing off and taking precipitous actions based on raw intelligence, but I think there is a tendency to hoard stuff too long and to keep it in compartments.

Mr. BEREUTER. Thank you. I want to ask both of you, are there any groups capable of—any groups other than al-Qa'ida capable of or seriously considering attacking the United States today? And I am talking about the homeland.

Mr. ARMITAGE. In terms of capability and virulence, Hizbollah certainly is capable. They have thus far confined themselves in the main to Central and South America and, of course, the Middle East. But capability, they could do it.

Mr. WOLFOWITZ. It's absolutely right—and intentions are one of those things that if you want any precision on you almost never get it—if you reject the evidence that comes from overt expressions of hostility, then you'll be taken by surprise every time.

Mr. BEREUTER. Is there any other entity you would suggest, other than Hizbollah, at this point or make general reference to?

Mr. ARMITAGE. No; other than to make the obvious point that there are a number of groups in the so-called network that is al-Qa'ida, whose intentions are clearly to harm Americans. They've said it, they do it, they write it. So I don't have direct information that they are targeting the United States, but they are certainly intent on targeting U.S. interests.

Mr. WOLFOWITZ. Congressman, we don't have that kind of precise information about what groups are there. This group that calls itself the Islamic Movement for Change that sent a threatening letter to our embassy in Saudi Arabia in the spring of 1995 and then claimed credit for the attack in Riyadh in the fall of 1995 has never been identified. We don't know what countries or what groups have sleeper cells buried around the world now. We know what people have capabilities and we know what people have declared hostile intentions toward us. And I go back to Secretary Rumsfeld's point. Those are the dots, and if you want to wait until they're connected, you're going to wait until something terrible happens.

Mr. BEREUTER. Both of you have experience beyond your current capacity, in your previous roles in the administrations. Both of you have held important roles in the Department of Defense and one continues today, of course. What do you think the state of affairs is with respect to our allies and their ability to provide intelligence to us? Have we—is there progress yet to be made in that respect?

Mr. ARMITAGE. Well, first of all, the difference between September 10 and September 12 in this regard is night and day, and that includes more than just intelligence. It is also in the terrorist financing. We stood up to terrorist financing back in May, the tracking center, but after the tragedy, people came aboard.

Is there more work to be done? Absolutely. And I say that with complete assurance, because we don't know what we don't know from these countries. And we sometimes find it very surprising that we have some information which turns out to be true, and we turn to those countries and they say oh, yeah, we knew about that, we neglected to tell you, we forgot to tell you. So there's a lot of work still to be done.

Mr. WOLFOWITZ. I just add very briefly, our cooperation with our allies improved dramatically after September 11. Our cooperation with unfriendly countries improved dramatically after the fall of the Taliban.

Mr. BEREUTER. Thank you, Mr. Chairman. I think we are called for a vote and so I will just terminate at this point.

Chairman GRAHAM. Thank you, Congressman Bereuter.

Congressman Boswell, would you like to do your questioning now or——

Mr. BOSWELL. I have just shared with your co-chair—and he's got a solution—that I definitely want to share in this questioning. So I think we are going to go vote and he's got us suggesting about letting the Senators continue their 5 minutes.

Chairman GRAHAM. And when you return, you will be called upon for your 20 minutes.

Mr. BOSWELL. And I'm ready.

Chairman GRAHAM. The House members will be attending to their voting for approximately the next 20 to 30 minutes, but we are going to continue with questions from Senators, and I would just like to ask two questions.

Mr. Wolfowitz, you said in your prepared statement that our goal should be to drain the swamp of terrorists, and that the primary method of doing so was going to be win on the offense; that is, to go after the terrorists, not play defense.

In a previous hearing, we had high officials in the Intelligence Community who were asked a question: What was the biggest mistake that we made in the 1990s relative to al-Qa'ida? Answer: The failure to aggressively assault the training camps of al-Qa'ida, which at one time were producing, on average, 100 terrorists per week, who then were subsequently placed around the world, including, as we know, in the United States.

In light of that, I have been surprised that our current war on terrorism has not, at least apparently, targeted the training camps where the current generation or the next generation of terrorists—and I am speaking specifically the training camps outside of Afghanistan—are producing the next group that will likely be equipped to attack us. Is that based on intelligence that the community is getting to the effect that the training camps are not as significant today as they were 4, 5 years ago; or what is the reason why in a campaign on the offensive to drain the swamps, the place that the alligators are being prepared are not being targeted?

Mr. WOLFOWITZ. Senator, I am not sure if we can get into this in open session. I am not sure which training camps you are referring to.

Chairman GRAHAM. Primarily the ones, as I say, outside of Afghanistan; and I will not mention the specific countries, although they are fairly well known.

Mr. WOLFOWITZ. There are countries like Yemen and Georgia where we know there are active terrorists, not just training camps—training camps, yes, but also people plotting and doing plots. And we are working actively in different ways with both those governments to get actionable intelligence, number one, and, number two, to improve their capabilities to go after these problems. But if we have actionable intelligence and they are not prepared to act, then we'll have to figure it out ourselves. I mean, in the cases that I'm aware of, we're aware that there are problems, but we don't have the kind of precision that told us about Tornak Farms or specific things in Afghanistan.

Just one last point. I don't want to get in an argument with the people who talked to you earlier about training camps, but it seems to me even worse than the training camps was the training that took place here in the United States and the planning that took place in Germany. The donkeys, if we can call them that, that took over the airplanes may have been trained in Afghanistan. The pilots were clearly trained elsewhere.

Chairman GRAHAM. In your opening statement, Mr. Wolfowitz, you commented about the importance of us not being seduced by the status quo, the way things have been, and to be prepared to think creatively as to the nature of the threat and the nature of our vulnerability. Based on what has happened September 11, and before and since, what recommendations would you have in terms of personnel policy, organizational policies as to how we can inject a greater degree of creativity within our intelligence agencies?

Mr. WOLFOWITZ. Well, some of the things we've done already are in fact enumerated in my statement. I do think organizationally from within the Department of Defense, we believe very strongly that having this single focal point for intelligence, the Under Secretary for Intelligence, would contribute enormously in dealing

with two problems. One is breaking down compartmentation within the Department and, number two, giving the Director of Central Intelligence a focal point that he can go to to solve problems when they occur.

With respect to the issue about culture, I think there are a lot of things that come to mind, but I can't think of anything that would be more important than finding ways to reward those long voices that do descend to perhaps send back intelligence estimates that have no footnotes in them, and praise the ones that come forward that indicate with some clarity what we know and what we don't know and what we may not even be aware that we don't know.

Chairman GRAHAM. Thank you. The questioners will be Senator DeWine, Senator Lugar, Senator Inhofe, Senator Feinstein, Senator Kyl. Senator DeWine.

Senator DEWINE. Mr. Secretary, Mr. Secretary, thank you for both being here. We all have a great deal of respect for both of you. It's clear that George Tenet was, as Secretary Armitage said, pounding on the table. It's clear that you both were very concerned and working hard on the issue of terrorism. And it's also clear that there are a lot of good people not just in the administration but down in the trenches who were doing a lot of good hard work. And I don't think—we should make it clear to the American people that our investigation has shown that: that while there was an intelligence failure, we have seen there were a lot of people doing a lot of very, very good work every single day.

I really have two questions. One was, was there a strategy for fighting terrorism? Were all the instruments of national power coordinated and applied together? Off the top of my head, these would include covert action, the use of foreign countries, disruption by foreign governments, use of the Justice Department, prosecution, jailing terrorists when we catch them, military, obviously, trying to freeze economic assets. Were all of those being coordinated together?

And second, and probably more important, if the answer to the first question is yes, who is driving this?

George Tenet talked about a war against Usama bin Ladin. He's the man who talks to the President every day. He's the man who the public looks to, frankly, in regard to the effort against terrorism. I believe, you know, in spite of that fact, in spite of the fact that you wouldn't find anyone who was more driven than George Tenet about this issue during that period of time, it didn't seem that all the things got pulled together.

I wonder if you could reflect a little bit on that and talk to me a little bit about structural changes that need to be made, so that this is a focus that can be applied, so there is the coordination that is needed.

Because I agree with you, Mr. Secretary, the cooperation does exist at the top level. The question is how you drive it down and how you make sure that someone who is in the field, who works directly under the Defense Department, candidly, gets the priority, that information, things need to flow somewhere else when they are tasked to do that. And that is the real difficulty that we face.

I don't want to go in any more detail than that. But I think that is the difficulty that we face.

If the two of you could reflect on those. One was the coming together, if you had a plan to coordinate everybody; and two, who is driving it?

Mr. ARMITAGE. The National Security Council was driving it. It started in March when they called for new proposals on a strategy that would be more aggressive against al-Qa'ida. The first deputies' meeting, which is the first decisionmaking body in the administration, met on the 30th of April and set off on a trail of initiatives to include financing, getting at financing, to get at increased authorities for the Central Intelligence Agency, sharpen things that the military was asked to do. The Attorney General was wrapped into it. The point of this is it is not something that takes place at one meeting, and it happens because there are many considerations, from privacy considerations to budgetary ones.

So from March through about August we were preparing a National Security Presidential Directive, and it was distributed on August 13 to the principals for their final comments. And then, of course, we had the events of September 11. So the answer was yes, we are on that track; it's not something that takes place overnight.

Senator DEWINE. I would just say to the public—Mr. Secretary, I understand what you said—but to the public that sounds like a hell of a long time, Mr. Secretary. In hindsight that sounds like a long time.

Mr. WOLFOWITZ. Well, and the truth is that these people were embedded in our country, the pilots 2 years ago, and people carrying out the hijackings last spring. I mean, they were way ahead of us. And that's something one has to bear in mind in saying, where is the evidence of an imminent threat? By the time threats are imminent, first of all, you probably won't have the perfect intelligence, and if you do, it may be too late to do anything about it.

I think organizationally there are many things that can be done and are being done; some of them not yet being done. But I think nothing is as important as what the President has proposed for the new Department of Homeland Security. The clear deficiency before was that we didn't have anyone with the responsibility for dealing precisely with that problem.

And I don't think it's an exaggeration to say, as has been said, that this proposal which the Congress is wrestling with right now is as important to restructuring our government for this new security era as the 1947 National Security Act was in structuring the government for the Cold War. It's not a magic solution and there's still going to be work to be done, but I do think it's very clear that we need—having a single official who has that responsibility doesn't mean that they will work by themselves, but will focus a great deal of effort in sorting intelligence.

Chairman GRAHAM. Thank you, Senator DeWine. Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman. During all the committee's analyses of what occurred prior to 9/11, we have come back time and again to two thoughts: we possess vast powers of collection out there and hopefully we will do better with analysis.

I am hopeful that in the course of all of our discussion we can parse this large input-output mismatch. I'm impressed with how

much somebody has listened to or heard somewhere and how difficult it is to translate this for the policymaker. How does the analyst determine "relevance"?

The second thought is even if we do excel at collection, this information has to be translated. The language skills that are required to deal with this hand-off from the collector simply are not there. A crash program has to occur. In other words, even if we collect the nuggets, can we get it in a language the analysts can understand?

What fascinates me about our witnesses' testimony today is their concern that the desire for analytical consensus may lead to the policymaker receiving the lowest common denominator, one devoid of dissent. We don't want to confuse the President or the Secretary of State or Defense with conflicting advice, but having several different policy choices weighed by the policymaker is imperative.

Lastly, let me query Secretary Wolfowitz and Mr. Armitage on the issue of "intelligence accountability." Somebody has to be in charge of intelligence, someone has to be "accountable."

Mr. ARMITAGE. There is something seriously out of sync when you have policymakers, and even good friends like Paul and I, who can disagree almost violently without being disagreeable I think on policy issues as we discuss them; and yet it doesn't seem to be the case in the Intelligence Committee that that kind of disagreement is allowed to flourish. The meetings in front of the President—it's not a secret that he welcomes different views; he requires them to make the right decision.

I can't give you any satisfaction on the other question of the interconnectivity of our information and all of that. We're dealing with a Department of State that, thanks to the goodness of Congress for the last 2 years, is finally coming into the 1980s. We almost have all of our posts wired for e-mail, not to mention secure.

Senator LUGAR. The technical revolution in the field——

Mr. WOLFOWITZ. Senator, I think one of the real lessons—and it's not with respect to terrorism—is we now have technological capacities that allow us to have a pull system for intelligence rather than a push.

Let me give you an example. When it comes to satellite photography, our traditional way of doing it is the photo interpreters at a central location pore over it and figure out what's really good and they distribute to a user. We now have the capacity to distribute stuff that a user out in the field who may not be the world's best photo interpreter, but he knows that it's the guy shooting at him from over the hill that he needs a photograph of, can pull it out, and the data, can distribute it. And we need more of that. And that, by the way, is the opposite of this tendency which is every problem is going to be solved by centralizing. I think on the whole, we get huge advantages from more decentralization.

The other point is, I hope the people understand no matter how good our intelligence gets, and obviously it can be improved and obviously we can identify things that could have been done better, it will never be good enough that we can simply wait and head off every attack when it's imminent. We have to act preventively. And that isn't only by military means or even only by intelligence means. But we can no longer say that it is somehow acceptable—

maybe acceptable was never quite the right word, but countries sponsor terrorism and we put them on the terrorism list and we don't sell them Boeing aircraft, and that's good enough. I think we have seen on September 11 a glimpse of how terrible the world will be when those capabilities are magnified by weapons of mass destruction. And I think what we came to live with over the last 20 years, we can't live with anymore. And no matter how good our intelligence is, we will not be able to live with it.

Chairman GRAHAM. Thank you, Senator Lugar. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman. I am going to cover three things that I don't believe have been covered. First of all, and I think it's appropriate even though it is not within the scope specifically of what we're supposed to be talking about here, but what Senator Lugar said about the abilities, the ability that we have. I don't think we can isolate and leave out of this discussion what is happening to our military capability. We have seen several articles recently, and one as recent as Monday in the Wall Street Journal, in terms of the attention that we are paying to the defense of this country; that throughout the 20th century, we have spent on average about 5.7 percent of our gross domestic product on defense during peacetime; during wartime, 13.3 percent on defense. It has been, prior to this last budget, under 3 percent of our gross domestic product. I think this is a very critical thing, and I believe that it was in one of the early hearings that we had in this administration, Secretary Rumsfeld said we are going to have to face it and get it up to or exceed 4 percent of our gross domestic product. I would like each one of you to respond to that.

Mr. WOLFOWITZ. You are not going to get a strong argument from me. We are getting substantial increases in resources, thanks to the budget increases that the President approved actually prior to September 11.

Senator INHOFE. Except the current budget is only at 3.1 percent.

Mr. WOLFOWITZ. I think the other point I would make, Senator, is we need to make truly efficient use of what we have, and it's similarly not a matter—though it's not a trivial matter to make good use of the taxpayers' dollars—but I think sometimes we find that we need structures that are quicker and more agile and communicate with one another better, and sometimes that is a smaller, leaner structure rather than a bigger one.

Senator INHOFE. Let me get to the point. There seems to be an attitude here, or several public statements have been made that talk about this administration and the mess that we got.

I was thinking about the two skeletons in the closet. One rattled to the other one, how did you get in here? The other one said, if we had any guts we'd get out.

Well, I think we have an administration now that has the guts to get out. I'm a little disturbed, though. The first thing that happened in the past administration—take the energy labs, for example, they did away with color-coded ID badges. They did away with background checks and reinstated some people that had already been shown to have leaks. And I remember going through what I call the hand-wringing phase of Usama bin Ladin, starting with the World Trade Centers, and actually taking credit for the first

Yemen threat that was out there; Somalia, and then Tanzania and then Yemen.

All this happened, and then you guys came in office. I think you said, Secretary Armitage, that by the time you got your national security team in place and were able to do something—your first meeting was in March?

Mr. ARMITAGE. April.

Senator INHOFE. In April. And then this comes along just a few months later. And I would just ask you for a real brief answer as to what do you think you had to do in terms of getting a real handle on all the access to the information that was there and getting it properly interpreted to your satisfaction?

Mr. ARMITAGE. I'm not sure how to satisfactorily answer that, Senator Inhofe. I know that within a month, we felt we had enough information that we had to aggressively go after al-Qa'ida. And that was within a month. We learned a lot more as we moved on down the path. But that was a decision April 30. I had been in office 5 weeks, and Paul about 7.

Senator INHOFE. I think in your testimony, Secretary Wolfowitz, the key paragraph: The President has made it clear we will not wait until it's too late and that the one option we don't have is doing nothing. We cannot afford to wait until we have a smoking gun, for a gun smokes after it's been fired.

I see the hand-wringing now coming from this side of the table as opposed to the administration, quite frankly, because when we talk about all the things that have to be done and all the things that have to be in place, I am hoping that you do realize and the whole country needs to realize that you have the authority in the event that the President sees imminent danger to an American city to go ahead and take the necessary action. That doesn't require a response.

Lastly, my predecessor, David Boren, was the Chairman of the Senate Select Intelligence Committee. He and I talked in 1994, when I took his place and he became President of Oklahoma University, about the problems that we have in our Intelligence Community talking to each other, NSA, and it's kind of a turf battle going on.

In terms of the Under Secretary of Intelligence—which I strongly support—recognizing this doesn't take all of the Intelligence Community into effect, only the DOD portion of it, do you think this is going to go a long ways into ending the turf battle in the intelligence system?

Mr. WOLFOWITZ. I hopes it goes a long way toward dealing with turf battles in that large chunk of the intelligence system that is in the Department of Defense. Yes, there are turf battles and there are legitimate reasons why one agency is concerned about overly wide dissemination of information. And these problems don't arise just because people are defending turf. But I think within that large area that is under the Secretary of Defense's purview, I think this will go a long way. It's not a magic cure. There is no single magic cure, but it will be a major step forward. I thank you for supporting it.

Mr. ARMITAGE. May I take advantage of your initial question? Any support for the defense budget is welcome, and I think it

should be welcomed by every citizen. And I will make the point that the Department of State's budget is one-tenth of 1 percent.

Senator INHOFE. I only mention that because I chaired the Senate Armed Services Committee on Readiness. And we are at the point now when you look at readiness, modernization, all these things we have to do, there's no longer one area that you can rob money of, and we're still going to have to do something about the bottom line.

Chairman GRAHAM. Thank you, Senator Inhofe. Senator Feinstein.

Senator FEINSTEIN. Thank you, Mr. Chairman. And, gentlemen, welcome and thank you.

What has come through to me so far is that although George Tenet declared war, either no one heard that declaration or not many people heeded it. And although the Intelligence Community warned that al-Qa'ida sought to attack the United States and was capable of inflicting mass casualties, insufficient attention was devoted to the risk of an attack at home. Gaps in intelligence coverage were not filled. Defending the homeland should have been the number one priority. But instead, attention was really focused on attacks overseas and no real effort was made to harden the homeland to reduce the chances of attack.

Did the Intelligence Community—and I recognize that there's a shift of administrations, and I recognize the time it takes to get up and running, and I'm not intending to ask these questions purporting any blame whatsoever—but did the Intelligence Community clearly warn you that al-Qa'ida was capable of and sought to carry out a mass casualty attack on the United States?

Mr. ARMITAGE. Senator, thank you. I recall being told by the Intelligence Community about the efforts of al-Qa'ida to develop chemical, bio, and radiological weapons. I do not recall and I'm sure I didn't get any information that said they had this capability. They were intent on developing; I remember that.

Mr. WOLFOWITZ. I don't recall any warning of the possibility of a mass casualty attack using civilian airliners or any information that would have led us to contemplate the possibility of our shooting down a civilian airliner. I do recall a lot of information suggesting the danger of a mass casualty attack from chemical, biological, nuclear weapons.

And I disagree with the statement that nothing was done to protect the homeland. We put a major focus on what needed to be done to deal with particularly those mass casualty contingencies. We included a number of measures in our '02 budget proposal. And as I said earlier, when we did the Quadrennial Defense Review some considerable time before September 11, we identified homeland defense as the number one priority for the Defense Department for its transformation efforts.

Senator FEINSTEIN. Thank you, and that's certainly correct. Since you mentioned Iraq and you mentioned it in your written statement as well, what do you see as the connection between al-Qa'ida and Iraq? And have you received any information which is specific enough to let you be convinced that there was a meeting between Mohamed Atta and Iraqi intelligence in Prague or anywhere else?

Mr. WOLFOWITZ. This gets into a lot of classified areas.

Senator FEINSTEIN. I am not asking you for the information.

Mr. WOLFOWITZ. One can't get into it without getting into the information. One of the things we've said earlier, these are not issues where there is a categorical that is the case or this is the case. Almost everything we know, or certainly everything we think didn't happen, has some uncertainty attached to it.

But the point I was trying to make, the point that the Secretary of Defense is trying to make, is about more than just one country. It's about the fact that there are people out there, a number of them, with horrible capabilities and with hostile intentions. And if we insist on waiting until we have the kind of precise intelligence that allows us to say there is an imminent threat, we will wait too long.

When one thinks about September 11 and the kinds of actions that might or might not have been taken in a war against al-Qa'ida, it is worth remembering that the September 11 plot was clearly put into motion as early as the beginning of the year 2000; that the entire group of hijackers was in this country by the spring of last year. And if we had succeeded in closing one door to them, they might have well examined others.

We know that Mohamed Atta, for example, was investigating the possibility of crop dusters, presumably to distribute biological weapons. So we can't defeat terrorism by defense, by closing every door we can find. We are only going to defeat terrorism when we put these organizations out of business.

Chairman GRAHAM. Thank you, Senator. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I just want to begin. I have been reading this August Time magazine piece that tells all with absolute accuracy, I am sure. And by way of introducing our two panelists today, they come out very well as enthusiastic supporters of doing something about terrorism: "Richard Armitage, the barrel-chested deputy Secretary of State. Paul Wolfowitz, the scholarly hawk from the Pentagon."

Mr. WOLFOWITZ. I resent that comment.

Senator KYL. You should be very pleased with it in the context of the article, which says there were those who weren't quite as anxious to move forward on terrorism and that you all were very enthusiastic.

Chairman GRAHAM. And I will also note that Mr. Armitage did not reject his description of barrel-chested.

Mr. WOLFOWITZ. They didn't describe which part of mine.

Senator KYL. In your testimony, Secretary Wolfowitz, you talk about your service on the Rumsfeld Commission and the issuance of the report back in 1998. And I just wanted to quote, because this was not quoted during your oral presentation. You talk about your service on that Commission and the fact that because of the significant need for good intelligence, Congress subsequently requested an intelligence side letter to the report, which was provided. And then I quote partially from your testimony here: First, according to the side letter, it was evident to all commissioners that resources for intelligence had been cut too deeply and that the United States was entering a period in which the Intelligence Community was going to be seriously challenged to meet its foremost task—preventing surprise.

You go on to say that U.S. intelligence capabilities needed to succeed in this task, the letter concluded, were not as robust as they needed to be.

And to go on to conclude the letter: Methodological approach, analytical depth, and presentation to users of the Intelligence Community was in a degraded situation. And then your testimony notes that, partly as a result of this, Congress responded with a significant increase in funding for intelligence in the fiscal '99 budget but—and I quote your testimony—despite the best efforts of this committee, however, the increases were not sustained in fiscal years 2000 or 2001.

And then you conclude by noting, literally at the time of the attacks last September, the Department was preparing a significant increase for intelligence in the FY 2003 budget. And you noted immediately after the attacks it was doubled.

So I take your point and have been urging for some time that we focus on the resources part of the problem, that many of the deficiencies that people have been able to point to here can be traced back to a requirement that we compromise some intelligence because of inadequate resources.

And my first question to you is, without citing any specifics—unless you would like to and can in an open session—are you aware generally of situations when intelligence compromises had to be made because of inadequate resources?

Mr. WOLFOWITZ. Yes, generally, but I am not aware of ones that I would directly connect to the September 11 events.

Senator KYL. Does it make sense to fix the intelligence budget as a specific arbitrary percentage of the defense budget, given especially the kinds of things you have been trying to do in terms of transition and the increasing requirements for good intelligence as a component of the new kind of war that we fight?

Mr. WOLFOWITZ. I don't think so. I'm reluctant to have arbitrary targets, although it's maybe good to keep them in mind as a benchmark to ask yourself the question. To give you an example of how I think it needs to be done, we went through a major exercise last fall in putting the budget together and looking at transformational technologies that hadn't made it into the service budgets. And a lot of those were in the intelligence area. And then we sat down, program by program, with Director Tenet and with his people and decided where there were overlaps and redundancies or where there were gaps that needed to be filled. I don't think there's any substitute for doing the detailed work. We did it, and we need to continue to do.

Senator KYL. I want to give Secretary Armitage an opportunity to talk about the need for enhancements in budget with respect to the State Department's significant responsibilities specifically with regard to terrorists coming into the country, the visa programs, the new requirements that I think we have properly placed with the State Department in the border security bill.

Mr. WOLFOWITZ. I support him.

Mr. ARMITAGE. The first 2 years, I must say the Congress in relative terms has been generous to us; the requirements of the PATRIOT Act, further in the homeland security bill, which we gladly accept, will definitely require more consular affairs officers, more

training in consular affairs, which is exactly what you all want. This does not mean, however, that even in the State budget, that other than for planning purposes I would welcome a fixed percentage of the GNP devoted to the State budget, because it's what you what do with the money that is so much more important than some arbitrary number. But for planning purposes, having a general range would be very helpful, I think, for guys who have to make budget decisions.

Chairman GRAHAM. Thank you, Mr. Secretary. Thank you, Senator Kyl. Senator Hatch.

Senator HATCH. I want to welcome both of you here, and we appreciate the service both of you have given through all these years to our country. It has been an extraordinary service, and of course I'm aware of a lot of it and personally have high regard for both of you.

Dr. Wolfowitz, to your knowledge, did the Defense Department ever do any kind of after-action study of the lessons learned following the USS *Cole* incident? And let me just add one other question. Did it ever attempt to inform intelligence collection or analysis in ways designed to prevent future such attacks?

Mr. WOLFOWITZ. There was a very careful after-action study on the *Cole* incident. I believe it was done at the request of the House Armed Services Committee. And understandably—maybe not understandably, but I think understandably—it focused very heavily on force protection deficiencies and what we needed to do to close that particular door in the future. And we are pretty good at closing the barn door after that particular horse is out. And at the risk of repeating myself, I think the message there is we are not going to win this game on defense. We've got to go to offense and we are on offense now.

Senator HATCH. For both of you, in February 2001 the Director of Central Intelligence testified before the Senate Intelligence Committee that he believed al-Qa'ida was the most immediate threat faced by the United States. And before September 11, did anybody in your respective departments receive periodic reports from the Intelligence Committee on al-Qa'ida and the threat that it posed?

Mr. ARMITAGE. Yes, absolutely. In the State Department, we had mostly a weekly update on al-Qa'ida.

Senator HATCH. Were you aware that despite what the DCI said about al-Qa'ida being our number-one threat, the CIA's Counterterrorist Center had only five persons working full time on intelligence analysis related to Usama bin Ladin and the FBI only had one?

Mr. ARMITAGE. No, I was not.

Senator HATCH. Would you have less confidence in the strength of the products you were getting if you had known how little effort the Intelligence Community had devoted to analytical work on this type of a product?

Mr. ARMITAGE. We had our own analysts looking at it and sometimes they came to slightly different opinions on this or that. And I had a fair amount of confidence that between the two, I was getting it right. I had no idea of the numbers involved in the Agency.

Senator HATCH. Just one more question. Mr. Wolfowitz, would you care to comment?

Mr. WOLFOWITZ. I would give you the same answers.

Senator HATCH. When you arrived at the Defense Department in this new administration, were you briefed on any serious contingency planning for using military personnel in the fight against terrorism?

Mr. WOLFOWITZ. We certainly talked about contingency planning for the use of the military in dealing with a mass casualty event in the United States. But one of our observations was that contingency planning was in the very most primitive stages, and it's one of the considerations that led us to saying in the Quadrennial Defense Review that this had to be the number-one priority for DOD transformation.

Senator HATCH. At the time you arrived at the Defense Department, what degree of effort and resources did the Department of Defense devote to fighting terrorism as distinct from force protection measures?

Mr. WOLFOWITZ. I'm not sure I can make that distinction very well. We were spending billions of dollars on force protection. I guess to say what we were spending on the offensive piece, that would mostly be in—there really is an accounting problem here. There would be a lot in the intelligence world, and then the question would be how do you count the various capabilities that we were developing that we later used in Afghanistan. We were not actively using our military against terrorism at that particular stage, but we obviously were developing capabilities that proved to be crucial.

Senator HATCH. One last question to either or both of you: Does the FBI currently have the freedom necessary to penetrate radical cells within our country? And we know there are radical cells in our country.

Mr. WOLFOWITZ. Don't know the answer to that.

Mr. ARMITAGE. Don't know the answer to that.

Chairman GRAHAM. Thank you, Senator Hatch. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. Let me add my welcome to our witnesses.

Let me ask both of you: In August of 1998 in the aftermath of the east African embassy bombings, the United States launched cruise missiles at al-Qa'ida targets in Afghanistan. Is it your understanding that bin Ladin was an intended target of that attack? Let me start with you, Mr. Wolfowitz.

Mr. WOLFOWITZ. I don't know what the intentions were at that time, Senator. I have read that he was, but that it was considered a valuable target, whether or not he was there.

Mr. ARMITAGE. I agree.

Senator LEVIN. Were we not, in any event, after that attack in effect at war with bin Ladin and al-Qa'ida at that point 3 years ago?

Mr. WOLFOWITZ. I would say, Senator Levin, that we probably were at war with al-Qa'ida in February of that year when bin Ladin issued his famous fatwa declaring war on us in effect, or possibly earlier. I mean, one of the basic problems we have here is we're not dealing with a traditional enemy where there is a clear transition from being at peace to being at war, but surely that fatwa was something that was pretty chilling.

Senator LEVIN. Let me ask you about intelligence reporting by the FBI that you received and as to whether or not the reporting from the FBI on the threat of foreign terrorism has changed since September 11. Mr. Armitage, why don't I start with you?

Mr. ARMITAGE. From our point of view at State, it has. And the FBI is a very active participant in the secure video teleconference we have twice at least twice a week simply in the counterterrorism arena. I asked the very question to our fellows this morning, and that's the answer I got.

Senator LEVIN. That was not the case before September 11?

Mr. ARMITAGE. No, I believe it was not the case, and general sharing of information from law enforcement agencies was a real shortfall.

Senator LEVIN. Mr. Wolfowitz.

Mr. WOLFOWITZ. I think there has definitely been a change since September 11. I think there are still big issues that people wrestle with about civil liberties considerations involved in sharing information that may directly be related to a prosecution. And I think there are concerns that the FBI has, like every other agency, that if they share information with someone else it might get compromised. So there are still issues there and there's no magic solution, but there's definitely a change since September 11.

Senator LEVIN. Be specific. What changes have occurred since September 11?

Mr. WOLFOWITZ. I measure it in terms of the quantity of information that I get.

Senator LEVIN. How would you measure, twice as much, four times?

Mr. WOLFOWITZ. Enormously more. Threat reporting every morning. And by the way, it isn't always clear when something has come from the FBI or from another intelligence source, but I'm making guesses that a lot of this is coming from FBI investigations.

Senator LEVIN. And you are looking at the quantity of reporting every morning on threats?

Mr. WOLFOWITZ. Basically, yes.

Senator LEVIN. Was that reporting available every morning prior to 9/11 but there wasn't as much each morning, or it was sporadic as to whether it was every morning or not?

Mr. WOLFOWITZ. I think it's two things. I don't think there was nearly as much. I mean, remember all of these people that the FBI has detained and interrogated around the world, including this country, has produced a huge volume of information we didn't have before, but I also think there is a much greater willingness to share what they have.

Senator LEVIN. Yesterday the joint inquiry staff reported that a closely held intelligence report was prepared in August of 2001 for senior government officials and that it included information that bin Ladin had wanted to conduct attacks in the United States since 1997, as well as information acquired in May of 2001 that indicated that a group of bin Ladin supporters was planning attacks in the United States with explosives.

Can you tell me who within the administration received that report and what action was taken in response, if any, to the warnings

in that specific intelligence report of August 2001 for senior government officials?

Mr. Armitage, let me start with you.

Mr. ARMITAGE. I recall that general topic in the SEIB, the Senior Executive Intelligence Brief—I can't tell you who got it. I know I got that one. I think a day or two after, some other people saw it, but I saw that, and it talked about a hijacking possibility.

Mr. WOLFOWITZ. I have to confess, I wasn't aware of it until I read about it much later. Maybe that is because it came in August, and I think during a time when I was on leave. I think that we were generally aware of the fact that al-Qa'ida attacks could take place in the United States as well as abroad, and put a lot of emphasis on heightened force protection levels in July of last year when we got an exceptionally large volume of threat reporting. We went on a worldwide alert, including in our facilities here in the United States.

Senator LEVIN. For the record, would you let these committees know who in the Defense Department then, if anyone, received that August 2001 intelligence report that I have referred to?

Mr. WOLFOWITZ. I will try to check for the record.

[See Department of Defense responses to questions for the record.]

Chairman GRAHAM. Thank you, Senator Levin.

Congressman Boswell, a designated questioner, has now returned.

Mr. BOSWELL. I have returned. Thank you, Mr. Chairman. And thank you and Chairman Goss for your hard work in trying to bring this to resolve.

I would like to address our two Secretaries just a moment before I ask questions.

Mr. Armitage, you and I have a little history together. I suppose you probably know where that was, in Southeast Asia in the Vietnam situation. I might make a reference to that in a moment. But I appreciate the fact that you said some things didn't happen, as we refer to what is going on, this talk today. And I refer to them as prevents that we can't talk about that have happened, and I appreciated that, but I think that we owe it to these families from yesterday. It was a soul-searching day yesterday as we talked to them, and I would guess if you would have been sitting up here, you would have felt no different than we did.

But they need assurances from us that we learned whatever lessons we are learning, and that we don't have to learn them again, and I hope that we will remember that and try to keep that information flowing to them, because it is terribly important in their grief, and we wouldn't feel any different—we don't feel any different.

I am going to go over to, I think, Mr. Wolfowitz just for a minute. We need to know what is new. You may not be able to tell us today, but you made a comment that we have known for some time about the chemical and biological possibilities of mass destruction, and somewhere, someplace, we need to know what the situation is with the nukes, how close they are. And I hope that is in mind, which leads me to some of your opening comments that caused me to think about that.

And, Secretary Armitage, yourself, again I thank you for your years in uniform, now your service now, both of you, in fact. But you and I, and, of course, others right here at this table, we went to Vietnam, and we didn't have the people behind us, and we know that. And we left there under less than favorable conditions, kind of had our tail between our legs. The worst part of it was that 56,000 body bags that came back. I don't know about you, but I helped put some of my comrades in those bags, and I will never forget that; you wouldn't expect me to, and I am sure you don't either.

So I want to know when we get to the point where you can share with us, maybe not today, to give information that will cause the American people to be with us if and when we should go to Iraq. And I think it is terribly important because of that history that I have just referred to, so I hope that that will be shared.

And I would also like to know from your opinion of that time, and we have allowed our Chairs to get you with us, what do we do next? The day after we take Mr. Saddam Hussein out, then what happens next?

So I guess I wanted to lead off with that and now I would like to go to some questions. I appreciate you being here. I know since I am the last one to ask the lengthy set of questions, a lot has been already asked, so I hope that I don't do things redundantly at anybody's expense because of absence and so on.

But, Secretary Armitage, in your written testimony, you note that in the summer of 2001 the U.S. Government demanded formally of the Taliban that they cease support of terrorism, and that we will hold them responsible for attacks committed by terrorists that they harbored. Can you elaborate on that? Can you describe how this message was received? Was there a reiteration of previous warnings to the Taliban of a significant ratcheting up of the stakes? Can you address that? Have we learned anything from this about the tools at the State Department's disposal to prevent states from harboring terrorists?

Mr. ARMITAGE. Yes, sir. We, in June, late June of 2001, had our ambassador in Islamabad talk to the representatives of the Taliban in Pakistan. We also demarched the government of Pakistan, who was supporting the Taliban at that time. We made it clear that should any harm come to any Americans, they, too, bore responsibility.

In the intelligence reporting after that, for a short while we saw that some in the Taliban leadership were trying to put a little distance between themselves and the people that they referred to as the Arabs, which we know are, of course, the al-Qa'ida, foreigners who were in Afghanistan. However, as that discussion internal to the Taliban continued, Mullah Omar finally overruled it, I believe because of greed, the money that he was getting from bin Ladin, and it had ultimately little effect.

Mr. BOSWELL. In your written statement you discuss State's information-sharing mechanisms with the FBI and local law enforcement still not where they need to be.

And our embassies bear a responsibility as hosts for a number of agency representatives, such as the FBI and legal attaches and so on. How well is this system interaction with the FBI and law enforcement working now, a year later after the attacks?

Mr. ARMITAGE. Well, the short answer is it is working much better, but I don't think it is sufficient to the problem. I don't think our own capabilities from our embassy, in terms of communication and interconnectivity, are sufficient to the problem at all.

Mr. BOSWELL. Well, sharing of information will always be under scrutiny, and I appreciate what both of you have said, I think, in terms of the sensitivity and putting people in danger. If it is in the wrong hands, so on, we will always have to deal with that in a democracy. Of course we will. It is very sensitive. We have to go back and deal with approximately 600,000 people that we are here to represent, something close to that number.

And it is my opinion, from spending a lot of time with local law enforcement and the State equal of FEMA and so on, and those that will be on the front line in this kind of a war, that they really need and deserve the best communication we can get to them, and so anything that we can do to work with you on that, we have got to do the best we can. I trust you understand that, and I would like for you to allude a little more how we can get there, that is not in a classified sense, so if they are watching, or if we go home, the rest of us, we can tell them about it, that we are engaged in this, and it is our intent to be sure that they are in the information scheme of things so they can do what we are going to expect of them as we continue this battle with terrorism.

Mr. ARMITAGE. First of all, you are talking to the son of a cop, so you are not going to get anything but cheerleading from me on that statement. But I think my father, as I recall, would have been astonished to find that he was on the front line of a national battle. He thought it was all he could do to get through the day on the street. But that is sort of the mindset that has to be changed immediately.

Further to that, there are new—we have got new folks in our Intelligence Community, the TSA. Customs has become so much more important. We have got to be able to more integrate them with this, and so over time it becomes a seamless flow of information.

Now, no witness is going to sit in front of you, sir, and tell you that that is the case now. It is not credible. But that is the direction we are going in, and it takes a mind change not just from the national level, but at the level of mayors, and Governors, et cetera.

Mr. BOSWELL. They are very keen on this. I know you know that from what you have just said. They are very keen on this. I appreciate your reassurance that you are tuned in to it, but I can tell you from firsthand contact, which happens almost on a daily basis, that they are very, very concerned that we don't expect them to have responsibilities that they are not at least informed about, and they need that information. So we have got to keep that in front of us and continue to expand on it.

Let me shift a little bit. Secretary Wolfowitz, what can you share with us? What should the American people know about the toll, the cost this global war on terrorism will take on the Department of Defense. And how big a threat is this—your thoughts on how long it would last? How much effort do we need to deal with it? And what do you see as the gaps between the counterterrorism capabilities that we have and the counterterrorism capabilities that we

need? And can we do a war on terrorism and a war on Iraq at the same time? What comments—can you give us some reassurance?

Mr. WOLFOWITZ. You covered a lot of ground there.

Mr. BOSWELL. I will go back.

Mr. WOLFOWITZ. I think the answer is we have had substantial increases in resources, for which we appreciate the support of the Congress. I think it has made a huge difference. There are strains in certain areas, particularly in the call-up of Reserves. I think most people who signed up for the Reserves some years ago probably didn't anticipate the length or the level of demands that this new homeland security mission would place on people. But I think the force has responded magnificently so far. I believe it has a great capability to sustain what is probably going to be a long war.

You asked how long. I don't think we know how long, and, as we get a better idea of how long it will be, we will have to assess at each stage what kinds of resource that we need. But I think that we have adequate resources now.

I believe, as Secretary Rumsfeld has testified, it is a mistake to separate this issue of Iraq as something separate from the war on terrorism. It is very much part of the war on terrorism. And I think we—depending on what the President asks us to do, we have a very wide range of options that we can sustain, I think, with the military capabilities that we have today.

But we certainly are anticipating getting the full level of increases that are planned over the course of the 5-year defense program that we gave to the Congress last year. We have got to be on a steady, but not overwhelming, upward curve.

Mr. BOSWELL. Well, I guess a point I am trying to make is if we are going to have a war on terrorism and the potential of this war with Iraq, which is certainly getting lots of attention, can we afford it, and can we take care of the homeland in the process? This is something that people are sharing with us as we travel back to our districts.

And I think that is a fair question, you know, picking up the tab, taking care of homeland, ensuring that Europeans, the region and whatever, as we go back to probably classified things at some point, are picking up their share of the tab.

And so I think there are folks—the American people are getting behind all of this. We are going to have to communicate better than we are so far, and some of that responsibility lies on us, but for a lot we have to rely on you, because I have often said, because of being on this committee, I kind of know what some of the threats are, but I don't know what is going on with the Secretary of State, as you folks travel and do all things. You can't keep us totally informed on that. I understand that. Maybe you are accomplishing some great things that we don't know about, and at some place and point you can tell us about it. When you can, we need to know, because—again going back to my opening statement—the American people have got to be with us, and there is a lot of doubt out there.

And they are reminded of the 56,000 body bags. They bring it up to me once in a while because I am a Vietnam veteran, as are you.

Mr. ARMITAGE. May I make a comment? Paul probably wants to comment, too. I am not contradicting what you said. You are right. One of the questions that we and you particularly with your re-

sponsibilities have to ask is whether we can continue the global war on terrorism and if the—depending on what the President decides, how to handle Iraq and to take care of homeland security. That is one of the questions.

One of the other questions that I hope constituents are also asking or at least being asked to think about is can we afford not to act?

As Paul and I have been discussing last night and this morning, in this very hearing, and we were thinking to ourselves, if a terrible event happened from Iraq, what kind of hearing would we be having if we hadn't done something? That is a fair question. That is one that we have to—you are suggesting we should do a better job communicating. Fair enough. But I think it is also fair to have this discussion with the American public along the lines of what is the cost of no action? And we happen to feel it is considerable.

Mr. WOLFOWITZ. Congressman Boswell, one thing that hasn't gotten communicated sufficiently in public, and that is the way in which this war is a global war, and that is the reason why separating out the issue of Iraq as not part of the war on terrorism is a mistake.

Let me give you a couple of examples. We have uncovered a whole network of al-Qa'ida terrorists in Southeast Asia. We would never have gotten at those people if it hadn't been for the action in Afghanistan, which unveiled some capabilities that were going on in Singapore.

The success in Afghanistan drove several people, including the man we arrested, detained a couple of months ago, Abu Zubaydah, and probably now this guy we got just very recently, Ramzi Binalshibh, into Pakistan where we were capable, with Pakistani authorities, to wrap these guys up. And finally, I mean, among the many interactions here, the fact that the Taliban supported terrorists and are now no more is a lesson to every other government around the world that used to support terrorists and now begins to think whether it has to change its policies.

So it is really a mistake to think that there is one struggle with just terrorists and this issue of Iraq is something completely separate. They really are part of a piece. Finally——

Mr. BOSWELL. Let me just interface with you a little bit. That is a point I have been trying to make, as in my opening statement. We understand that. And this guy is a terrorist, and he can provide a lot of resources, but we have got to be able to protect the homeland. I appreciate what you are saying. So continue, please.

Mr. WOLFOWITZ. We are protecting the homeland in every way that we can, but, as I said, we can only get so far playing defense. So we are going to do everything we can defensively here, and undoubtedly they will come up with some surprises we haven't thought of, but our real effort is to get them out of business.

Mr. BOSWELL. Then we have got to make the case. That is, we are not there. We have got to make the case. We are relying on you to come to us and make the case. And I know you are doing some of that now, and I appreciate the presentation to the U.N., but the American people, we need to hear the case. And I think the support will be there, but we have got to make the case.

Mr. WOLFOWITZ. Thank you.

Mr. BOSWELL. Moving on. Our time is okay?

Secretary Armitage, much of the success in the campaign against al-Qa'ida has been the result of significant assistance, and we have been touching on that, from foreign governments around the world.

The administration has much to be proud of in working with the other countries. I compliment you on your efforts, you and the Secretary. We have asked them to take dangerous police actions. We have asked them to accept our troops on their territory and to provide us law enforcement, intelligence information to an unprecedented degree. But recently, however—and I am concerned about it—we have become aware that some of our allies are unsettled about our policies and the way in which we are pursuing our interests. Some leaders are becoming more popular with the electorate as they distance themselves from U.S. policies. So how strong are our bonds?

Elaborate. Talk to us about that, because I think that we have to have allies with us to make this acceptable to our people.

Mr. ARMITAGE. You are referring, I think, in the main to the German election to be held the 22nd of this month, and I think it is quite regrettable that there have been a number of both—to some extent a campaigning on an anti-American theme. I don't know how, as a general matter, to separate our preeminence in the world from jealousies, from being a target. I think we are going to be that as long as we enjoy this promise and preeminence in the world, and indeed American Presidents generally do stand up and stand for principle, and I think we are doing that.

And most of our allies in this global war on terrorism have been quite good. Even in the case that you cite, I think you were citing, that—activities in Afghanistan alongside us do continue with German police and military.

So to some extent it is a mixed picture. In other areas like in Pakistan, Uzbekistan, people are not only standing up, they are standing up at risk to their governance and to their lives. Witness the fact that President Musharraf's intelligence service thwarted a bombing attempt on him yesterday.

So it is a mixed picture. I think it is a better picture than it is worse, but it is a daily struggle. We are going to keep at it.

Mr. BOSWELL. Thank you.

To both of you, the response to global terrorism threats, it is an interagency situation. Before 9/11 the National Security Council orchestrated and coordinated interagency responses to terrorism. After 9/11 the national security interagency system has shifted in adding in particular a deputy national security advisor for combatting terrorism. So who reports to both Ms. Rice and Governor Ridge?

Mr. ARMITAGE. Right.

Mr. WOLFOWITZ. Who is it?

Mr. BOSWELL. Who reports to them?

Mr. ARMITAGE. It's now General John Gordon, sir. It was General Wayne Downing up until a month or two ago.

Mr. BOSWELL. Give us some reassurance and elaboration on how the coordination, the sharing of information at the high level, at the administration level, is actually taking place.

Mr. ARMITAGE. Regarding General Gordon, he chairs the—the secure teleconference at least twice a week. During last week it was several times a day because of the fact that we had increased our threat alert. And I talk to John probably every other day, myself, on one issue or another. So I think, from my point of view, he is interacting pretty well, just as General Downing did.

I would have to let Dr. Rice speak to how she feels about it, but I have every reason to believe that she is very satisfied with the way that he works.

Mr. WOLFOWITZ. I would agree with that.

Mr. BOSWELL. Okay.

Chairman GRAHAM. Well, good.

Mr. BOSWELL. Is my time up? I am still in the yellow light.

Chairman GRAHAM. We have had a rule that you don't start a question in the yellow light.

Mr. BOSWELL. They made a new rule on me.

Mr. Chairman, I appreciate this opportunity and the time, and I appreciate the efforts. And I just want to leave this, my opening thought, if I could. It is that we have got to take this to the American people, and we don't want another Vietnam situation where we have got 56,000 body bags and we don't have the people with us. We have got to give reassurance where lessons learned to those families.

And I thank you for your attention. I thank you for your time.

Mr. ARMITAGE. If I may, you are right, absolutely, but I didn't and I doubt that you left Vietnam with our tail between our legs.

Mr. BOSWELL. No. I had my head high, but I didn't like the fact that——

Mr. ARMITAGE. I didn't like what happened either. I had my head high.

Mr. BOSWELL. We did.

Mr. ARMITAGE. It is not your problem.

Mr. BOSWELL. Our people were not with us. You know that.

Chairman GRAHAM. Thank you, Mr. Congressman.

Senator Shelby.

Vice Chairman SHELBY. Mr. Chairman, first I want to apologize to both the Secretaries. I have been tied up in the Banking Committee all day. I told Secretary Wolfowitz earlier that I would have been here. I have been here most of the time.

I want to just make a few observations—I am going to keep you here—because, one, Secretary Wolfowitz, I think this statement, I have reviewed it, is excellent. And lessons learned, that is very important. If we don't learn from the past, we will repeat them. We all know this.

My observation is that both of you have brought a lot of leadership to the State Department and to the Secretary of Defense's office. You have outstanding Secretaries, Secretary Powell, Secretary Rumsfeld, people that are going to put the security of this Nation first, whatever comes.

I had the opportunity when I chaired this committee to work with Secretary Rumsfeld when he headed up the Rumsfeld Commission that you served on, and I thought that Commission laid the groundwork for many things, including missile defense. But it

also touched on intelligence, and if you look back in that report, we got something out of it.

But I just want to thank you for your service, thank you for what you are doing, and I am sorry I was not here earlier for all of your testimony.

But as far as the President is concerned, I know a lot of questions may have centered around the right. I think the President is on the right track. I know he is on the right track. I am going to support him. I believe that Congress is going to support the President overwhelmingly, and I think we should lead, not the U.N.; we should lead. And if the U.N. follows, well, that is good. If they don't fellow, they will become a debating society. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator Shelby.

Congresswoman Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman. I was settling in getting ready for your distinguished Vice Chairman's 20 minutes of questioning, but pleased to be recognized.

Vice Chairman SHELBY. I will yield my time. Only this morning, though.

Ms. PELOSI. Thank you.

Thank you, Mr. Chairman.

Welcome, Mr. Secretary. Thank you for your presentation this morning.

My questions spring largely from some of your comments here today. Some of them I don't need answers to; I just want to make some observations, and then I do have a couple of questions.

First of all, I was interested in your "drain the swamp" comment—that we, in order to fight terrorism, had to drain the swamp. And it was interesting to me, because the—this was said earlier—the Hamas and the Hizbollah are an important part of terrorism in the world, and as we know, there is significant support from Iran for terrorism.

I wondered if that was the next swamp that we were planning to drain, if there were any other swamps that you might like to mention as well?

Mr. WOLFOWITZ. I wasn't talking about anything specific. I am trying to make the point that we are not going to be able to have intelligence that is so perfect that we can find every snake in the place.

Ms. PELOSI. I understand. But you related it to the Iraq situation.

Mr. WOLFOWITZ. I think the point—and maybe you weren't here when I said it, I think it bears repeating. For roughly the last 20 years or maybe even longer, we viewed terrorism as an evil.

Ms. PELOSI. Mr. Secretary, I understand. I only have 5 minutes. I was here. I just missed the first couple of minutes of Mr. Boswell's. But my point is you were mentioning that in the context of Iraq. We have a responsibility to the American people to protect them. We all want to work together to do that. We all stand with the President on the war on terrorism. But that is the war that we are in, and I would not like to see us undertake any initiatives that would jeopardize the cooperation we have with the countries in the

world in the war on terrorism that put our forces—in which force protection is one of our primary responsibilities in intelligence.

So if we are talking about going after the al-Qa'ida and the support that we need to do that, my concern is that, and I didn't have any intention of talking about Iraq today. It is not the subject of this hearing. The subject of this hearing is rooting out terrorism.

Now, you want to talk about it in a larger sense and relate it to a different initiative, but we are trying to figure out how we can improve our intelligence gathering so we can understand plans and intentions to protect the American people better and to assure the families of those who are affected that this won't happen again, the suffering they have experienced won't be experienced by others.

So in terms of that, if we were to go into Iraq, do you feel confident that we have the intelligence capability, going into a different place to—as we are engaged in the war on terrorism to protect our troops when we go in there, if we were to go in there in a matter of weeks?

Mr. WOLFOWITZ. I mean, we didn't come here to discuss that.

Ms. PELOSI. I understand that. No. But you brought it up, and I specifically advised my colleague, this isn't about Iraq. But you spent your testimony quoting Secretary Rumsfeld's testimony from yesterday to another committee about Iraq when we are here to talk about how we best fight the war on terrorism in relationship to 9/11.

I want to be respectful of you. I hope that you will extend my best wishes to the Secretary, as you will to Secretary Powell, and tell them that our invitation stands for them to come here and answer these questions as well.

But let me be more specific, Mr. Secretary Wolfowitz. Again, going back to your comments, on page 3 of your testimony, you say, lessons learned from September 11, and the important point that you make is that you quoted Thomas Schelling's novel—I mean, the foreword to Roberta Wohlstetter's superb book, Pearl Harbor, and in it you quoted, this is in your statement, surprise, when it happens to a government, is likely to be complicated, diffuse, bureaucratic. It includes neglect of responsibility, but also responsibility so poorly defined or so ambiguously delegated that actions get lost.

My question to you is when you used that quote, are you saying that this—September 11 happened because it included neglect of responsibility? If so, what? Responsibility so poorly defined? If so, what? And so ambiguously delegated that action gets lost? Could you address your own statement relating to this inquiry?

Mr. WOLFOWITZ. I am not trying to say everything in that quote pertains to September 11. I think everything in that quote pertains to the problem of the future——

Ms. PELOSI. I am just talking about what you quoted. I didn't say——

Mr. WOLFOWITZ [continuing]. And how one avoids surprise. One of the points that he makes there, I think it is crucial, and I think it is actually by now widely accepted, that in addition to failures that may have existed to get information, for example, out of the Phoenix FBI, there is a problem which I think we are trying to address now with a new Department of Homeland Security, assigning

responsibility so that not only that we get beyond this issue of simply who neglected responsibility, but to make sure that the responsibility is pinned somewhere so that it gets done, because unless you identify people as responsible, there is a tendency to say, that is not my job, someone else is taking care of it.

Ms. PELOSI. That is a very good point. I wonder if you would like to be specific in that regard, because you are using the quote that this was—are you saying that September 11 was a neglect of responsibility?

Mr. WOLFOWITZ. I didn't say that.

Ms. PELOSI. But you used that quote, though. It says, includes neglect of responsibility.

Mr. WOLFOWITZ. The import of that quote is to say that problems often arise, even though people are taking their responsibilities perfectly seriously, because the responsibilities aren't clearly assigned. He is actually talking about Pearl Harbor where people identified all kinds of people who didn't do what they should have done, but where there were problems also that the responsibility for making sure, for example, the information got out to Pearl Harbor wasn't assigned anywhere.

Ms. PELOSI. But we are talking about September 11. I am asking in relationship to the context in which you made the comment. My time has expired, but I have to close by saying that I had hoped that we could focus on September 11 and that the purpose of this hearing was September 11, and it was not to expand it to justify—to saying, but if we could have in war in Iraq, that it would make some difference as to what happened on September 11.

Certainly we have to be proactive and go out there and co-opt any attempt to attack our country, but it isn't about that. And we were trying to be respectful of you in confining our questions to September 11 and how we can do better in the future, and I am just disappointed that you—the Secretary didn't come, but you came and read his statement to another committee, about a different subject that was not the specific focus of our hearing. I am glad you came.

Mr. WOLFOWITZ. I thought the focus of this hearing was to talk about what can be learned about September 11 to prevent attacks in the future. The statement I gave you is full of what I think is lessons learned from September 11 that can help us to prevent attacks in the future.

Ms. PELOSI. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you very much, Congresswoman Pelosi.

The Chair recognizes Congressman Goss.

Chairman GOSS. Thank you. Secretary Armitage, you have noted that we have had great cooperation from other services in other countries in the war on terrorism. That is a very welcome comment. I don't interpret from that you suggesting in our intelligence capabilities that we should in any way reduce or give up our unilateral efforts in the Intelligence Community. Am I interpreting you correctly?

Mr. ARMITAGE. Absolutely. On the contrary, we should redouble our capabilities and encourage others to come along with us.

Chairman GOSS. Thank you, sir.

Also in your testimony you say we simply cannot afford to lose the openness for which we are famous, and, of course, that is the hallmark of our country. You are talking about protecting in some ways our embassies overseas, which is a concern of all of us.

Many of us are concerned that we don't want to build just fortress America in many places around the world. On the other hand, we want to provide reasonable protection from terrorists at our overseas installations, whether they are embassies or bases. Mr. Wolfowitz, do you have any further comment on that?

Mr. ARMITAGE. Senator Hatch asked Paul earlier a question about any lessons learned after the U.S.S. *Cole*. Well, we learned some lessons after Kenya and Tanzania. That is, as much as we desire to be open and keep in close contact with every country, it is not on these days. So, because of the congressionally-mandated Crowe Report, I think we have taken those lessons to heart.

Our budget submissions reflect both the upgrading of the diplomatic security efforts as well as the hardening of our embassies, which were called for in that report.

Chairman GOSS. I hope you would agree with my view that hardening of the embassies and taking necessary gates, guards and guns protection obviously makes great sense, but really the first line of defense would be good information so we never have to rely too much on those gates, guns and guards.

Mr. ARMITAGE. Of course, I would, but I would also add that our first line of homeland defense, as far as we are concerned, starts with our consular people, who are interviewing now these folks overseas. They really, as far as we are concerned, are the first line.

Chairman GOSS. That is welcome. Thank you.

Secretary Wolfowitz, you made the statement that our current sources and methods have depreciated badly over the last decade. I characterize that as basically that we have been underinvested in intelligence. Is that pretty much what you are saying?

Mr. WOLFOWITZ. I think underinvested, and I think probably a bit risk-averse, too much risk-averse. You don't penetrate organizations of the kind we are talking about easily. I think we now recognize that the cost of not penetrating them is enormous, however.

Chairman GOSS. Thank you. I yield to the Chairman on that.

Chairman GRAHAM. I apologize for myself and for my colleagues. A Senate vote is under way and is reaching the end, so we are going to have to leave to make that vote. I wanted to extend my personal thanks and the appreciation of The Joint Inquiry Committee for the excellent testimony and response to questions which you have allowed us to receive today.

Thank you very much.

Chairman GOSS [presiding]. Thank you, Mr. Chairman. I think that we all know that we have got ourselves smothered in stacks of hay with fewer and fewer needles out there basically in the Intelligence Community. We have heard that expressed so many different ways by military and civilian customers, that is a problem. And, Secretary Wolfowitz, you talked about what I will call information discovery and that bridging, which we understand, and that is a theme.

My worry is that we do not have enough people focused on what I will call the hard work of building the database that Secretary Armitage referred to also, that we don't have people loading up the system with the kinds of information which—open source, routine stuff which seems like a waste of time, but can be critical as we go along.

And I notice even in the vetting of background for security clearances in the Department of Defense, and I am sure other agencies as well, there is quite a reasonable waiting list, perhaps unreasonable waiting list. Are we making any progress in those areas?

Mr. WOLFOWITZ. I think we have cleared up a lot of the backlog on the security clearance side. One problem that we have, I think, is something that Senator Lugar alluded to earlier, on the need for more language capability. We have potentially enormous resources in this country with our immigrant communities to deal with these difficult languages, and I think the security and understandable security concerns about bringing in people that we haven't got long familiarity with deprives us of a great deal of that benefit. That is something that I think we need to deal with.

And just to say it very quickly, we have a challenge. We have said it over and over again in the Defense Department. At the same time that we are fighting a war today, we are trying to build the military of 10 years from now. It is difficult. It is a lot more than just walking and chewing gum at the same time.

The same thing is true in the intelligence world. A lot of capabilities that we would like to be developing are capabilities that are going to pay off a year, 2 years, 5 years from now. And the same people that have to do that work are busily working on the most immediate threat information that comes in. So keeping that balance between the immediate and the very important long term is a challenge, and it is something that I think committees of the Congress can help us in getting that balance.

Chairman GOSS. Committees of the Congress have recognized that challenge. We need to be reminded, realistically, when we are doing our authorization and appropriation, of what the true needs are, and we need to work with you on what consequences we are willing to accept by not meeting those true needs in case we can't. That process has not worked as well as it should have in the past, in my view. Pointing no fingers, it is just simply that we know some things don't get the attention that they need. We need to understand what those are and what the consequences are.

Thank you. My time has run out.

Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman.

Thank you to both witnesses.

I just want to jump in where this conversation has just left off, because we had a conversation, private conversation, before your testimony, and I was waiting to say exactly what you just said, and that is that the point of looking backwards is to make certain we understand what failed—and I think what failed were systems, not people—so that we can look forward and make certain it doesn't fail again, and that if we dwell too long on finding the needle in the haystack, we may miss the needle in the next haystack. And I think it is very important to remember that, and I frankly think

that even the families who offered enormously compelling testimony yesterday would, if they had the choice, rather know that no one else will meet the fate of their spouses or parents than know precisely, absolutely that some piece of paper maybe should have moved from desk A to desk B.

So I just want to commend you for looking forward. I hope systems do change. I think it is imperative that good people trying to do their jobs get a signal from us that we want them to do their jobs, and that while we investigate this, we want them to be at their desks thinking out of the box, communicating with people in the next agency about everything they can imagine that could happen, and reaching for better technologies to converge the different databases and the different information so that next time we can hunt and not just gather the clues that will get us to know in advance what can be coming our way.

I also want to say something that you have said often, Mr. Chairman. I quote you anyway. I hope you said it, but if you didn't, I impute it to you. That is, that what changed on 9/11 was the audience, and I think that is a big difference.

I appreciate the fact that these witnesses have not said, gee, some prior administration did something wrong. That isn't the point. Every administration over, you know, the last 20 years has been trying to get this right. The point is that now the attention is focused on solving the problem, and there is popular support for the investments we need to make in counterterrorism, and we are making those investments.

And we do need a Department of Homeland Security so that someone is in charge, and we do need the right authorities to that person, and we do need the technologies that go with that. At any rate, I know these witnesses agree.

Let me just ask two questions thinking forward about things under your control, and I will put them both out there before the light changes.

The first is for you, Secretary Armitage. I am interested in what changes we are making to our visa system that was obviously extremely porous pre-9/11, and some of us who looked at this in past lives, I as a member of the Bremmer Commission pointed this out, and nothing changed. What are you doing to change that?

And to you, Secretary Wolfowitz, I am interested in NORTHCOM, which I don't think has come up this morning, I don't believe, and how the Northern Command, in your view, will integrate with our homeland security effort to make certain that we have capabilities that work seamlessly with the new Department of Homeland Security, rather than work as a separate stovepipe.

Mr. ARMITAGE. Thank you, Ms. Harman. If I might start out by saying your comments and that of Chairman Goss's will do more to inspire a confidence in people to be not risk-averse, to really think out of box, than anything that we would ever say, I will tell you that. Thank you.

The changes in visas runs the gamut. First of all, because of the homeland security bill, particularly the House bill where we gladly accept the direction of the Director of Homeland Security, we will

have functional responsibility as he has policy responsibilities for us, number one.

Number two, we have, I think, rather dramatically increased, with cooperation now from law enforcement and from intelligence, the number of files that are in our TIPOFF system and our CLASS system; that we have gone to machine-readable visas in almost all cases; that in certain countries, all males between 16 and 45 have to be not only interviewed, but there is a required waiting time; and there are a whole host of these issues which—or measures that I would be more than happy to supply for the record, if that is acceptable to you.

Ms. HARMAN. Fine.

[See Department of State responses to questions for the record.]

Mr. WOLFOWITZ. If I can make one very quick comment. I think it is important to understand failures and try to correct failures. I do think—and this isn't in our departments—I think it would be fair also to recognize success, because a lot of things have been prevented by some very hard-working and talented and creative people in the Intelligence Community. We want to inspire that kind of creative risk-taking. I think it is important as one focuses on failure not to make everybody failure-averse.

On the issue about Northern Command, it—of course we are just about to stand it up on October 1, and General Eberhart is developing the plans by which it would be structured. But what it will provide is a single point of contact for the Secretary to go to for those military capabilities needed in support of civilian authorities.

We are going to have to work very hard on making sure that these requirements are communicated in a timely way, and we have had quite a few opportunities for real-world exercises, if I can call them that, over the last 6 months of making sure that when something was needed on the civilian side, that we had the right rules of engagement in the military chain.

I don't think there is any substitute for two things: Number one, trying to think as carefully as you can and anticipate real-world requirements, whether it be to deal with a hijacked airliner or any number of other things that could occur. And, secondly, I think we are going to have to do a fair amount of war game simulation to actually see what works and what doesn't work. We have just been through a very, very revealing exercise called Millennium Challenge that had nothing to do with the homeland side, just on a pure military side. We have had huge lessons learned from that. I think we need a kind of Millennium Challenge for Northern Command as soon as they are ready to do one.

Chairman GOSS. I will announce to Members that our agreement with these gentlemen—they have other obligations—was to leave at 1:00. We have three Members here who have been here and attentive all day. If you could spare time for a few minutes for each of them, I promise you I will not go more than the allotted time. And I would ask Members to be as concise in their questions. Is that agreeable?

Mr. ARMITAGE. Of course, sir.

Chairman GOSS. Thank you very much.

Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman.

Welcome, gentlemen. Delighted to have the distinguished panel here this morning.

I would just like to for 30 seconds talk about Iraq, although we are not supposed to talk about Iraq. It was my very first vote in 1991 on whether or not to go to war, and I am open to the administration's arguments, to the rationale, to a forward engagement, as we called it in the Democratic Party's platform, but I really would hope that people of your caliber and stature as well as your bosses would be up here talking to the full committee and to the House of Representatives making the argument that I know you are capable of making and explaining why we need to do it so that we can communicate that to our constituents as well, too.

Just as an aside, I remember on that first vote, we had the administration, the first Bush administration, coming up scores of times to help inform and educate and work with Members of Congress on what was an exceedingly important vote at that time, and I hope that we can reengage in that with this administration. That is not a criticism. That is a hopeful suggestion on a vote that may be pending next week.

Mr. Secretary, I want to say to you, I didn't know that you were going to quote Wohlstetter's book. I happen to be looking at it. Let me read you one more part of what Schelling's foreword was, and either you did great work on this or your staff, maybe Rich Haver is reading this.

It would be reassuring to believe that Pearl Harbor was just a colossal and extraordinary blunder. In fact, blunder is too specific. It was just a dramatic failure of a remarkably well-informed government to call the next enemy move in a Cold War crisis, to call the next enemy move.

Finally, he says, Wohlstetter's book is study of a great national failure to anticipate.

Usama bin Ladin in a fatwa says that he is at war with us. George Tenet says we are at war with him. Yet we can't anticipate even with all of these clues the next move.

I think mistakes were made. I, like Secretary Rumsfeld yesterday, think it is too late when the smoking gun is there. You have got to find the person pointing the gun, loading the bullets, getting ready to pull the trigger. And intelligence, that is what it is supposed to do.

So I hope that we can, as the families who were here testifying so emotionally and so passionately yesterday, we can prevent the next one, but we can also move forward in a paradigm shift to see what we need to do in the Defense Department to forward engage or to support Special Ops that can go after terrorist groups that aren't sponsored by nation-states, but may be in different countries in the world, and work with Congress in a bipartisan way to see if that is a good policy to implement.

We have a panel coming after you, Mr. Secretary. I think this is a tough question, and I hope it is fair. They may say we briefed this administration on these priorities. They said that they would spend more time on the war on terrorism than any other war or any other battle. Did you have those kinds of transition briefings that you were part of, and were there specific requests by George Tenet at CIA to move resources and money in the Defense Depart-

ment to this tougher, more unconventional war, to go after al-Qa'ida?

Mr. WOLFOWITZ. We—I don't remember briefings from—by the time we were nominated and confirmed, the transition was over, so they weren't transition briefings. We got lots of briefings from the beginning about the al-Qa'ida danger, including from important people who had served in both administrations, not only Director Tenet, but Richard Clarke at the National Security Council. As we said earlier, there were quite a number of actions that were proposed, quite a few of which were, in fact, implemented, but some of which we recognized really called for looking at the whole problem in a bigger way, and recognizing that if you are going to go to war with an entity, it was war, it wasn't just an intelligence activity or just a single military retaliation.

And I would say considering the challenges of putting all of that together, it came together pretty quickly.

Mr. ROEMER. Did you consider doing it before September 11? Did you have a plan to go to war in an unconventional way against al-Qa'ida before September 11?

Mr. WOLFOWITZ. We weren't quite there, but we had a conclusion from the principals, meaning that we needed to look at major military options. That conclusion came on September 5. As we have said, the Presidential decision memo that came after September 11 was not substantially different.

But, I mean, one could also——

Chairman GOSS. Could I interject? Your time has run. I don't mean to interrupt, but out of fairness to your schedules and the two Members remaining.

Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman.

And to our Secretaries, welcome, and I will not try to keep you long.

And sometimes we all, in looking back, have 20/20 hindsight. The question has been asked. And oftentimes in order to soothe some of the, you know, the feelings and the emotions of America following September the 11, we come up with this question: Why were the Americans not warned?

Well, why were they not warned when you look at the attack of 1993, when people died in the World Trade Center, when you look at the 1998 attack on our embassies in Africa, or the 2000 attack on the U.S.S. *Cole*? And we can all ask that question, why were the Americans not warned?

I think that is part of what we are trying to do here today is to find the avenues through which we can improve our intelligence capability to provided that warning. That is why we are here, and that is what it is about today. It is not a perception of who was negligent, and it is not a perception about failure to anticipate. It is about what we do tomorrow to prevent yesterday's attack.

What I want to ask you, both of you, very quickly, is do you believe that America is better defended without the passage of the homeland defense bill that we have in the House of Representatives?

Mr. WOLFOWITZ. If I understood the question correctly, absolutely not. I think we would be much better defended with the

homeland defense bill and with a Department of Homeland Security so that there is a clear responsibility.

Mr. GIBBONS. Secretary Armitage.

Mr. ARMITAGE. Absolutely, sir.

Mr. GIBBONS. Final question for you. That would be vertical integration of information and intelligence-sharing. Part of the problem has been throughout the history of terrorism the failure to communicate not just between Federal agencies, but vertically as well, down to State and local law enforcement agencies as well.

Have you found in the recent years that the activities of Governor Ridge and the homeland security advisor have improved our ability to communicate intelligence both vertically as well as horizontally down to and up from our local and State law enforcement agencies?

Mr. WOLFOWITZ. I guess all I can say is I have an impression, and it is related to what I said earlier about the quality of reporting that appears to come now from domestic sources, that we are just getting a lot more of it. I can't tell you exactly why. I imagine because an awful lot of people, including Governor Ridge and the Attorney General and everybody in the FBI, and the pressure from this kind of a committee, I think, encourages people to ask, are we passing the right information?

Mr. GIBBONS. I know there was a concern and a perception that classified information and the ability to share that with those that do not have or possess a clearance was a problem. Have we managed to overcome that in terms of expediting classifications and clearances for those individuals so that we can get the necessary information down to them? That was one of the hurdles. Are we moving in that direction?

Mr. WOLFOWITZ. We are moving in that direction. There have been some important changes, but I don't think we have debugged that system, if I can use a computer term, because there is always going to be this dilemma of do you share stuff that compromises your sources, or do you share stuff that prevents something from happening?

A general point, if I may make it, I think it goes back also to the Pearl Harbor book. I think it helps to understand that certain kinds of failures are endemic, that this is not the first time we have been taken by surprise, nor will it be the last time probably, unfortunately. If you understand some of the reasons why that happens, you have a better chance of fixing them, and I think one of the things to remember and understand is that warning comes in lots of shapes and flavors, and we have had lots of warnings. Some of them have been issued to the public, and the reaction is, what do they expect us to do about it? It is, in effect, not an actionable warning.

You have to relate the intelligence warning to the action that it is warning you of, and if the action it is warning you of is to shut down all civil aviation in the United States, it is going to have to be pretty darn precise information. So I think helping people understand and improving our own understanding of the relationship between the warning and the action that is expected to be taken on the warning, I think, is a fundamental point that I think this

committee can help with. I think the whole country needs to understand a little better.

Mr. ARMITAGE. If I may, Mr. Gibbons, I don't want to prolong this, but I think it is worth mentioning. Congressman Boswell hit one of the same points. Are we in a seamless information flow down to the local law enforcement? No, we are not. We are not in a seamless information flow down to the Governors and the mayors yet either. I think Governor Ridge has worked magnificently to try to bridge that.

Witness the Golden Gate Bridge warning. We issued a warning based on what we felt was the credible information of a desire to attack that, and there were some who criticized us for inducing and inciting fears, et cetera.

We had an experience, Paul and I, in the middle of last year when we sortied—or he and Defense Department sortied ships from Bahrain around the July timeframe. We closed up an embassy. We were accused by some of the "sky is falling" phenomenon. So there is a lot of sort of paradigm shifts that have to go on not just in law enforcement. It is in the governance as well.

Chairman GOSS. Thank you very much.

The last Representative of the morning will be Mr. Chambliss. You have the floor, sir.

Mr. CHAMBLISS. Thank you.

Very quickly. Gentlemen, you are certainly two of the—outside of the Secretary, you are the highest-ranking and the highest-profile folks at State and Defense. Prior to April 30, 2001, had you gentlemen been involved in any meetings with the previous administration, particularly with Mr. Clarke and Mr. Berger, where you were advised of an urgency of the matter regarding al-Qa'ida and that positive action needed to be taken, and were you given a plan of action by Mr. Clarke and Mr. Berger?

Mr. ARMITAGE. I never met with Mr. Berger. I did meet with Mr. Clarke, along with other colleagues. He certainly was infused with an urgency of the al-Qa'ida threat. We were right with him on that. We were never given a plan. There were some briefings, I understand, that the transition got, but it was not a plan.

Mr. WOLFOWITZ. Same answer for me. I met with Mr. Clarke, not with Mr. Berger.

Mr. CHAMBLISS. At the meeting that took place on April 30 that both of you acknowledge that you were at, and I believe your quote, Secretary Armitage, was, a deputies' meeting on 4/30/01, you made a decision to go after al-Qa'ida and eliminate them. Again, was that meeting—at that meeting, which I know Mr. Clarke was at, I am not sure whether Mr. Berger was there or not, would you tell us whether both or either one were there? Was their sense of urgency at any degree higher than what had been expressed to you before, and, again, was any plan to offensively go after al-Qa'ida or bin Ladin given to you?

Mr. ARMITAGE. I can assure you that Mr. Berger was not there. We did have some discussions there about the use of UAVs. I won't go any further than that. Out of that meeting, among other things, came directions to the various bureaucracies, including the Defense Department, to develop contingency military plans. Mr. Clarke was there.

Mr. WOLFOWITZ. It also might be worth pointing out, April 30 is an interesting date, if I am correct, on the intelligence information. All of the hijackers were in the United States by that time. It is important to recognize the lead time you need to have to deal with these threats, and if we had undertaken this campaign in Afghanistan in July of last year, those people were all ready. They had their plans engaged really from early 2000.

Mr. CHAMBLISS. Thanks, gentlemen.

Chairman GOSS. I want to thank you very much, Mr. Chambliss.

I want to thank our witnesses, the two Secretaries, for coming up. This has been extremely instructive. We are definitely, as you know, aware of how the consumers see this. We are working very steadfastly to try and come up with the best possible awareness and understanding of the American people on the events of 9/11, and you have helped us to do that.

We are reassured by the work that you are doing, and we wish you well in it. We are all counting on you. Thank you.

The committee stands adjourned, subject to the call of the Chair, I guess, which should come at about 2 p.m.

[Whereupon, at 1:15 p.m., the committee was recessed, subject to the call of the Chair.]

Chairman GRAHAM [presiding]. I call the meeting to order. We are pleased to have with us this afternoon two former national security advisors, General Brent Scowcroft and Mr. Sandy Berger. We were to have a third, Dr. Tony Lake, who unfortunately has had a medical problem which has precluded him from joining us this afternoon. He had previously submitted his written statement which will be available and included in the record.

[The prepared statement of Dr. Lake follows:]

ANTHONY LAKE

JOINT INTELLIGENCE COMMITTEE TESTIMONY

Washington, D.C.
September 19, 2002

Chairman Graham, Chairman Goss, Members of the Joint Committee:

I am glad to have this opportunity to try to help, as best I can, the joint committee in its very important work. We must learn from the past while focusing on the future.

I have not had a recent opportunity to review the documentary record from the period in which I served as the Assistant to the President for National Security Affairs, but hope that these general recollections and thoughts are of value to you.

You have asked me to look back on the period of 1993 – 1996 as a consumer of intelligence. I think it is fair to say that we believed the Intelligence Community served us well.

Certainly, attacks such as those on the World Trade Center in 1993, in Oklahoma City, or on American facilities in Saudi Arabia in late 1995 and 1996 were serious setbacks. But it was a period also in which terrorism was formally moved to among the top priorities of the Community; in which the gulf between the FBI and CIA was further narrowed; in which a number of terrorist plots were defeated and terrorists captured; and in which a

focus on the emerging threat of Osama bin Ladin was established. For all of this, the Intelligence Community deserves more credit than it has been given.

Before discussing some of the problems in the Intelligence Community that I believe need to be fixed, let me briefly review that record.

After a truck bomb killed six Americans and injured some one thousand of our citizens on February 26, 1993, a massive effort led to the arrest in June of Sheik Omar Abdul Rahman. He was to be convicted in October 1995 and sentenced to life for his role in the so – called "Day of Terror" plot to attack various New York City landmarks.
In June 1993, the FBI's Operation TerrStop successfully disrupted that plot.

In the same month, the United States bombed the Iraqi intelligence headquarters after the Kuwaiti government uncovered an Iraqi plot to assassinate former President Bush. The FBI and the CIA were able, largely through painstaking analysis of forensic evidence, to confirm Iraqi responsibility. I was not aware of any further Iraqi terrorist plots during the remainder of my time in government.

In January 1995, Abdul Hakim Murad, thankfully a bumbling bombmaker, accidentally blew up his apartment in Manila. This was more a stroke of good luck than an intelligence masterstroke. But the evidence collected by the Government of the Philippines and analyzed by the CIA not only allowed the defeat of a plot to bomb some twelve American commercial airliners over the Pacific (the White House immediately

grounded such flights until they were deemed safe) and to learn about the terrorists' discussions of many other possible actions including assassinating the Pope, crashing an aircraft into CIA headquarters, and attacking numerous other American targets. It also helped our intelligence agencies, through cooperation with foreign authorities, to capture Ramsi Yousef one month later, in Pakistan. The mastermind of the Manila plot, he had also been the object of a massive search for his involvement in the 1993 bombing of the World Trade Center. (If I may add a personal recollection: I vividly remember my joy as I looked at Ramsi's picture on one of the matchbook covers offering a reward for his capture when our NSC counterterrorism coordinator, Richard Clarke, informed me of his capture in a late night phone call to my home.)

In March 1995, President Clinton signed PDD 35, the product of months of work coordinated by George Tenet, then the NSC's Senior Director for Intelligence. It formally established our top intelligence priorities and placed terrorism among them, led only by intelligence support for our troops in the field and a small number of states that posed an immediate or potential serious threat to the United States. In June, PDD 39, a comprehensive directive on terrorism, mandated increased efforts to capture terrorists abroad; high priority for detecting and preventing attacks with weapons of mass destruction; and the exchange between the FBI and CIA of high-level anti-terrorism officials. The same year and in 1996, with the encouragement of the White House, the CIA expanded its Counter Terrorism Center.

The importance of these measures was reinforced by the murder of American diplomats in Pakistan in March 1995 and the Oklahoma City attack a month later. In May, the President called for legislation providing for more than one thousand new law enforcement personnel and other anti – terrorism measures. In October, in his speech at the General Assembly, the President called for a global fight against terrorism and penalties against states that harbored them, as he subsequently did at the summit meeting of Middle Eastern leaders at Sharm - El - Sheikh. The following April, the President was to sign into law the Antiterrorism and Effective Death Penalty Act.

In November, 1995, a bomb destroyed a facility in Riyadh, Saudi Arabia, killing seven, including five American military personnel training members of the Saudi National Guard. Four men were arrested and, after a public confession, quickly executed. The FBI had no chance to interrogate them. In June, nineteen Americans were killed by a truck bomb at a military barracks in Saudi Arabia. After repeated requests at the highest levels of our government, the Saudis allowed indirect access by the FBI to the suspects who were arrested. While some evidence of possible Iranian involvement was developed, our Intelligence Community was unable to develop a clear case at that time.

Meanwhile, we were giving increasing attention to Osama bin Ladin. This does not mean I was aware at the time of any active involvement by bin Ladin in any of the terrorist plots and attacks that I have mentioned. Nor did we then have any knowledge of clear operational links between bin Ladin and the murderous fighting in Somalia in the fall of 1993, despite his much later claims to the contrary.

Our focus, which goes back at least to 1994 and probably to 1993, was on bin Ladin as an increasingly important source of financing for terrorism and, by late 1995, as possibly more than that, as he called for attacks on American interests in the Persian Gulf and especially Saudi Arabia. Our primary preoccupation was on state sponsors of terrorism and such organizations as Hezbollah. Nonetheless, I recall chairing the meeting approving the establishment of a special cell at the CIA's Counter Terrorism Center to track bin Ladin and his activities.

In an effort to disrupt his financial networks, we urged the Sudanese government to expel him, which was done in May, 1996. He fled to Afghanistan. I am sure that we will be discussing further today his subsequent activities. But let me note here that I can think of few issues over which there has been more bad public information, or disinformation, than that concerning the role of the Sudanese government during that period.

Mr. Chairmen, you asked that I address also what I perceived as the weaknesses in the Intelligence Community and what might be done to strengthen it.

I would suggest that the weaknesses I noted in the early and mid 1990's were less vertical than horizontal. By this I mean that I thought the reports the White House received from the Community, in the President's Daily Brief and other forms, were of very high quality, although I wish they had better integrated open source and classified intelligence. And my weekly meetings with the DCI generally served us well. The main needs, most of

which were and are being addressed by the Clinton and both Bush administrations. I believe were horizontal:

-- Not only cooperation, but near fusion, in the counter terrorism work of the CIA and FBI, as the FBI addresses difficult legal, cultural and communications challenges in adding intelligence collection to its primary task of building criminal cases;

-- Better communication between the Department of Justice and the White House staff on terrorism - related investigations, even at some risk to the secrecy with which it is building its cases;

-- Not only a strengthened capacity for the collection of human intelligence, as Director Tenet has been emphasizing, but real time, operational coordination of human and technical intelligence;

-- Better integration of the work of the Intelligence Community and the intelligence cells of our regional military commanders;

-- Production of all source analysis that is not only more efficient within the government but better includes open source information and outside expertise;

-- And methods of securely but effectively sharing intelligence about terrorist threats with state and local officials. This is too often seen as a vertical, one-way stream

from Washington. In fact, it should be seen as horizontal cooperation among all the federal, state and local agencies protecting our homeland, cooperation in which all have insights from which the others can learn.

Let me emphasize: progress on all these issues has been made, in both Bush administrations and under President Clinton. But I believe there is a way to go on most of them.

Many can be resolved by more progress on technical connectivity, linking computers in secure ways not only within the Community but with its government consumers. Yet I wonder, given the number of challenges and their magnitude, if this or some future President, with the Congress, might not want to think in larger terms, and pursue not piecemeal but comprehensive reform. This would have to take on the most important horizontal issue: the institutional relationship of the DCI and the Secretary of Defense. Such a comprehensive approach could include as a goal – and I recognize that this seems quixotic in bureaucratic terms – giving the DCI budget authority over the Intelligence Community to equal his or her responsibilities, or even to place not only the CIA but also NIMA, the NRO and NSA under the direct control of the Director of Central Intelligence.

One last point: I hope, as the Congress, the public and the press hold the Intelligence Community accountable for its failures, that we also remember the difficulty of its work. The fiber optic flood of information it must monitor… the changing faces of

the terrorist threat and the large number of possible targets... the many other intelligence priorities we have... the fact that you build intelligence piece by piece, so what is clear looking back is never so clear looking forward: it is no wonder that we predict that there will be new terrorist attacks. But we cannot logically both predict those attacks and then act with extreme shock whenever there is failure to prevent one.

The Community should be held accountable. But if the search for accountability becomes hostile or politicized, it will be taken less seriously within the Community and the reformers are undercut. If every setback becomes immediate grist for a public grilling, the analysts could become risk averse, covering themselves by crying wolf about every possible threat rather than making judgments about the most likely. And while honoring all those who have been the victims of terrorist murder over the years, we should also bear this in mind: when we fail to remember intelligence successes while examining those tragedies, we do the people who are trying to protect us, and ultimately ourselves, a great disservice.

We will never know which of our citizens are alive today because of those successes, nor note their names nor see their faces. Yet it is a reality, not rhetoric, that they are alive. And we should be grateful.

Chairman GRAHAM. The fight against Usama bin Ladin and against terrorism broadly goes back many years. This afternoon, we will seek to understand what happened in some of those earlier years in the emerging fight against terrorism in the views of those who had key policymaking and policy advising positions as to the support which they received from the intelligence community.

General Brent Scowcroft served as national security advisor to both Presidents Ford and President George H.W. Bush. He had a 29-year military career that included the rank of Lieutenant General in the United States Air Force. His career also included a period of service as special assistant to the director of the Joint Chiefs of Staff and military assistant to President Nixon.

Mr. Samuel R. Berger has served as assistant and deputy assistant to the President for national security affairs under President Clinton. Mr. Berger, a lawyer, has a long career in public service, including serving on the staff of former Senator Harold Hughes of Iowa as well as at the State Department.

Gentlemen, I very much appreciate your participation this afternoon and I know that it will be very meaningful to the members of the committee. Each of our two committees has adopted a supplemental rule for this joint inquiry that all witnesses shall be sworn. So I would ask if you would please rise and raise your right hand.

[Witnesses sworn.]

Chairman GRAHAM. Mr. Scowcroft, we look forward to hearing your statement.

TESTIMONY OF BRENT SCOWCROFT, FORMER NATIONAL SECURITY ADVISOR TO PRESIDENT GERALD FORD AND PRESIDENT GEORGE H.W. BUSH

General SCOWCROFT. Thank you, Mr. Chairman. I'm very pleased to appear before you to discuss such a complex and an important subject. I am not so efficient as Dr. Lake, so I was unable to provide a written statement, but I am prepared to make a few introductory remarks. I was asked to focus on the role of terrorism in the first Bush administration and that will be the focus of my remarks. And at the outset, I would like to point out the difficulties of comparing the counterterrorist situation and activities of the first Bush administration with those of the present time.

The dominant security challenge of the Bush I administration was still the Soviet Union, and that tended to be the organizing focus in which security priorities were viewed. So there was a different kind of an outlook there. And still, things that were not related somehow to the Soviet Union, sort of ipso facto, were not given quite as much attention. In addition, at that time, terrorism was primarily a phenomenon which was State-sponsored or State-assisted or tolerated. And therefore, it was natural for us to think of deterring or dealing with terrorism primarily through the sponsor than through the—with the terrorist organizations directly where things like deterrence and so on would have some impact.

A further point: none of the terrorist organizations at the time so far as we knew had global reach. This meant that while U.S. persons, U.S. interests and U.S. assets were not immune from terrorist attack, the United States homeland, in effect, was. And that

certainly colored how terrorism was viewed. Terrorist organizations appeared to be either regionally- or issue-related. And even though Hizbollah was thought to be behind many of the terrorist acts that occurred during the Reagan administration, they, the acts themselves, seemed to be relatively independent and uncoordinated events rather than part of an overall strategy.

Indeed, at that time there were some terrorist experts who argued that terrorist acts were less an attempt to create damage or to kill people than they were to call attention to the issue which the particular terrorists supported. And I have no idea whether that is really true, but that would be another distinction with the present. As compared to the Reagan administration, which we succeeded, the incidents and the severity of terrorist acts diminished significantly during the Bush I administration.

There was nothing, for example, comparable to the Beirut embassy bombing, Kuwait embassy bombing nor the Marine barracks. There was only one aircraft hijacking during our administration, and no Americans were involved at all.

Nevertheless, there were terrorist activities which compelled a focus on the terrorist problems. And there are two issues which stand out in my mind. The first is Pan Am 103, which occurred technically during the Reagan administration on 21 December 1988, so that the fallout was almost entirely in the Bush administration. And the second was the issue of hostages in Lebanon. I followed the Pan Am 103 problem closely. I received periodic briefings on the investigation. And the effort which led to Libya and away from Syria and Iran, who were the first suspects, was, in my mind, a product of brilliant analysis and investigation and had appeared to be the result of very close coordination between/among CIA, FBI and the British.

The hostage problem was one which we basically inherited. In the decade beginning in 1982, there were some 30 westerners kidnapped in the Middle East. When we came to office, I believe there were about eight hostages being held most apparently in Lebanon.

In February of 1988, Marine Lieutenant Colonel William Higgins, a member of the UNTSO, the UN Treaty Supervision Organization, was captured early in the Bush administration; pictures of what seemed to be his execution were released. The emotional impact of that in the country was severe. The hostage problem was a particularly difficult one. We had various bits of information about some of the hostages, nothing about others. We considered various ideas for trying to rescue the hostages, but the intelligence was never adequate to make the risks appear reasonable. And I'll comment in a moment further about that.

In the early nineties, we saw the emergence of a fundamentalist or Islamic fundamentalist movement, which became suffused with the terrorist threat. It entered the political structure of a number of countries in the Middle East so that the character of terrorism was now changing. It was assuming, for example, possibility of terrorism fundamentalism capturing the political structure of different countries in addition to the typical Hizbollah-like terrorists. And this was an entirely new thrust.

And one of the best examples of that is Algeria. In 1992, the fundamentalists threatened—the Algerians were having two-stage

elections. After the first stage, it appeared likely that the fundamentalists would capture the Algerian government. The then-government, realizing that, canceled the elections and a civil war ensued, replete with much terrorism—and that war has just recently been winding down.

Now my recollection there is that the President was kept well informed through the PDB of this evolution of terrorism into the broader issue involving politics. My summing up is that terrorism was a difficult issue for us to deal with, but that, especially compared with the Reagan administration, it was not an issue that was on the rise and getting worse.

But now, just as terrorism, as I pointed out, has changed, so have the challenges before us. I would say that for Bush I intelligence support in general seemed adequate to the task as it then appeared. But as I indicated, I was frustrated then at the lack of HUMINT capability to help with the hostage problem. We simply could not find out enough about the hostages—who precisely was holding, where they were held and so on—to make any attempt at rescue feasible because we stood the chance of having more of them killed in an attempt to rescue one or two.

And I think that remains an area where improvements are required. The war on terrorism is, in my mind, primarily an intelligence war. And we badly need an improved capability to get inside terrorist networks if we're to deal with that problem. I would observe also that the early nineties began a period of severe budget cuts in the intelligence community. That's a policymaker's issue. That's not an intelligence problem. And that also hampered the ability of the intelligence community to make the transition from the focus on the terrorist threat to that of a world nurturing terrorist activities. And I think that was particularly the case in HUMINT, which had been, to my mind, exclusively focused on the Soviet issue. And HUMINT capability in other areas was sparse and making that transition was made harder.

One last thought about the changed nature of terrorism, and that is its global reach. I believe that the change exacerbates the bifurcation of the intelligence community, the bifurcation being the U.S. border and intelligence collection and activities outside the border versus inside the border. It was not so much of a problem during the Cold War and in the immediate post Cold War world when most of the intelligence problems we faced were overseas, were out of the country. So, with the exception of a couple of counterintelligence cases when we did run into this bifurcation, it was a manageable problem.

The borders, as far as the terrorists are concerned, are gone. There is no distinction for a terrorist between inside and outside the United States. And I think that makes much more serious the division that we have between the CIA and the FBI. And I think it goes two ways. First of all, when you have to have a hand off between any two bureaucracies, there is a considerable loss of efficiency, even if they get along very well. I am not suggesting those two do not. But that is in itself, it makes the problem more difficult, and some of the things that you all are looking at about 9/11 are clearly a result of that bureaucratic difference.

But, in addition to that, there is to me a cultural issue between these two organizations. And that is they approach the problems on which they are expert from opposite ends of the spectrum for the law enforcement organization—and that's fundamentally what the FBI is. You start with an incident. You start with something that focuses your attention and you seek to know more about it to find out about it and so on, but you start with this central fact and you build a case—and as you're building the case, you protect the evidence in that case so that it can be used in prosecution.

The intelligence analyst comes to that problem in an opposite way. There are a lot of little sort of disconnected things going on in the world and the analyst looks at it and says is there a pattern here somewhere that I can discover that will lead me to be able to prevent something from happening. Now these are both legitimate points of view for the jobs that these two have, but they are not interchangeable, and you do not make one an expert simply by putting another label around his neck. And I think that is one of the fundamental problems that we face in the community today. And while we are working on it, I'm not sure that we have adequately solved that difficult issue.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you very much, General.

Mr. Berger, thank you for joining us.

[The prepared statement of Mr. Berger follows:]

SAMUEL R. BERGER

JOINT INTELLIGENCE COMMITTEE TESTIMONY

Washington, D.C.
September 19, 2002

Chairman Graham, Chairman Goss, Members of the Joint Committee: thank you for inviting me here today. We meet at a time of sober reflection, just over a year since the terrorist attacks on the World Trade Center and the Pentagon. We can never forget what we lost that day – more than 3,000 lives cut short... voids created forever. September 11 changed our perspective and priorities as a nation... perhaps even as individuals.

I welcome the Committee's efforts to explore the intelligence community's performance prior to that terrible day and to determine what can be done better. In order to look forward, we have to look back -- to ask hard questions and seek honest answers. All of us want to learn the right lessons to prevent another catastrophe.

At the same time, as your investigation has surely revealed, it is easier to see how puzzle pieces fit together when you have a final picture in hand. History is written through a rearview mirror but it unfolds through a foggy windshield. Few things are as clear at the time as they are looking back. Our challenge now regardless of party or administration, is to sharpen, to the greatest extent we can, our ability to look forward... because the dangers and opportunities our country must confront lie before us, not behind. In that

spirit, what I'd like to do today is, first, put into perspective the intelligence the Clinton administration received and the actions it prompted... and then focus on the challenges I believe our intelligence system still faces in dealing with the jihadist terrorist threat, and what we must do to enhance our capabilities and protect our people.

Counterterror Not a Top Intelligence Priority When We Came Into Office

When President Clinton began his first term in 1993, the intelligence community was primarily focused on the agenda created by the Soviet Union's collapse, the Cold War's end and our Gulf War victory. Despite the fact that, during the 1980s, nearly 500 Americans had been murdered in terrorist attacks abroad by Hezbollah, Islamic Jihad and others, counterterrorism was not a top intelligence priority. The CIA maintained no significant assets in Afghanistan after our withdrawal from the region in 1989. Little was known about Osama bin Laden except that he was one of many financiers of terrorist groups.

Terrorism became a priority for us early on, with the fatal attack on CIA employees at Langley five days after inauguration, the World Trade Center bombing in February, the Iraqi plot to assassinate President Bush in April, and the "Day of Terror" plot against historic landmarks in New York that was thwarted in June. The terrorist threats came from disparate sources – although perhaps less disparate than we knew then – but they reinforced a

larger view that President Clinton expressed early, and with increasing frequency: that the very same forces of global integration that were making our lives better also were empowering the forces of disintegration – terrorists, drug traffickers and international criminals – sometimes all three combined. In 1995, he was the first world leader to bring the terrorist challenge before the United Nations, calling for a global effort to fight it, and as early as 1996, he spoke of terrorism as "the enemy of our generation. Director Tenet shared the President's sense of priority for the terrorist threat.

To reflect that increased priority, working with the Congress we more than doubled the counter-terrorism budget from 1995 to 2000, during a time of budget stringency – with a 350% increase in the FBI's counterterrorism funds, and (although classified) substantial increases in CIA's counterterrorism resources.

We sought to achieve greater coordination by energizing an interagency Counterterrorism Security Group (CSG) consisting of senior-level officials from all key agencies, and appointed a tough-minded activist, Richard Clarke, to a new position of White House-based National Counterterrorism Coordinator. The CSG convened several times a week – sometimes every day – to review threats presented by the intelligence and law enforcement community and follow up. In 1995, the President signed a Presidential Directive formalizing a system for periodically reviewing intelligence priorities, elevating terrorism to a

level exceeded only by support for military operations and a few key countries such as Iraq.

How effective was the intelligence community within the context of that heightened priority? The intelligence and law enforcement community did succeed in preventing a number of very bad things from happening before September 11. They thwarted the "Day of Terror" plot in New York in 1993; Sheikh Omar Abdel Rahman was convicted of that conspiracy in 1995. They worked with foreign intelligence services to track down and capture more than 50 top terrorists, including Ramsey Yousef, responsible for the '93 World Trade Center bombing and Mir Aimal Kansi, who murdered the CIA employees at Langley. With Filipino authorities, they helped to prevent a Manila-based plot to assassinate the Pope and blow up 12 American airlines over the Pacific. Beginning as early as 1997, they undertook a campaign, working with cooperative intelligence agencies around the world, that broke up al Qaeda cells in more than 20 countries.

In late 1999, the CIA warned of five to fifteen attacks on American interests during the Millennium celebrations. That prompted the largest counter-intelligence operation in history before 9/11. Our intelligence community worked with Jordanian officials to uncover plots against the Radisson Hotel in Amman and religious holy sites. Following the arrest of Ahmed Ressam crossing into the U.S. from Canada, they traced material seized from him to terror cells that were broken up in Toronto, Boston, New York and

elsewhere. During this intense period – the most serious threat spike of our time in office – I convened national security Principals, including the Director of Central Intelligence, the Attorney General, the top-level people from the FBI, State and Defense, at the White House virtually every single day for a month for coordinating meetings. I am convinced that serious attacks were prevented by this warning and the actions that resulted.

Yet there were things we did not know or understand well enough. The sophistication of the CIA Counterterrorism Center increased significantly after it was substantially increased in size in 1996 – and the dedication and commitment of the people who worked there was extraordinary – but the picture of the al Qaeda network developed slowly. It was and is a hard and elusive target, as we have seen even since the horrifying events of September 11 galvanized the world to go to war with Afghanistan, and turned Taliban allies like Pakistan into its adversaries.

Islamic jihadists had been attacking American targets since the early '80s, but the linkages among this new breed – hardened by the battle against the Soviets in Afghanistan in the '80s and energized against the United States by the military presence we left in Saudi Arabia after the Gulf War – emerged gradually in the '90s. Our understanding of bin Laden evolved from terrorist financier in the early '90s to an increasingly rabid, magnetic and dangerous galvanizer of anti-American hatred in the mid to late '90s. In June 1998, I

described bin Laden in a "Nightline" TV interview as the most dangerous non-state terrorist in the world.

The first time the intelligence community presented clear evidence of bin Laden's responsibility for attacks against Americans was following the bombings of our embassies in Kenya and Tanzania in August 1998, killing twelve Americans and many more Africans. Our focus on bin Laden, and our efforts to get him, intensified in nature and urgency.

I do believe the CIA was focused on the counterterrorism mission. What we have learned since 9/11 makes clear that the FBI, as an organization, was not as focused. Director Mueller has acknowledged these problems. Until the very end of our time in office, the view we received from the Bureau was that al Qaeda had limited capacity to operate in the U.S. and any presence here was under surveillance. That was not implausible at the time: with the exception of the World Trade Center bombing in 1993, not attributed before 9/11 to bin Laden, plots by foreign terrorists within the U.S. had been detected and stopped. But revelations since September 11 have made clear that the Bureau underestimated the domestic threat. The stream of threat information we received continuously from the FBI and CIA pointed overwhelmingly to attacks on U.S. interests abroad. Certainly, the potential for attacks in the United States was there. That is why, for example, we established the first program on protecting U.S. critical infrastructure. But the ongoing picture of specific threats we received generally was pointed abroad.

Serious efforts appear to be underway to reorient the FBI, making prevention of terrorism its primary mission.

As far as intelligence reporting on threats to civil aviation was concerned, the risk was principally placed overseas and generally involved information about bombing or hijacking. Along with scores of potential threat scenarios – from truck bombs to assassinations to public utilities – we had heard of the idea of airplanes as weapons. But I don't recall being presented with any specific threat information about an attack of this nature or any alert highlighting this threat or indicating that it was any more likely than any other.

Looking Forward: Challenges and Recommendations

Mr. Chairman, in his speech before Congress nine days after September 11, President Bush memorably declared, "In our grief and our anger, we have found our mission and our moment." As our government builds on, expands, and intensifies its efforts to combat terrorism, I'd like to highlight seven important challenges I believe our intelligence community must address if that mission is to succeed.

First, we have to improve dramatically the timely coordination and integration of intelligence. September 11 brought into stark relief the extent of the information breakdown ...not only between agencies, but within them. We

have to resolve these problems, while recognizing that different elements of the national security community have distinctly different intelligence needs.

The creation of a Department of Homeland Security is a step in the right direction, but key to making the new DHS work, in my judgment, will be the creation of an intelligence analytical unit that is accepted as a full partner in the intelligence community: an integrated ALLSOURCE fusion center to analyze and prioritize both domestic and foreign information. It should have the ability to set collection priorities and task partner agencies. And there will still be a need for a White House-led coordinating mechanism – to deal with the policy judgments that flow from threat analysis. In my view, that mechanism is better placed within the National Security Council system rather than separate from it.

Second, we must reach a new consensus on the proper balance of responsibilities within the intelligence community, especially now that the lines between wartime and peacetime... foreign and domestic... law enforcement and intelligence have been blurred. I believe that strengthening the DCI's authority to plan, program and budget for intelligence collection, analysis and dissemination will permit much more effective integration of our intelligence priorities and efforts, including better concentration on counterterrorism. In that connection, I encourage this Committee to consider proposals to separate the DCI and CIA Director positions, so the DCI can focus primarily on community issues and not just CIA concerns. In addition, I would end the

practice of having every intelligence community agency develop its own bilateral relationships with foreign counterparts and give the DCI authority to coordinate all intelligence cooperation with other countries.

Third, the terrorism challenge increases the importance of predictive intelligence from terrorist targets ... the information that tells you where they are going to be and what they are going to do.

This is an incredibly difficult challenge, especially when dealing with a shadowy, cell-based network. After new authorities were issued by the President in 1998, we were actively focused on getting bin Laden and his top lieutenants, through overt and covert means. The success of these efforts depended upon actionable intelligence on his future whereabouts. The intelligence community stepped up its efforts to anticipate bin Laden's movements, but reliable intelligence of this nature emerged only once – shortly after the African embassy bombings. We acted on this predictive intelligence to attack a gathering of bin Laden and his operatives in Afghanistan. Twenty to thirty al Qaeda lieutenants were killed, we were told, and bin Laden was missed by a matter of hours.

Over the next two years, we continually sought to obtain predictive intelligence on bin Laden. This included developing and successfully testing the promising new technology in late 2000. But never again in our time would actionable intelligence necessary for effective action emerge.

Obtaining better predictive intelligence requires continued strengthening of human intelligence collection. Recruiting these exceptional sources requires effort, patience, ingenuity and professional zeal. It also depends upon profound understanding of intelligence targets that comes from the closest possible partnership between the CIA Directorates of Operations and Intelligence.

Fourth, intensified use of new technologies also is essential, particularly "downstream" information capabilities involving processing, exploitation and efficient distribution. We need to enhance the intelligence community's cadre of computer science and technology experts, as well as expand public-private IT partnerships, building upon Director Tenet's innovative In-Q-Tel venture capital program.

Fifth, we need to strengthen covert action capability, including paramilitary — while maintaining all of the necessary congressional consultations and oversight. Our military special forces are magnificent, but they are organized and trained to work best within the context of a larger, declared military operation. There is a need for a strong CIA paramilitary capability for highly sensitive, undeclared operations less compatible with the Special Forces traditional mission.

Sixth, I believe we should seek the same ethic of "jointness" among our various intelligence units as Goldwater-Nichols initiated in the military.

Requiring rotational assignments for intelligence professionals in different agencies in the community can expose them to different techniques and points of view, create relationships that facilitate cross-agency cooperation and improve the performance of the overall community.

Finally, we must add resources not only to collection but also to analysis, including looking at new ways to fuse open source analysis with information from clandestine sources. We also need to build better mechanisms for bringing academic and private sector experts into close and constructive contact with the intelligence community. The National Intelligence Council has been used to recruit outside experts for periods in government. We should consider ways of expanding this cooperation, including a quasi-official Institute to bring experts together – in a classified context – with intelligence professionals. And there are less formal ways to build virtual networks of cleared outside experts and government intelligence specialists.

Conclusion

Mr. Chairmen... the hardest challenge for policy makers is to recognize the larger context, to discern the bigger picture, to understand the historical forces, to hear the sound of distant footsteps. That requires the best possible intelligence community. For better or worse, after September 11, nothing is unimaginable anymore. Our challenge is to summon and sustain the will to make our intelligence as good as it must be.

Thank you for this opportunity to share my thoughts. I would be happy to answer your questions.

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TESTIMONY OF SAMUEL BERGER, FORMER ASSISTANT AND DEPUTY ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS UNDER PRESIDENT CLINTON

Mr. BERGER. Chairman Graham, Chairman Goss, members of the Joint Committee, thank you for inviting me here today. We meet at a time of sober reflection just a year since the attacks on the World Trade Center and the Pentagon. We can never forget what we lost that day, more than 3,000 lives cut short. September 11 changed our perspective and priorities as a Nation, perhaps even as individuals. I welcome the committee's efforts to explore community intelligence performance prior to that terrible day and to determine what can be done better.

In order to look forward, we have to look back, to ask hard questions and seek honest answers. All of us want to learn the right lessons to prevent another catastrophe. At the same time, as I am sure your investigation has revealed, it's easier to see how puzzle pieces fit together when you have the final picture at hand. History is written through a rear-view mirror, but unfolds through a foggy windshield. Few things are as clear at the time as they are looking back. Our challenge now, regardless of party or administration, is to sharpen to the greatest extent we can our ability to look forward, because the dangers and opportunities our country must confront lie before us, not behind.

In that spirit, I would like to, today, first put into perspective the intelligence the Clinton administration received and the actions it prompted, and then focus on the challenges that I believe our intelligence system still faces in dealing with jihadist threat, jihadist terrorist threat, and what we must do to enhance our capabilities and protect our people.

When President Clinton began his first term in 1993, as General Scowcroft has noted, the Intelligence Community was primarily focused on the agenda created by the Soviet Union's collapse, with Cold War's end, and our Gulf War victory. Despite the fact that during the eighties nearly 500 Americans had been murdered in terrorist attacks abroad by Hizbollah, Islamic Jihad, and others, counterterrorism was not a top intelligence priority. The CIA maintained no significant assets in Afghanistan after our withdrawal from that region in 1989. Little was known about Usama bin Ladin, except that he was one of many financiers of terrorist groups.

Terrorism became a priority for us early with the fatal attack on employees at Langley five days after inauguration, the World Trade Center bombing in February, the Iraqi plot to assassinate President Bush in April, and the Day of Terror plot against historic landmarks in New York that was thwarted in June. The terrorist threats came from disparate sources, although perhaps not as disparate as we knew at the time. But they reinforced a larger view that President Clinton expressed early and with increasing frequency, that the very same forces of global integration that were making our lives better also were empowering the forces of disintegration, the terrorists, the drug traffickers, the international criminals, sometimes all three together.

In 1995, he was the first world leader to bring the terrorist challenge before the United Nations, calling for a global effort to fight

it. And, as early as 1996, he spoke of terrorism in a major speech as the enemy of our generation. Director Tenet, in my judgment, shared the President's sense of priority for the terrorist threat. To reflect that increased priority, working with the Congress, we more than doubled the counterterrorism budget from 1995 to 2000 during a time of budget stringency, with a 350 percent increase in the FBI's counterterrorism funds and, although it is classified, substantial increases in CIA's counterterrorism resources. We sought to achieve greater coordination by energizing an interagency counterterrorism security group consisting of senior level officials from all key agencies, and we appointed a tough-minded activist, Richard Clarke, to a new position of White House-based national counterterrorism coordinator.

The CSG convened several times a week, sometimes every day, to review threats presented by the intelligence and law enforcement community and to follow up. In 1995, the President signed a presidential directive formalizing a system for periodically reviewing intelligence priorities and elevated terrorism to a level exceeded only by support for military operations and a few key countries such as Iraq.

How effective was the intelligence community within the context of that heightened priority? The intelligence and law enforcement community did succeed in preventing a number of very bad things from happening before September 11. They thwarted the day of terror plot in New York 1993. Sheikh Omar Abdel Rahman was convicted of that conspiracy in 1995. They worked with foreign intelligence services to track down and capture more than 50 top terrorists, including Ramzi Yousef, responsible for the '93 World Trade Center bombing, and Mir Amal Kansi, who murdered the CIA employees at Langley.

With Filipino authorities, they helped to prevent a Manila-based plot to assassinate the Pope and blow up 12 American airlines over the Pacific. Beginning as early as 1997, they undertook a campaign working with cooperative intelligence agencies around the world that broke up al-Qa'ida cells in more than 20 countries.

In late '99, the CIA warned of 5 to 15 attacks on American interests during the millennium celebrations that were upcoming. That prompted the largest counterintelligence operation in the history prior to 9/11. Our intelligence community worked with Jordanian officials to uncover plots against the Radisson Hotel in Amman and religious holy sites.

Following the arrest of Ahmed Ressam crossing into the United States from Canada, they traced materials seized from him to terrorist cells that were broken up in Toronto, Boston, New York and elsewhere. During this very tense period, the most serious threat spike of our time in office, I convened national security principals, including the Director of Central Intelligence, the Attorney General, the top level people from the FBI, State and Defense at the White House, virtually every single day for a month for coordinating meetings.

I am convinced that serious attacks were prevented by this warning and the actions that resulted. Yet there were things we did not know or understand well enough. The sophistication of the Counterterrorism Center increased significantly after it was sub-

stantially increased in size in 1996 and the dedication and commitment of the people who worked there was extraordinary. But the picture of the al-Qa'ida network developed slowly. It was and is a hard and illusive target, as we have seen even since the horrifying events of September 11, which galvanized the world to go to war with Afghanistan and turn Taliban allies like Pakistan into its adversaries.

Islamic jihadists have been attacking American targets since the early '80s. But the linkages among this new breed, hardened by the battle against the Soviets in Afghanistan in the '80s and energized against the United States by the military presence we left in Saudi Arabia after the Gulf War, emerged gradually in the nineties. Our understanding of bin Ladin evolved from terrorist financier in the early nineties to an increasingly rabid, magnetic and dangerous galvanizer of anti-American hatred in the mid to late nineties.

In June of 1998, I described bin Ladin in a Nightline television interview as the most dangerous non-State terrorist in the world. The first time the Intelligence Community presented clear evidence of bin Ladin's responsibility for attacks against Americans was following the bombings of our embassies in Kenya and Tanzania in August of 1998, killing 12 Americans and many more Africans. Our focus on bin Ladin and our efforts to get him intensified in urgency. I do believe the CIA was focused on the counterterrorism mission.

What we have learned since 9/11 makes clear to me that the FBI was not as focused as an organization. Director Mueller has acknowledged these problems. Until the very end of our term in office, the view we received from the Bureau was that al-Qa'ida had limited capacity to operate in the United States and any presence here was under surveillance.

That was not implausible at the time. With the exception of the World Trade Center bombing in 1993, not attributed before 9/11 to bin Ladin, plots by foreign terrorists within the United States have been detected and stopped. But revelations since September 11 have made clear that the Bureau underestimated the domestic threat. The stream of threat information we received continuously from the FBI and CIA pointed overwhelmingly to attacks on U.S. interests abroad. Certainly the potential for attacks in the United States was there. That is why, for example, we established first program on protecting U.S. critical infrastructure. But the ongoing picture of specific threats we received generally was pointed abroad. Serious efforts appear to be under way to reorient the FBI, making prevention of terrorism its primary mission.

As far as intelligence reporting on threats to civil aviation was concerned, the risk was principally placed overseas and generally involved information about bombing or hijacking, along with scores of potential threat scenarios from truck bombs to assassinations to public utilities.

We have heard of the idea of airplanes as weapons, but I don't recall being presented with any specific threat information about an attack of this nature or any alert highlighting this threat or indicating it was any more likely than any other.

Mr. Chairman, in a speech before Congress nine days after September 11, President Bush memorably declared, in our grief and

our anger, we have found our mission and our moment. As our government builds on, expands and intensifies its efforts to combat terrorism, I would like to highlight seven important challenges that I believe our Intelligence Community must address if that mission is to succeed. First, we have to improve dramatically the timely coordination and integration of intelligence.

September 11 brought into stark relief the extent of the information breakdown, not only between agencies but within them, in some cases. We have to resolve these problems while recognizing the different elements of the national security community have distinctly different intelligence needs. The creation of a Department of Homeland Security is a step in the right direction. The key to making the new DHS work, in my judgment, will be the creation of an intelligence analytical unit that is accepted as a full partner in the Intelligence Community—an integrated all-source fusion center to analyze and prioritize both domestic and foreign threats.

They should have the ability to set collection priorities and task partner agencies. And there will still be a need for a White House-led coordinating mechanism to deal with policy judgments that flow from threat analysis. In my view, that mechanism is better placed within the National Security Council system rather than separate from it.

Second, we must reach a new consensus on the proper balance of responsibilities within the Intelligence Community, especially now, as General Scowcroft has pointed out, that the lines between wartime and peacetime, foreign and domestic, law enforcement and intelligence have been blurred.

I believe strengthening the DCI's program to plan, program and budget for intelligence collection analysis and dissemination will permit much more effective integration of our intelligence priorities and efforts, including better concentration on counterterrorism.

In that connection, I encourage the committee to consider proposals to separate the DCI and the CIA director positions so the DCI can focus primarily on community issues and not just CIA concerns. In addition, I would end the practice of having every Intelligence Community agency develop its own bilateral relationships with foreign counterparts and give the DCI authority to coordinate all intelligence cooperation with other countries. In some countries there are now a dozen or more of these relationships.

Third, the terrorism challenge increasingly increases the importance of predictive intelligence from terrorist targets, the information that tells you where they are going to be and what they are going to do. This is an incredibly difficult challenge, especially when dealing with a shadowy cell-based network. After new authorities were issued by President Clinton in 1998, we were actively focused on getting Usama bin Ladin and his top lieutenants through overt and covert means.

The success of those efforts depended upon actionable intelligence on his future whereabouts. The Intelligence Community stepped up its efforts to anticipate bin Ladin's movements. But reliable intelligence of this nature emerged only once shortly after the African embassy bombings. We acted on this predictive intelligence to attack a gathering of bin Ladin and his operatives in Afghani-

stan. Twenty to 30 al-Qa'ida lieutenants were killed, we were told, and bin Ladin was missed by a matter of hours.

Over the next two years we continually sought to obtain predictive intelligence on bin Ladin. This included developing and successfully testing promising new technologies in late 2000, but never again in our time would actionable intelligence necessary for effective action emerge. Obtaining better predictive intelligence requires strengthening human intelligence collection. Recruiting these exceptional sources requires effort, patience, ingenuity and professional zeal. It also depends upon a profound understanding of the intelligence targets that comes from the closest possible partnership between the CIA director of operations and intelligence.

Fourth, intensified use of new technologies also is essential, particularly downstream information capabilities involving processing exploitation and efficient distribution. We need to enhance the Intelligence Community's cadre of computer science and technology experts, as well as expand public/private IT partnerships, building upon Director Tenet's innovative In-Q-Tel venture capital program.

Fifth, we need to strengthen covert action capability, including paramilitary, while maintaining all of the necessary congressional consultations and oversights. Our military special forces are magnificent, but they are organized and trained to work best within the context of a larger declared military operation. There is a need for a strong CIA paramilitary capability for highly sensitive undeclared operations less compatible with the special forces traditional mission.

Six, I believe we should seek the same ethic of jointness among our various intelligence units as Goldwater-Nichols initiated in the military. Requiring rotational assignments for intelligence professions in different agencies in the community can expose them to different techniques and points of view, create relationships that facilitate cross-agency cooperation and improve the performance of the overall community.

Finally, we must address resources not only to collection, but also to analysis, including looking at new ways to fuse open source analysis with information from clandestine sources. We need to build better mechanisms to bring academic and private sector experts in close and constructive contact with the Intelligence Community. The National Intelligence Counsel has been used to recruit outside experts for periods in government. We should consider ways of expanding this cooperation, including a quasi-official institute to bring experts together in a classified context with intelligence professionals. And there are less formal ways to build virtual networks of cleared outside experts and government intelligence specialists.

Mr. Chairman, in conclusion, let me simply say that the hardest challenge for policymakers is to recognize the larger context, to discern the bigger picture, to understand the historical forces and hear the sounds of distant footsteps. That requires the best possible Intelligence Community. For better or for worse, after September 11, nothing is unimaginable anymore. Our challenge is to summon and sustain the will to make our intelligence as good as it must be. Thank you very much.

Chairman GRAHAM. Thank you very much, Mr. Berger and General Scowcroft, for two excellent, thought-provoking statements. Our practice is to have the designated questioners who will ask questions for a period of approximately 20 minutes. The House is leaving because of a vote that is under way. They will be returning in approximately 20 to 30 minutes. First, Senator Rockefeller and then Senator Shelby.

Senator ROCKEFELLER. Thank you, Mr. Chairman, gentlemen. I will repeat something I said this morning. This is, as Eleanor Hill said yesterday, the terrorists at the World Trade Center and Pennsylvania, the Pentagon, and that needs to be said because you want to free witnesses of any sense of the word going after people, trying to place blame until we know a lot more. So that the terrorists are at fault and that has to be made very, very clear.

Now you represent very key intelligence policymakers in the years before 9/11, as opposed to this morning's panel which was some of each. And each of you has been involved for years in promoting reform. And I have here just at random—I mean, an endless series of reports, none of them thin, all of them huge and all of them recommending how do you bring the Intelligence Community together to work efficiently before 9/11, when the world changed forever. There is an enormous reluctance to do this.

From my observation, I don't think very much has been done in a larger systemic sense and that troubles me. Each of you have already in your own way answered some of the questions that I have, but I want to follow up on them. You have the concept of how do you service customers. You suggested seven approaches. General Scowcroft, you are at work on something which you are probably not free to discuss but you have discussed with us in a classified setting, and so that the question of protecting the Nation at home and prosecuting the war on terrorism here and abroad occurs very deeply to each of you.

The first thing that strikes me is why is this so impossible? Why is there such an ethic against change? I can give you some answers, but I am not interested in my answers, I am interested in yours. When everyone really goes at the subject of doing systemic change, I mean, if there was ever an opportunity that was handed this Nation and this Nation's intelligence effort and beyond that to reorganize ourselves in a way which protects the American people, which is our first responsibility under the Constitution, it is now, it is post 9/11. And you would think people would be coming out of the woodwork in ways to do that, but that is not happening. Changes are being made at the edges. People are taking those changes and making them appear to be enormous events when they're not. Because as you said—I forget your phrase, Mr. Berger, but it was something like jointness, the ethic of jointness.

They're all in this together and the intelligence communities are in this together. And yes, they do have separate missions and they do have certain things, but they have their own campuses and they have grown up NSA, no such agency. I mean they have grown up in a climate of quiet uniqueness, nobody to intrude, their own memorial gardens, which are sacred, their own cafeterias, their own way of doing things, directors come and go, the bureaucracy stays,

nobody really challenges, and, since 9/11, people have gotten very interested.

The question is what are we going to do about it? And you just start with the question of no single person over all of this. And we were told this morning that the new Under Secretary for Intelligence will be able to do that, bring all the different threads together. Can an Under Secretary, in fact, do that? Just drawing some thoughts and I want you to come back with some. I can't remember any director of the CIA who felt really at liberty, with controlling only 15 percent of the budget, with the Department of Defense controlling 85 percent of the intelligence budget, you know, to equal 100 percent, that they felt really able to wander beyond what they had the power to participate and authorize and their authorized limit, which in the case of the Central Intelligence Agency which the American people think is the source of all intelligence is 15 percent.

Now if there's a crisis, if a satellite goes dead, if something happens, can George Tenet and any of his predecessors, whether there were similar situations or there weren't, go to the Department of Defense and say I need X hundreds of millions of dollars to do this kind of thing and will it happen? Probably not? Why? Because it is this Senator's opinion that they know they're going to lose that effort to improve their efficiency.

So what do you make of a system where you have the 15 percent/85 percent divide, where Mr. Berger is calling for a sharp increase in preemptive intelligence—and I agree, you can't make war without preemptive intelligence. You have to have good intelligence before you make good war. But what do you make of this? They have their own. The Central Intelligence Agency has their own. They both share in the control of a variety of other agencies, but the budget belongs to the Pentagon. What is the fear? What is the political fear?

Is it the fact there are so many campuses out there that are complete and settled? Is it the fact that nobody wants to take on a big risk and nobody wants to take on the Secretary of Defense and if they do that, they are taking on the President maybe? I don't know. Why is it so hard to get us to focus particularly now on coordinating our intelligence efforts? That is my short question.

General SCOWCROFT. I will try to give you a shorter answer than the questions. You make a number of very good points. My guess is if you look at those volumes that you showed us, they, in general, go in one direction, which is to—toward centralization of the Intelligence Community. The Department of Defense and the CIA or the DCI, let me say, the Secretary of Defense and DCI were both established by the legislation, National Security Act of 1947, and they were both sort of titular heads of agencies that were gathered together from out of the executive branches or executive departments of the government. Neither of them had significant powers.

Now over a period since then, the Secretary of Defense has accreted a great deal of power. He still is not probably quite so much a czar as most other Cabinet heads are, but he has pretty much authority over his constituent elements. The DCI, despite his title of Director of Central Intelligence, has shared in no such accretion. There have been changes and they have generally gone on

in that direction, but he still presides over a group of semi-autonomous agencies.

Now is that good or bad? There are some people who say organizational blocks don't matter, it's the people. And if you get the right people in, you'll get the job done. But I think in part that's true. But a good organizational structure can't make up for bad personnel. But a good organizational structure can make good people more efficient at what they do. But every time you take steps to increase the authority of the DCI, you're taking away authority from someone else. And no bureaucrat likes authority taken away from him, and so the resistance is significant. And by and large, there has been the crisis within the Intelligence Community as there has been in the Department of Defense having to fight several wars since 1947 to get people to take that step.

Now that's a pretty broad answer, but is 9/11 that precipitating incident? I don't know. I would just point out one thing. In May of 2001, the President established an NSPD 5, a review of the Intelligence Community. And I was honored to chair the external panel of that review. And that was the sense that even before 9/11, that we had some problems here that needed to be worked on. Now that also conjoins me from getting into too much detail because that report has been submitted and is still classified and that is my initial response to you. It is the inertia; whether it's constructive or destructive depends on your philosophy about organization and its connection to management.

Senator ROCKEFELLER. Mr. Berger.

Mr. BERGER. Why is it so hard to change? Perhaps you should bring in a distinguished panel of psychiatrists, but let me give you my perspective from the intelligence side. I think that people tend to look at things from the inside out rather than outside in. So change means what about my carpool and what about the project I'm working on and how I fit into the new office. So there is a personal inertia. And then there is vested interest in the status quo. But I do believe 9/11 is an indispensable moment and so I believe the work of this Joint Committee is so important because the battlefield of the war is now here at home and therefore we have to be organized for that war.

My own view, Senator, as I said in my remarks, I think organization does matter. I would have a Director of Central Intelligence who had overall authority for budget, planning and priorities working with his colleagues, not execution. He would not own the agencies, but he would have the ability to set overall priorities in concert with his colleagues under the direction of the President.

Number two, as I indicated, I think there still should be two counterterrorism centers, but I think in the new Department of Homeland Security there must be a fusion center. It's an analytical center, not a collection center, with the ability to take all of this information you've been getting, all 400,000 documents and try to see the patterns, that has the ability to task the agencies for collection and seen as a full partner in the intelligence process.

And third, I think there does need to be a White House focused coordinating mechanism, because policy and intelligence are linked together, my own view is, best situated within the National Security Council than in an Office of Homeland Security. We can get

into that later. It's a side issue. I think it's more central to the way we make decisions in this country involving national security. But I think this is the moment, Senator, that all of us have to try to change the way we do things and we can either do it——

Senator ROCKEFELLER. Reclaiming my time. I have an FBI question for both of you. We can either say this is what it ought to be, but then if we try to do that, everybody would say, oh, they are just fooling themselves. They're just naive. They're do-gooders. It will never happen. You accept that, you accept that and then by definition, you have immediately cut in half what it is that you seek which will then be leveraged down to 25 percent or below.

So, I mean I just want that out there—the horror of 9/11 and people talking about carpools and what kind of a Nation are we with respect to change. We are capable of doing some rather extraordinary things, and this ought to be one of them.

My second and last question has to do with the FBI. I am interested, and I think that Mr. Berger, you were fairly clear on this and I think that you were, too, General Scowcroft. I would be interested in the quality of the intelligence that you received, each of you, in your own time from the Intelligence Community as compared to the FBI, and I would put that within the following context. I do not understand why it is that you have the obvious situation of you collect intelligence internationally, and that's central intelligence, and then you collect it internally and that can't be central intelligence because that's invasive.

We have something that is called the PATRIOT Act, that says yes, you can cooperate on some things and all of a sudden there's an analytical group set up over in FBI of not very many people to do intelligence work. And they are trained in one kind of life as you said, General Scowcroft. They are trained to do one set of things. They are not trained to do the other set of things. We don't have the time. It takes five years to train good analysts anyway. So why is it that we're trying to make the FBI do something which I don't basically think it can do from this Senator's point of view. And I am interested, one, in what your views are about that and, secondly, what was the quality of the feedback that you got from each of those separate agencies on common threats?

General SCOWCROFT. Well, that is an interesting question, Senator Rockefeller, because, as you first mentioned, I was thinking back to intelligence from the FBI, I mean, intelligence information from the FBI, and I was trying to think of cases where we actually got it. Not very much, because we are or I was focused on foreign intelligence primarily. There was some counterintelligence issues where the FBI intelligence was particularly involved, and the one case I mentioned, Pan Am 103, but that was investigative intelligence and the FBI and the CIA did an absolutely brilliant job on that. But I can't think of many—can't recall of any instances of pure intelligence product from the FBI. And I don't say that pejoratively at all.

Senator ROCKEFELLER. And I don't ask it in that fashion, because what they do, they do superbly.

General SCOWCROFT. They do superbly. And it would be a shame to say now FBI, you are going to focus only on intelligence collection and we're not going to worry about law enforcement anymore.

That would be a serious mistake. But I don't know how to answer your question because I can't separate FBI intelligence out very well.

Senator ROCKEFELLER. Mr. Berger.

Mr. BERGER. Senator, let me say first, there are extraordinarily dedicated people in the FBI and we have seen that since 9/11 as we have looked back. And the FBI had some successes here, for example, in breaking up the 93 days of terror. But by and large, if there was a flood of intelligence information from the CIA, there was hardly a trickle from the FBI.

I think that relates somewhat to how they saw their mission. I think it relates to their sense of the al-Qa'ida fundamentalist threat in the United States—which I think either was much less by the end of 2000 than it seems to be today, or was underestimated—and the priority given to this area of counterintelligence.

So it is a little bit like the person who looks for his keys under the light pole because that is where the light is. We were getting a lot of information on foreign threats. We were getting very little information on domestic capabilities and threats, and that obviously influenced the focus.

Senator ROCKEFELLER. I thank you both. Mr. Chairman, that concludes my questions.

Chairman GRAHAM. Thank you, Senator Rockefeller. Senator Shelby. Senator, before you commence—after Senator Shelby, we will then turn to questions from members of the committee, assuming that we are still in a situation where our House brethren have not returned. The order of questioning will be Senator Bayh, Senator Durbin, Senator DeWine, Lugar, Inhofe, Feinstein, and Kyl.

Vice Chairman SHELBY. Thank you, Mr. Chairman.

First of all, General Scowcroft and Mr. Berger, we appreciate you coming here today and we appreciate your insight and your experience. I respect both of you. I especially appreciate Mr. Berger's insight into the creation of the intelligence component at Homeland Security. It is something Senator Graham and I have been working with both Senator Lieberman, Senator Thompson, the White House, and others to create what Mr. Berger described. We think it is very important. Without it, we doubt that Homeland Security could be what it needs to be to deal with this. So I appreciate your insightful remarks.

I would like to pick up on, first, what Senator Rockefeller was talking about. We all respect the FBI. We know the FBI has no peer when it comes to forensic science, you know, investigations and stuff. I believe they are great and they have got great people there. And I believe Director Mueller is bringing leadership down there. But we will have to measure that with time.

Having said that, Mr. Berger, on page 6 of your testimony, and I will quote again, it is similar to what you said earlier: I do believe the CIA was focused on the counterterrorism mission. What we have learned since 9/11 makes clear that FBI, as an organization, was not as focused. Director Mueller has acknowledged these problems. Until the very end of our time in office, this is the Clinton Administration, what we received from the Bureau was that al-Qa'ida had limited capacity to operate in the U.S. and any presence here was under surveillance.

Gosh. I am not going to comment on that, but that is disturbing. And I think your remarks were true—ring true.

I would like to get into something else now. Mr. Berger, first I will direct some questions at you. I have some observations to make first. In August of 1998, after al-Qa'ida bombed our embassies in Kenya and Tanzania, President Clinton had strong words about how we must deal with the terrorist threats. He declared, and I will quote, "that countries that persistently host terrorists have no right to be safe havens. Our battle against terrorism," he said, "will require strength, courage and endurance."

He pledged—that is, President Clinton—that we, and I quote, "will not yield to this threat. We will meet it no matter how long it may take. This will be a long, ongoing struggle. We must be prepared to do all that we can for as long as we must."

President Clinton also went on and he warned that the risk from inaction from America and the world would be far greater than action, for that would embolden our enemies, leaving their ability and their willingness to strike us intact.

President Clinton went on to say, and he promised, "There will be no sanctuary for terrorists. We will persist and we will prevail." Those are very strong words. I agreed with him. I welcomed it. And they sound a lot to me like what President Bush has said recently and said just before we destroyed the Taliban regime in Afghanistan with overwhelming force.

By the time he spoke those words, President Clinton, if I recall right, had already or about that time, contemporaneous with, launched a missile strike against a camp in Afghanistan and a pharmaceutical factory in Sudan. After that speech, Mr. Berger, what steps did the administration take to fight a decisive, clear battle against terrorism?

Mr. BERGER. Well, Senator, as you point out, first of all, when—after the attacks on our embassy in Afghanistan and—excuse me, in Kenya and Tanzania—there were 12 Americans killed; a number, many more Africans. Quite soon, within 2 weeks, we had developed very good intelligence indicating that 200 to 300 bin Ladin operatives would be at a fixed location with bin Ladin. We attacked that facility. We killed many al-Qa'ida people.

What I was told afterwards is that bin Ladin had probably left a few hours before, indicating the difficulty of getting predictive intelligence, getting inside the tent cycle.

We can talk about Sudan. I believe hitting that plant was the correct thing to do. I know that the Sudanese have paid a lot of money to lobby us with public relations firms to try to portray it as a toothpaste factory. I would be happy to make that case if you like, as to why that was an appropriate target. From that point on——

Vice Chairman SHELBY. That is a dispute——

Mr. BERGER. It may be disputed, but I believe we were correct then, and I believe we are correct now.

Vice Chairman SHELBY. Was there a dispute in the Intelligence Community?

Mr. BERGER. There was no dispute——

Vice Chairman SHELBY. As to whether or not this was a military target or an intelligence target?

Mr. BERGER. There was no dispute presented to the principals or the President.

Vice Chairman SHELBY. Okay.

Mr. BERGER. That facility was one in which there was VX chemical precursor found, which was owned by the Military Industrial Corporation of Sudan, which we knew was their vehicle for developing chemical weapons, which was—had received millions of dollars from bin Ladin. And we have actually learned since, from an al-Qa'ida operative, that they were working with Sudan on chemical weapons in Khartoum. And I would much rather be defending the decision to hit that place than not having hit that place, if two weeks later chemical weapons had shown up in the New York City subway system or in Alabama. So as for that, I believe that was the right decision to make. We proceeded on the information that we received. Whether down in the bowels——

Vice Chairman SHELBY. Do you believe that was good information?

Mr. BERGER. I have gone back to the Agency on a number of occasions, because I have been defending this from time to time since. And at the highest level, that information has been validated to me.

Now, with respect to what else was going on, from 1998 on, we were embarked on a very intense effort to get bin Ladin, to get his lieutenants, through both overt and covert means. I cannot discuss in this committee the covert efforts, which involved working with——

Vice Chairman SHELBY. Let me go back. You said 1998. What about 1996? Was he ever offered up by the Sudanese people? I was recently—Senator Spector and I were in Khartoum. They told us that they offered him up to the Clinton administration and that you all declined. Was that a real offer or was that just talk or what?

Mr. BERGER. Senator, can I answer the last one and then get to the next one?

Vice Chairman SHELBY. Sure.

Mr. BERGER. You ask them faster than I can answer them. You asked what we did after 1998. We were involved—at that point, our intense focus was to get bin Ladin, to get his key lieutenants. The President conferred a number of authorities on the Intelligence Community for that purpose.

Vice Chairman SHELBY. By "get him," that meant kill him if you had to, capture him or kill him?

Mr. BERGER. I don't know what I can say in this hearing, but capture and kill—until the Chairman rules me out of order. There was no question that the cruise missiles were not trying to capture him. They were not law enforcement techniques. We unfortunately, despite intense effort, had actionable intelligence only that time.

Whether more could have been done to get more actionable intelligence, I don't know. We developed some new techniques at the end of 2000, some technical means to get corroborating information on bin Ladin's whereabouts. Those were tested successfully in 2000. I don't know if they were used again after 2000.

So our focus was, in addition to breaking up al-Qa'ida cells around the world, in addition to a number of other things we were

doing, our focus was getting bin Ladin, A, and B, putting pressure on the Taliban. We froze Taliban assets, about $250 million. We went to the United Nations. We got sanctions on the Taliban. We sent senior diplomats to meet with the Taliban and issue to them privately the same threat that President Bush issued publicly after September 11; that is, if there were any further incidents involving bin Ladin, they would be held personally accountable as the Taliban.

So I think that was intense effort. I think that it was directed at personnel, it was not directed at jungle gyms or facilities. We—I think the judgment was to hit a camp and not get top bin Ladin people would have made the United States look weak and bin Ladin look strong. And I think the potential of going to war with Afghanistan before 9/11 was not something that I think was feasible. No one on this committee was seeking that, or, I think, elsewhere.

Now, you ask about Sudan. There never was an offer, Senator, from Sudan to turn bin Ladin over to the United States.

Vice Chairman SHELBY. Were there discussions?

Mr. BERGER. There was an effort in 1996——

Vice Chairman SHELBY. Were there discussions?

Mr. BERGER. There was an effort in 1996 taking place. There were contacts with the Sudanese. Understand, Senator, the Sudanese Government in the mid–1990s was one of the worst terrorist states in the world. Close to Iraq. They tried to assassinate Mubarak. They have been engaged in a civil war in which two million of their people have been killed. They have bombed their own people at feeding facilities. They practice slavery and discriminated in gross ways against the Christian community in that—these were not nice people. That is point number one.

Number two, we tried to—they wanted to get off the terrorism list. We put them on the terrorism list in 1993 because of all of this and many other things. They wanted to get off the terrorism list. And from time to time they would say just, you know, take us off the terrorism list and we will be nice guys.

We said, do something. Prove it. Get rid of bin Ladin. Expel all of these other groups. There never was—and I spent a great deal of time on this since 9/11 because the question has come up more than once—there never was, and certainly no official I have talked to at any agency is aware of any offer by the Sudanese to turn him over to the United States.

We pressed the Sudanese to expel him. We actually had discussions, I believe, with the Saudis and others about whether they would take him. They said no. But the Sudanese never offered that. They have said so since, most recently.

And if I can say this in conclusion, if you think that Tarabi and Beshar, who were as vile a bunch of thugs as exists, was going to turn Usama bin Ladin over to a hostile country, whether Saudi Arabia or the United States, I think that overestimates the kind of people we were dealing with.

We gave them every opportunity, from 1996 on, even after—let me just finish, Senator—even after bin Ladin was expelled, to give us information, to turn over information. We met with them continually all over the world. They never gave us anything. Since 9/11,

there is a bit of revisionism going on, because they don't want President Bush to single them out as the next target. And there is obviously an attempt to rewrite history.

Vice Chairman SHELBY. Do you think they have changed very much since September 11 last year?

Mr. BERGER. Well, I am just reading now that they are probably taking al-Qa'ida resources back to Sudan. That is—they now, according to what I have read, even though—the Sudanese now is where the al-Qa'ida are transferring gold and other materials, al-Qa'ida resources. So it doesn't sound to me as if they have made much of a fundamental break, although they have had some negotiations with Senator Danforth about ending the civil war.

Vice Chairman SHELBY. Back in 1996, had there been a decision made at that point in your discussions at the National Security Council to take, if you could, Usama bin Ladin dead or alive, if you could? Had that decision been made then or was that——

Mr. BERGER. I think in 1996 that decision was never presented. I think there had been a discussion, as I understand it, at the CSG, at the assistant secretary level, about could—could we find some place to take him. Could we take him here, could we take him to Saudi Arabia? But those were hypothetical, because we never had such an offer from the Sudanese.

And in 1996, Senator, I don't believe that the law enforcement community had evidence linking him to attacks on the United States. We have subsequently found out since 9/11 that there may be linkages between bin Ladin and World Trade Center 1993 and other activities.

Vice Chairman SHELBY. In 1996, you were very interested in him?

Mr. BERGER. In 1996 he was certainly on the radar screen. He was not as—I would say this: In 1996 he was on the radar screen. In 1998 he was the radar screen.

Vice Chairman SHELBY. He was. Okay.

I want to shift over to, Mr. Berger, something else I think you know something about. The White House Commission on Aviation Safety and Security, headed by Vice President Gore as I understand, recommended that the U.S. develop and implement a system of airline passenger profiling.

According to the Commission, and I quote: "Based on information that is already in computer databases, passengers could be separated into a very large majority who present little or no risk, and a small minority who merit additional attention." These are techniques that the Customs Service has long used and which could have played an important part in preventing terrorists from being able to commit the attacks of September 11.

As I recall, and you might correct me, did anything ever come of the Commission's recommendation for doing this? In other words, were those recommendations implemented?

Mr. BERGER. As I recall, Senator, the Commission was established after TWA 800, which at the time we thought was a terrorist act. We subsequently concluded that it was a mechanical failure. But I remember very well the night that the plane went down and we were very concerned that it was a terrorist attack.

One of the things that President Clinton did was to appoint this Commission to look at aviation security. That Commission came up with a number of recommendations. My understanding is some were implemented, some were not implemented by the FAA, some were not implemented by the Congress. So I think—I can't tell you piece by piece, since I was not directly involved in that, which recommendations were implemented, which were—which died at the FAA and which died in the Congress.

Vice Chairman SHELBY. Mr. Berger, the National Security Council sets priorities, as I understand it, and allocates to some extent resources to the most important issues. How high on the screen did fighting al-Qa'ida rank on your list of priorities up until the time, January 2000, that you left?

Mr. BERGER. Well, I will take this in a couple of stages, Senator. In 1995 the President issued PDD–35, which for the first time was an organized system of establishing intelligence priorities. And I think General Scowcroft has very well described the situation prior—in the 1980s—where the focus was more on the Cold War and more on the post-Cold-War issues.

So in 1995, we set up a system for setting and periodically reviewing intelligence priorities. At that point, intelligence was placed at a level exceeded only by support for military operations and a few key countries such as Iraq. And at the same time, the President issued PDD–39, which essentially directed the agencies to give terrorism the very highest priority. So I think from 1995 on, budgets started going back up. The focus was more intense. The bin Ladin cell was set up at the Agency. I guess he is probably the only terrorist that had his own acronym, a dubious distinction. We were obviously increasingly focused.

And I think with 1998, with the bombing of the African Embassy, where for the first time the intelligence and law enforcement community was able to say to us, this is al-Qa'ida, this is bin Ladin, that is the first time we had been able to have that kind of predicate. I think at that point bin Ladin and al-Qa'ida were among the highest priorities of our administration.

Vice Chairman SHELBY. My yellow light is on. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Senator Bayh.

Senator BAYH. Thank you, Mr. Chairman.

Thank you, gentlemen, for your testimony today and for your excellent written submission to the committee. I want to thank you both for your service to our country.

I was particularly interested in your remarks about the importance of coordinating and improving the communication among the different service branches. Senator Rockefeller asked about that at some length, so I won't get into that.

Sandy, I would like to ask you—Brent, I think you covered it pretty well in your comments—you suggested that within the Department of Homeland Security there be a unit focused upon coordinating intelligence. What does that say—what is your opinion about how that would interface with the FBI? Does that mean that you agree with Senator Rockefeller's skepticism about whether the FBI can be reformed to carry out that function or——

Mr. BERGER. No, I don't think it devalues or undermines the FBI in any way. I think that we could either reform the FBI to make it more focused on counterterrorism or invent a new institution and have to build it from scratch. It seems to me to make more sense, at least in the first instance, to try to make the FBI, as Mr. Mueller is trying to do, into primary focus counterterrorism prevention. They do have a lot of talented people and skills in investigation.

Now they are collecting essentially and analyzing. CIA is collecting and analyzing. They both have CTCs, counterterrorism centers. One of the things that we did, by the way, is we took an FBI person, and made him deputy at the CIA Counterterrorism Center. And we took a CIA person and made him or her deputy at the FBI CTC center. Obviously that was helpful, but not enough.

We also had a counterterrorism group that was taking the information that it had and looking at it collectively. But I believe to have a fusion cell in the new department would not be a collection agency, it would be an analytical function. It would take all of the information that it got from the CIA, that it got from DIA, that it got from NRO, that it got from FBI, and it would be dedicated to looking at this. And if it was a second pair of eyes or set of eyes to what was happening in the constituent agencies, all the better.

Senator BAYH. This is something, from my perspective, the two big issues that we need to grapple with, going forward, are how to better coordinate and improve communication among the different agencies. You have spoken to that. Senator Rockefeller spoke to that.

And then what to do about our domestic security and intelligence-gathering intelligence capacities and how to optimize those. I must say that—I told this to Senator Rockefeller—I share some of his concerns in this area. It is one of the big-picture items I think that we need to think through. So we deeply appreciate the insights that both of you can share with regard to that.

Just a couple of other things, because I know that I don't have much time. This is little bit sensitive, but I think we need to address it. We are now focused upon Iraq and what to do about the weapons of mass destruction there, largely being driven by their leader, Saddam Hussein.

The question, gentlemen: Specifically, I would be interested in your perspective on both—as you know, it is prohibited by Federal statute, it is a felony for us to authorize the killing of a head of state.

And there are other—well, there are Executive orders that restrict our ability to eliminate individuals who are non-heads of state. Is that a policy we should rethink? And we are in the process here of putting an untold number of American servicemen and women in harm's way, and yet we are constrained from accomplishing a similar objective through more precise and direct means?

Do either of you have an opinion about whether we should revisit those restrictions?

Mr. BERGER. I think they were put into effect when General Scowcroft was National Security Adviser the first time, so I will defer to him.

General SCOWCROFT. I believe that we should probably rescind them. One of the objections to rescinding them is that it encourages terrorists to think that it is okay to eliminate heads of state. But it gets us into all sorts of complications and drawing legalistic lines. One of the things that we found out in 19—let's see, 1989—there was an attempted coup in Panama, and we tried to help a little, but not very much. After we were looking into it, what we found is that some of the CIA personnel who were—I wouldn't say involved, but who knew about it and were meeting with the coup plotters and so on, were concerned about being accessories; because if you mount a coup, you know, it is very likely there are going to be some people killed.

So we tried afterwards to amend the Executive order to take account of that. But it seems to me highly legalistic. It was designed specifically after the investigations of the Intelligence Community in 1975, with some pretty farfetched attempts at Fidel Castro.

I think it is anachronistic, and we ought to be duly respectful of all reasons why you might not want to do that, but to be proscribed I think is a mistake.

Mr. BERGER. Senator, let me have an—I don't know whether this is a slightly different perspective or not. The Executive order was—we received rulings from the Department of Justice that the Executive order did not prohibit our ability—our ability to prohibit our efforts to try to kill bin Ladin, because it did not apply to situations in which you are acting in self-defense or you are acting against command and control targets against an enemy, which he certainly was.

Query whether or not actions against—if self-defense can justify a war, then presumably it can justify somewhat more surgical action. So while I do have some of the concerns that General Scowcroft has, if I believed that it was not an impediment to surgical actions with respect to an enemy, as it was not in the case of bin Ladin and might not be in the case of Saddam Hussein, I would then have to measure the fact that as a practical matter it didn't stop us from doing anything.

From the public international blowback that we would get from the symbolic statement that we are now going to go around killing foreign leaders, I think it depends a lot on whether it is a practical constraint about doing—with respect to dealing with Saddam Hussein, what the President may believe is necessary. I believe legally, based on rulings that we got, that it would not be a bar to targeting in self-defense a command and control target. And if the head of the army is not a command and control target, I don't know what is.

Senator BAYH. Mr. Chairman, I see my time is expired. I would just add one comment. We have heard, and we can't discuss it in this forum obviously, but we have heard from some of the folks who deal in these kind of areas. They are pretty reluctant, absent an express authorization, to wander too far down that path for fear of having the wrong legal interpretation and someday being faced with a lawyer who has a different analysis of some kind.

So I do think that it is an issue we ought to——

Mr. BERGER. They certainly would have to have clarity from the President of the United States or something like that.

Chairman GRAHAM. Thank you, Senator Bayh. Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman, and thank you both for joining us. I have listened to the line of questioning from Senator Rockefeller, Senator Bayh, and others. It seems to be very apparent to us as we review the capabilities of the agencies that are tasked with gathering intelligence that there is a wide disparity in their information technology and capability. I would say that the FBI is barely out of the Stone Age in terms of computer capability. Other agencies apparently, National Security Agency and others, are very sophisticated.

I would like to ask General Scowcroft and Mr. Berger, under your watch, who had the responsibility of oversight on something as basic as the information technology of each of those agencies and their physical ability to gather, review, coordinate, and share information?

General SCOWCROFT. That is a very good question, Senator. And I think the answer is it depends on the particular intelligence agency and who it belongs to. And in many cases it—there is divided responsibility. And what has really happened is each one of the individual components has built their own system. And in many cases the systems can't talk to each other.

Senator DURBIN. Were you aware of that?

General SCOWCROFT. Yes.

Senator DURBIN. Were any efforts made during your watch to address that?

General SCOWCROFT. Yes. And there has been some progress made in combining systems or inputting what I would call an interpreter, an electronic interpreter to allow the search to go on. But there is no enthusiasm in many cases to share this data. Each one likes to keep the family jewels.

Senator DURBIN. I was afraid you were going to say that. I was afraid that it wasn't just a matter of a breakdown of computer architecture, but it really was a mindset that said, "why would we want to talk to those people?"

General SCOWCROFT. That is some part of the problem that—this is a subset of a larger problem that I think that Senator Rockefeller talked about.

Senator DURBIN. Thank you. Mr. Berger, would you address that as well?

Mr. BERGER. Senator, in some cases this is a matter of collective priority or a matter of priority for the President or for the National Security Adviser. Early on in our administration, for example, it was the judgment of the then-DCI that our satellite infrastructure was woefully inadequate and that we had to make major investments to deal with the information technology, communications technology revolution. And so in the early 1990s we spent more money on satellites. That was something we shared, an overall assessment that was done with Congress.

Senator DURBIN. Who had the corporate responsibility of directing that discussion?

Mr. BERGER. There was enough money involved that that was a matter that both—this committee, both committees, as well as the Office of Management and Budget was involved in and the overall budgeting process. This was a big chunk of money to rebuild, up-

date our satellite system. So in some sense it is overall responsibility. I would say the day-to-day management systems within a particular agency are generally the responsibility of the head of the agency. It is not possible from the NSC——

Senator DURBIN. Mr. Berger, the point I am making is this: what they serve in the cafeteria at the FBI, as opposed to the CIA, is irrelevant. But their computer technologies, and whether or not they are complementary and consistent with the architecture of computers at other intelligence agencies would seem to be a matter of national security. And when we find in our first Judiciary Committee oversight hearing of the FBI last year, the first one I think in 12 or 14 years, maybe longer, the primitive state-of-the-art of computers at the FBI, it suggests no one was watching. Not just under your watch, but going back for the first——

Mr. BERGER. Well, those budgets were increased substantially. I think it would be worth looking at what happened to that money. The CT budget in FBI, according to Director Freeh, increased 350 percent. So I think it is worth looking inside that and finding out what the allocation was.

Senator DURBIN. But——

Mr. BERGER. Like I say, they were efforts to increase coordination. And in particular, we energized a high-level senior group that—the Counterterrorism Security Group—these were assistant secretaries for security—for counterterrorism in all of the key agencies. They met three, four, sometimes every day, to look at intelligence.

Now, I think looking post 9/11, not everything was always provided to that central mechanism. So there has to be a willingness, and this gets I suppose to culture, on the part of the agency to——

Senator DURBIN. I am out of time.

Mr. BERGER [continuing]. To share that information.

Senator DURBIN. I think this is emblematic of what the challenge is. If we do not have one person at the top of the heap somewhere near the White House, if not there, who is taking a look at something as basic as information technology at these agencies and saying that they ought to be able to communicate with one another if they wanted to, how will we ever reach the point of having a conversation where they can meaningfully be told to communicate? We seem to have lacked that in previous administrations. If we are talking about reforming intelligence, I hope this is part of it.

Mr. BERGER. I think some efforts were made, but more efforts need to be made, Senator. Absolutely.

Chairman GRAHAM. Thank you, Senator Durbin.

Congressman Reyes, I had indicated that you were going to be the next questioner, and then two persons who were here this morning have arrived. And so staying with our first arrival policy, it will be Congressman Castle, and then Congressman LaHood and then Congressman Reyes.

Mr. CASTLE. Thank you, Mr. Chairman. I unfortunately missed a lot of your testimony because of other responsibilities, including voting on the floor. So I am not exactly sure what has been stated, so I apologize if I am replowing land you have just plowed moments ago. But I am just interested in the broad conclusion of whether based on what we heard yesterday—you probably read

about it in summaries, if you didn't see it at all—about what we actually knew or did not know with respect to al-Qa'ida in the Intelligence Community.

And my first question is, is it your judgment that we knew and we had broadcast the fact that they were capable of carrying out a mass casualty attack on U.S. soil? One of my concerns, frankly, is that sometimes we don't talk publicly enough about the potential threats, which could embrace all Americans in helping prevent it.

And my question to you is: Was that something which you felt was publicly an issue before it happened on September 11, 2001, beyond just the Intelligence Community knowing?

Mr. BERGER. Well, I think there was—again, you have to see this like a photograph developing in developer, which becomes clearer over time, and certainly becomes clearer after 9/11.

But I think that as we got into 1997, 1998, it was clear that there was an al-Qa'ida network that bin Laden was at the center of. This was something that we talked about a great deal. I said earlier, Congressman, that, you know, in June of 1998, I said on television, bin Laden is the number one terrorist threat to the United States.

And where there were—the President spoke about terrorism and al-Qa'ida and bin Laden very frequently. I mean, I provided the committee staff a book, 270 single-spaced pages of statements that President Clinton made about terrorism, al-Qa'ida, bin Laden, over the 8 years, this thick.

Where there was specific threat information, obviously that was provided. But we did not really have, as I said earlier, specific threat information with respect to the United States. And I think that the threat in the United States was underestimated.

The threat information we generally had, for example, we had threat information that the Tehrani Embassy in Albania was going to be attacked. We sent 300 marines and stopped the attack.

During the Millennium, we warned the American people that there was a general threat of terrorist activity during the Millennium. I have talked about what we did in that connection. But I don't think there was specific threat information with respect to the United States that we did not provide. And in general I think, as I said earlier, the threat picture in the United States I think was not sufficiently seen.

Mr. CASTLE. I am not trying to play the blame game at all with this. I am one of those who wishes very much to resolve these problems as far as the future is concerned.

But I mean, you were there in 1998 when the attacks took place as the National Security Adviser, and bin Laden at that point was clearly identified by everybody. And yet we had testimony yesterday that the FBI really didn't have a lot of resources focused on this. And my sense is that even though most of us who have worked on this committee or at the White House knew about this, that perhaps the actual Intelligence Community did not have quite the focus we would like to have on bin Laden. And I realize that the President did and I realize that you did.

But the question is, in a broad sense: Did we in the Intelligence Community as a whole—this is not faulting anybody when I say

this—have the focus that we should have had on bin Laden in retrospect? I realize in retrospect everything is a little bit simpler.

Mr. BERGER. Congressman, I was puzzled by the statement by the FBI that they didn't understand——

Mr. CASTLE. The statement yesterday?

Mr. BERGER. That I read in the paper today, that they didn't understand the al-Qa'ida/bin Laden threat. They met three times a week in a highly secret Counterterrorism Security Group in which all of this information was on the table.

We went through the Millennium together, where we knew that there would be—we were told that there would be five to 15 attacks in the United States. We met at the White House at the highest level, Attorney General, Director Freeh, Secretary of State, every single day for a month, for at least an hour. We were a high-level fusion cell, if you want to call it that, during the Millennium period. And nothing happened in the Millennium. I believe we stopped some things from happening.

How you can walk away from those experiences and not understand—we are trying to kill bin Laden, we dropped cruise missiles on him. How you could not understand—I think this is an internal FBI issue of communication from the top to the field, and field to the top.

But there was no question, I think, that al-Qa'ida was a threat, bin Laden was a threat, certainly within all of the elements of the Intelligence Community.

Mr. CASTLE. My time is up and I can't ask you another question I wanted to ask you, but maybe we can discuss it someday. And it would have been whether you were satisfied with the extent of our human intelligence during the period of time that you were in the White House.

Mr. BERGER. I would be happy to at any time, Congressman.

Mr. CASTLE. Thank you. I yield back.

Chairman GRAHAM. And will you give us the answer to the question?

[See Mr. Berger's responses to questions for the record.]

Chairman GRAHAM. We have had another member added to our list. So the questioning now will be Mr. LaHood, Mr. Chambliss, and then Mr. Reyes.

Chairman GOSS. I am sorry; Mr. Chambliss did speak this morning.

Chairman GRAHAM. I am sorry; clerical error. You did speak this morning. So it is Mr. LaHood and then Mr. Reyes. Mr. LaHood.

Mr. LAHOOD. Well, thank you for your fairness in conducting this hearing, Mr. Chairman; we appreciate it.

Can I ask both of you gentlemen, were you shocked and surprised on 9/11 or 9/12, and after you began to learn about—I don't mean shocked from a personal point of view, but shocked at the news—who the people were; who was involved; how they did it—and particularly you, Mr. Berger, after just coming off of having worked in the administration in such a high-level position, and I know you worked very hard and spent a lot of hours on a lot of these activities.

But I am wondering, though, when you read the details of what happened, were you surprised by any of it, in terms of the people

involved and how they did it, and how they carried it off, and the fact that they were able to do it?

Mr. BERGER. I was not surprised, Congressman, by who was responsible, for a second. I was stunned by the magnitude of this. Surprised by how they had used primitive, in a sense, instruments. This was not—we had spent a lot of time on trying to anticipate weapons-of-mass-destruction threats, trying to build up our stockpile of Cipro, trying to build up our smallpox vaccines, trying to get first responders training, beginning to anticipate a potential WMD attack.

So I was not surprised by responsibility, because I thought it was the only terrorist organization that had the capability of doing simultaneous activities like that. I was surprised by their ability to strike here as sharply as they did, and I suppose by their ability to take box cutters and airplanes and turn them into weapons of mass destruction. But not by responsibility.

Mr. LAHOOD. Mr. Scowcroft, do you have any comments?

General SCOWCROFT. Yes. I was not surprised. I was horrified. I was surprised at the coordinated nature of the attack. That did surprise me.

But I would say, you know, the safest place in the world for a terrorist is inside the United States, because then he becomes a U.S. person with a lot of protections that we don't give him or anybody else outside. And so as long as they don't do something that trips them up against our laws, they can do pretty much all they want.

So all you have to do is pick some people that are clean to start with, that don't have records, and they can do all of those things. And so I think what, in a sense, what we are all surprised at—we have had this notion ever since really terrorism became a threat—that somehow the United States was immune. It was just too complicated for them to extend their organizations and to mount a sophisticated attack inside the United States. This was not actually very sophisticated, but it didn't really have to be, given the freedom with which they can operate, go in and out and back and forth.

Mr. LAHOOD. Mr. Berger, were you surprised or shocked at the level of noncommunication between and within agencies that were in the business of collecting intelligence and sharing it with the highest levels of our government?

Mr. BERGER. I have been continually disappointed since 9/11, Congressman, just reading the newspapers about the difficulties of communication within agencies from people in the field up, and the fact that there was inadequate sharing of information between them.

Mr. LAHOOD. Do you think that was true during your stewardship?

Mr. BERGER. Well, we tried to address the horizontal communication issue in a number of ways. I think probably it was better, but it was not sufficient. We energized, we got all of the key players in a room three times a week, or sometimes every day, to go through all the threat information and to share it and talk about what to do about it, what more they needed to do. The FBI was there, the CIA was there, the Justice Department was there, number one.

Number two, we took a—we decided that an FBI person should be deputy at the CTC, at CIA, and vice versa. So we took steps to increase horizontal coordination, and I think it probably was better. But it is clear that not everything was being put on the table.

Mr. LAHOOD. Can I stop you, because I had one other question. Both of you have served in high public office and both—I know Mr. Scowcroft has been on commissions. There is an idea floating around Washington and around Congress to establish a blue ribbon commission to look into what happened. I would appreciate your thoughts on that idea.

General SCOWCROFT. I am not sure we need a blue ribbon commission on what happened. I think that we have a pretty good idea in general what happened. And the kinds of questions that you are asking, whether they were precisely responsible, I think we ought to start looking forward and fix the things we know need fixing, whether or not they were precisely responsible.

Mr. BERGER. I don't know what my answer is to that question, Congressman. There obviously is a trade-off here between past and future. There is a trade-off between open and secret. I want to get the answers, I want to fix things, whatever is the best way to do that.

Mr. LAHOOD. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Mr. LaHood. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman, and I apologize for not having been here before, but we were finishing up on the House side and I just now got an opportunity to leave there. I wanted to welcome both Mr. Berger and General Scowcroft, who I have had the opportunity to talk with extensively. General, we served on the oversight—civilian oversight for the Air Force Academy. And ironically enough, some of the conversations dealing with today's subject we discussed about the commissions that were talking essentially about not if there was going to be an attack on the homeland, but when it was going to occur. And, of course, Mr. Berger on many occasions on Air Force One, traveling with the President, discussing many different issues.

But I am curious first, General, what you recommend—given your statement that the safest place for a terrorist is in the United States. What are your recommendations to resolve that dilemma that we are facing?

General SCOWCROFT. Well, I think in general we ought to look at terrorism this way: that aside from one thing—which is to try to penetrate terrorist networks and activities—is that every time the terrorists speak, every time they move, every time they spend money, every time they get money, there are some traces of those activities.

Now, theoretically it is hard to find them. But theoretically you can. There are several problems, though, because in those activities there are similar activities of millions of other people doing innocent things the same way. How do you distinguish between them? And also, how—since many of those may be in a foreign language—how do you get them translated quickly enough to be able to act on them? And in addition, you are dealing with volumes that are horrendous. I think we need to look at technology here for a solution to each one of those.

And the one I didn't mention, of course, is how you look through all of these without violating the privacy of all of those innocent individuals doing it. I think you can do some things with machines and technology, before they get to human beings, that help preserve the privacy things and still let us get more of a handle than we are able to do now.

Mr. REYES. Because one of the big concerns that a lot of us have in Congress are concerns dealing with minorities and racial profiling and those kinds of issues. You know, I was asked early on whether I thought it was a good idea to do racial profiling and fingerprinting individuals coming out of specified countries that the Attorney General had commented on. And I said, well if we are going to do that, then perhaps we need to go back and fingerprint everybody in Oklahoma because of Terry McVeigh.

The point there is that we want to make sure that we don't do exactly what you are talking about, General, and that is trample on the civil rights, because the first ones trampled would be the minority community. And we are seeing a lot of those kinds of issues surfacing already, and I am very much concerned in that regard. And I appreciate your comments along those lines, which leads me to the second point.

Wouldn't it make sense to be able to, in addition to the official role that we play here as Members of Congress with these hearings and this mandate, to have a commission that would be composed of people that could bring different talents and different expertise to looking at the events of 9/11, to get a different perspective, including the issue of protecting minorities and racial profilings and all of those? Don't you think that would help give a different perspective than the one we generally give here?

General SCOWCROFT. Well, it might. And of course, we don't know what we don't know. One of the things for a commission to look at is to find out all of the things we know.

But I would—I would say it would be very valuable at least to have an information technology group skilled enough to try to deal with the problems that you raise, and I suggested a way to deal with them, because there may be—technology may be able to give us the access that we need to the people we want, without trampling on anybody else.

Mr. REYES. Thank you. I am out of time. The time runs faster over here, Mr. Chairman. I am not used to this galloping pace.

Chairman GRAHAM. There is a reason for that. I will explain it to you later.

Mr. REYES. Thank you, Mr. Chairman.

Chairman GRAHAM. I understand that Congressman Chambliss was shorted on his full five minutes. So as we begin the second round, I will call on him and you will have a full five minutes now.

Mr. REYES. Mr. Chairman, I think I was shorted, too.

Chairman GRAHAM. Same clock.

Mr. CHAMBLISS. Thank you very much, Mr. Chairman.

Mr. Berger, during the Clinton administration, was bin Laden ever offered up to the United States by any country?

Mr. BERGER. No. I have a longer version of that answer which I provided to Senator Shelby earlier. But the short answer is no.

Mr. CHAMBLISS. That is fine.

During the time you acted as National Security Adviser, did you and your colleagues ever reach the conclusion that offensive action needed to be taken against al-Qa'ida as well as bin Laden himself?

Mr. BERGER. Yes.

Mr. CHAMBLISS. When was that conclusion reached?

Mr. BERGER. From August 1998, the first time that the intelligence and law enforcement community, particularly the Intelligence Community, was able to say to us this is the responsibility of al-Qa'ida and bin Laden. From that point on, the President authorized a series of overt and covert actions to try to get bin Laden and his top lieutenants.

Mr. CHAMBLISS. Did you develop any plan to dismantle or disrupt or go after the al-Qa'ida organization?

Mr. BERGER. Yes. And, in fact, the Intelligence Community worked with intelligence agencies around the world from 1997 on. Al-Qa'ida cells were dismantled, disrupted in about 20 countries.

There was not as much receptivity, Congressman, today—then as there is today. There were some countries which did not take the threats as seriously then as today. We were more protective of civil liberties and ethnic communities than today, but there was an active and aggressive effort by the Intelligence Community, working with liaison agencies, to disrupt and dismantle al-Qa'ida cells. And that succeeded in more than 20 countries.

Mr. CHAMBLISS. During the latter weeks and months of the Clinton administration, was there a plan developed and proposed by you and your colleagues to the Clinton administration with respect to——

Mr. BERGER. You mean to the Bush administration?

Mr. CHAMBLISS. Well, initially I would like to know if it was proposed to President Clinton.

Mr. BERGER. We were continually looking at what we were doing, looking at new techniques, looking at new steps we could take. In the fall—in February of 2000, for example, I sent a memo to President Clinton outlining what we were doing. And he wrote back, this is not satisfactory. It was particularly related to how you find this guy. We have got to do more. And that prompted us to work with the Intelligence Community and the military on a new technique for detecting bin Laden. I am not able to talk about it in this forum.

We tested that in the fall of 2000. Actually it was very promising as a way of determining where he would be if we had one strand of human intelligence. So we were continually looking at how we can up the ante.

Mr. CHAMBLISS. But did you have a plan, a plan that could be executed, to disrupt or take out bin Laden and the organization?

Mr. BERGER. Yes, sir. And we were executing that plan. Now the second question you asked, was there—which comes out of a Time magazine story, I think—was there a plan that we turned over to the Bush administration during the transition?

If I can address that, we—the transition, as you will recall, was condensed by virtue of the election in November. I was very focused on using the time that we had. I had been on the other side of transition with General Scowcroft in 1992. But we used that time

very efficiently to convey to my successor the most important information that was going on and what situations they faced.

Number one among those was terrorism and al-Qa'ida. And I told that to my successor. She has acknowledged that publicly, so I am not violating any private conversation. We briefed them fully on what we were doing, on what else was under consideration, and what the threat was. I personally attended part of that briefing to emphasize how important that was.

But there was no war plan that we turned over to the Bush administration during the transition, and the reports of that are just incorrect.

Mr. CHAMBLISS. Thank you.

Chairman GRAHAM. Thank you. Thank you, Congressman Chambliss. And Congressman Goss and I appreciate your maintaining the classified nature of the geography of where that election took place that shortened the transition period.

We have now completed the first round of questions.

Now I would like to ask two questioners from the House who did not get to ask their questions if they wish to ask a series of questions beyond five minutes. Did you indicate a full 20 minutes?

Mr. BEREUTER. I will not take a full 20 minutes.

Mr. BOSWELL. I will attempt not to take the full 20 minutes.

Chairman GRAHAM. Congressman Bereuter, then Congressman Boswell.

Mr. BEREUTER. Thank you, Mr. Chairman, and, gentlemen, thank you for your statements here, responses and your previous service to the country. Very much appreciate it. I will try not to cover things that have been asked previously if I understand what has happened appropriately. I wonder—this one goes to you, Mr. Berger, in particular. It appears that the FBI was not active in monitoring or penetrating radical Muslim groups. Is that your understanding? And if you have something of that understanding, why was that the case?

Mr. BERGER. I think that is my general understanding, Congressman, and I think that was pursuant to guidelines and directives that had been drawn up within the FBI in prior years and perhaps the threat to some degree, their view that the capability here was not substantial.

Mr. BEREUTER. The capability within al-Qa'ida and related organizations was perhaps not substantial? That might have been their understanding?

Mr. BERGER. That is at least what was conveyed. Perhaps there are different understandings among different people in the FBI.

Mr. BEREUTER. Is it your view that the FBI did not seriously warn or understand and then not warn that there was a serious terrorism problem that could take place in the United States?

Mr. BERGER. You know, I think there were certainly people at the FBI, Dale Watson, the late John O'Neill who understood this.

Mr. BEREUTER. Are you talking about your twice a week meetings?

Mr. BERGER. They were certainly there and I think they were trying to deal with what I now understand better was a disconnect between headquarters and the field. So I think as an institution—and I think Mr. Mueller has acknowledged this—as an institution,

at least as of the time I left, which was the year 2000, there was another 9 months, there was not a sense that there was—the sense, the capability that was here was logistical support, was not a serious threat and was covered, was the word they would use. We have it covered.

Mr. BEREUTER. A question for both of you. Does the United States need an MI5 or some modified MI5 and can you answer briefly why you think that would be the case or not the case?

General SCOWCROFT. I think that is one solution to the problem. The fundamental problem is that you need either to change the basic laws and responsibilities of the two intelligence agencies, FBI and CIA, or you need to build capabilities to match the legal responsibilities. Now one way to do it in the FBI would be to create an MI5, which is a domestic intelligence without the law enforcement. Another way would be to create a separate career path, for example, for the National Security Division of the FBI, training them not as law enforcement officers the way they are now, but as intelligence analysts to do the job. And there are other ways. But simply to say your primary duty right now has gone from law enforcement to counterterrorism is not going to produce a revolution inside the system.

Mr. BEREUTER. Do you think there has been relatedly a disadvantage to an FBI person that moves into counterespionage or counterterrorism for a significant part of their career?

General SCOWCROFT, Oh, yes, quite definitely. Most of my information is anecdotal, but it has been from talking to a wide number of people, including high FBI or Justice Department officials. And the people who don't make it in law enforcement are sent off to the National Security Division.

Mr. BEREUTER. So it's possible for someone to be a homesteader in counterespionage activities like Mr. Hansen and then breach the compartmentation——

General SCOWCROFT. I am not sure about the specific cause and effect, but, yes.

Mr. BERGER. Congressman, my inclination would be to fix the FBI. I think there are dedicated fine people there who care passionately about their country, who take risks every day, and it seems to me intuitively better and easier to fix and change the mission and deal with the organizational problems of an agency that exists than to do a greenfield operation someplace out in the Beltway. So I guess I see no inherent reason why it would be harder to fix the organizational problems in the FBI, reorient the mission, provide the leadership than it would be to start from scratch. I think the people there are talented, dedicated, patriotic people who if you tell them what their job is, they'll do it.

Mr. BEREUTER. I appreciate your opinion and I appreciate the fact that they're talented, patriotic and energetic. Looking back at the situation, it seems to me that the Intelligence Community would desirably be able to tell us the kind of approaches that terrorists might take against our citizens, against our infrastructure in the United States, spelling out the delivery methods, the techniques and so on. And if you look at the testimony presented yesterday by Eleanor Hill, which constitutes in effect a part of our committee's report, the Joint Committee, just focusing in on one

type of approach that was used, the use of commercial airliners as flying bombs, we have these items in our chronology. We have of course the Manila plot where part of it was an attempt to bring aircraft to crash into the CIA headquarters.

In August '98, Intelligence Community obtained information that a group of unidentified Arabs planned to fly an explosive-laden plane from a foreign country into the World Trade Center. September, '98, Intelligence Community obtained information that Usama bin Ladin's next operation would possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it. In the fall of '98, the Intelligence Community received information concerning Usama bin Ladin's plot involving aircraft in New York and Washington, D.C. areas. April of 2001, the Intelligence Community obtained information from a source with terrorist connections who speculates that bin Ladin would be interested in commercial pilots as potential terrorists.

So these are the things that were specifically identified as some of the things coming in that were geographically not specific and time uncertain of course, and that is one method of delivering terrorism in this country. But what surprises the American public and what shocks me is that there seems to have been no place in the Federal Government as far as I can find it that examined the information then about the potential delivery methods of terrorism and said this is how we counteract it.

And these are the kinds of procedures that have to work between the FAA and the FBI or between the FBI and the INS. And given the fact there didn't seem to be any agency responsible for that, and indeed it's a multi-agency problem and no one specifically looking at details of how to approach that, I guess I would have turned to expect it in the National Security Council.

But now hopefully we'll have the Director of Homeland Security and the new department with that very specific responsibility. But that is all categorized as an intelligence failure, and it seems to me it goes beyond that. I would welcome any response from you two gentlemen who have been National Security Advisors as to how it is that our government didn't meet its citizens' expectations by having a focused look at how these means of terrorism could be delivered upon our country.

Mr. BERGER. Congressman, first of all, recognize that there were mountains of intelligence information. Someone said we were drowning in the information. They related to a wide variety of possible means from truck bombs and car bombs to assassinations and an infinite—not infinite, but a wide range in variety of modalities. As I said in my testimony, we did not and I did not recall receiving anything that focused specifically on the threat of airlines as weapons. Certainly, it was known as one of many possibilities.

There was, chaired by the National Security Council, a counterterrorism security group whose job it was to look at cross-agency information. It was only as good as what was given. And obviously, I have checked. It did not receive the February '98 report, for example, that you referred to. So there was nothing that made this stand out any more than any other range of threats.

But that's history. I do believe, as I said in my testimony, that a Department of Homeland Security ought to have a fusion center

where all of the agencies are there, all of the raw data is available. The fusion cell is able to task, follow up. I think that because the volume of threat information, some of it unextracted from its digital form, is so great that we have to have a new mechanism for extracting patterns.

Mr. BEREUTER. General Scowcroft, do you have a comment?

General SCOWCROFT. I agree with most of what Mr. Berger said. I think that we need to look more closely than we have, because this is still fairly new as the best way to go about the intelligence job. Is it to look at all the things that can be done to us? Is it to look at all the people who could do it? Is it a connection of both and how do you do either one? And we're a long way from that. We have analyzed different parts better than we had the use of aircraft, for example. It's going to be very hard to stay ahead of people anyway.

But I think the specific answer to your question is homeland security is designed to be an answer to it. I cannot agree with Senator Shelby and Mr. Berger about the solution. I don't think replicating the Intelligence Community inside Homeland Security is—I think it's dodging the problem rather than solving it. But a fusion center needs to be done.

Mr. BEREUTER. I have one more area of questions that relates to the military and their past and future use in the war on terrorism. Mr. Berger and General Scowcroft, both of you, do you feel that there has been any reluctance on the part of the military to have become engaged in the war on terrorism or do you think there has been a reluctance on the part of the civilian leadership of the country to employ them?

And I raise a couple of other questions relatedly. Why is it, for example, that we had no military response to the boat attacks—small boat attack on the USS *Cole*? Did our policy structure suggest that the primary focus of dealing with al-Qa'ida terrorism was or even is the law enforcement and Intelligence Community unless we are formally engaged in going into a country like we did in Afghanistan?

Mr. BERGER. Congressman, let me start off by answering all three of your questions. We, both the President and myself, spoke to Secretary of Defense, Chairman of Joint Chiefs of Staff on numerous occasions about boots on the ground options in Afghanistan. And they looked at them, I believe seriously. And their assessment—this is pre–9/11, we don't have Pakistan, we don't have Uzbekistan, we don't have Tajikistan, we don't have any of those neighbors. Their assessment was that, given the distance for staging, given the likelihood for detection, given the inability to have forces proximate for backup and, most importantly, in the absence of actionable intelligence, that it was likely to fail. I don't believe that actually was risk aversion. I think that that was not an unreasonable assessment under the circumstances.

Mr. BEREUTER. How would you assess the military's attitude about their involvement?

Mr. BERGER. We are in an entirely new situation. 9/11 has galvanized the world to go to war in a full scale war that I thought was not possible, not thinkable before. And I think the military in the war on Afghanistan has performed very well. But you're really

talking about special operations kinds of—if one is talking about special operations. There are—there's something we pressed on. It's something I think we got a response to. And I don't think the response was necessarily an unreasonable one under the circumstances.

Number two, you asked about the USS *Cole,* which happened in October of 2000. When we left office, neither the Intelligence Community nor the law enforcement community had reached a judgment about responsibility for the USS *Cole.* That judgment was reached sometime between the time we left office and 9/11. So even with 9/11 people said show us the proof. We did not have a judgment from the Intelligence Community of responsibility on the USS *Cole* when we left.

Mr. BEREUTER. Are you surprised there was no military response when it became clear that al-Qa'ida was responsible?

Mr. BERGER. I leave that to the people from the Bush administration to address whether this was part of a larger plan on their part. I really would prefer to address my own tenure.

On the question of law enforcement versus military, after August of '98, after we knew we had responsibility for an attack that killed 12 Americans, we were not pursuing a law enforcement model. Cruise missiles are not generally conceived of as a law enforcement technique. We were trying to kill bin Ladin and his lieutenants. And so I know there has been a lot of discussion of that. The FBI is an investigative arm. They are an instrument for trying to find out what happened. But we are in a war and it takes the instruments of war to fight that.

Mr. BEREUTER. General Scowcroft, would you have any comments on the comments that I brought up?

General SCOWCROFT. Yes, I would. Part of the problem is the nature of terrorism and terrorist organizations. It seems to me your question is basically that of retaliation in an attempt to deter further action, so on. I suggest that that's irrelevant to terrorist organizations. If you knock someone out, they don't care very much. As long as they are there, they'll go on. This is poor man's war. It seems to me we're not going to have maybe any more situations like Afghanistan where you had a terrorist organization protected by the government and the military operation was really after the government forces primarily—maybe too much.

But most of it now is going to be terrorists hiding in states where control over territories is insecure or where you don't have a fully operating government—Yemen, Somalia, those kinds of things. And it's a war where our military machine is pretty largely ineffective except for the intelligence aspects of it. It's not military destruction we're after, it's finding these people. Getting rid of them is easy if you can find them and pin them down.

Mr. BERGER. Congressman, can I make one thought? It has occurred to me since 9/11 that we have had since the beginning of the Cold War essentially a threat-based approach to national security. We built NORAD so we could have detection so that we could respond. And part of what this committee is doing is trying to figure out how we get better intelligence, so we have threat, so we can have warning.

But with this new enemy I think we have to think about not only threat-based protection but vulnerability-based protection. We have to look at each of these systems and see where the vulnerabilities are, because we will not always have warning with this kind of enemy. We started to do that by focusing in on critical infrastructure in the nineties. But I think the real task of the Department of Homeland Security and all of us is to look—beef up our ability obviously, to get them, fight offense and get warning, but recognize that we also have to look at all of our systems, our critical systems, from a vulnerability point of view, whether that's companies or government, and have a much higher threshold of security in a vulnerability sense.

Mr. BEREUTER. Thank you, Mr. Chairman.

Chairman GRAHAM. I would like to comment on one aside that you made, which was the characterization of the staff report that we started yesterday's hearings with. It is not our characterization of these staff reports as being part of or the final report. They are rather means of putting the committee into a position that it can have an overview as to major blocks of events and activities that led up to September 11 and then to have that fleshed out by the kind of commentary that we've had today from our excellent witnesses. It will then be our responsibility to prepare the final report with that as one source of that beginning preparation, but not a part of the final report.

Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman. And, remembering your urging me to be short——

Chairman GRAHAM. Just asking.

Mr. BOSWELL. I took that as urging. This panel has been good. General, Mr. Berger, you bring a lot of expertise and a lot of experience to what we need to talk about and we appreciate it very much. I've got a couple of things I would like for you to comment on. I'll start off with you, Mr. Berger.

During your tenure, was the NSC worried about the nightmare described in Mr. Lake's book of terrorists' access to weapons of mass destruction? In particular, were you concerned about loose nukes falling into the their hands and would you comment on that?

Mr. BERGER. This was a very serious concern. In fact, in 1999, the President gave a speech to the National Academy of Sciences talking about this as the great looming danger. And he asked the Congress for $1.4 billion, most of which you appropriated, for money that provided for research, vaccines. We had the Cipro stockpiles because we got started then. We started to train first responders. Obviously, much more needs to be done. Much more needed to be done. But this was a particular preoccupation of the President.

And if you read Judy Miller's very good book called "Germs," a New York Times reporter, hardly a natural fan of the Clinton administration, I think she indicates that President Clinton was really focused on this. We have a long way to go and we probably will focus more on the weapons of mass destruction scenario than the airport scenario. We built an airport security system in the seventies to stop hijackings. The only hijacking that took place in the nineties before 9/11, as far as I know, was a disgruntled FedEx

pilot who took a FedEx plane from Memphis and flew it to San Jose. In fact, it appears as though that that airport security system had atrophied more than the people running it had known. But we were very much focused on the WMD threat, sir.

Mr. BOSWELL. I appreciate that. Some have criticized the administration's missile strikes against bin Ladin in '98 as ineffective and inadequate. And could you comment? Why didn't the Clinton administration in 2000 or 2001 launch a combined military effort something like what we've done after September 11?

Mr. BERGER. Congressman, I don't think that that was feasible before 9/11. Let's remember that in the Clinton administration, 67 Americans have been killed by terrorism. That is 67 far too many, 12 in Africa. But it is an order of magnitude different than what happened to us on 9/11. I don't think there was anybody up here calling for an invasion of Afghanistan. I don't think anybody in the press was calling for an invasion of Afghanistan. I just don't think that was something we would have had diplomatic support, we would not have had basing support. And so I don't think the kind of full-scale war that we have seen since 9/11 was feasible, unfortunately, before then.

Mr. BOSWELL. I would like for both of you to comment, if you would, just based on your experience, both of your years around the White House, how difficult, how difficult would it be for the Bush administration to maintain the focus and urgency of the war on terrorism with our allies, the American people and with government personnel, many of whom are pretty well stretched at this point? General, do you want to go first?

General SCOWCROFT. It will be very difficult. It will be especially difficult if there are no more terrorist acts for a while because you can already see us slipping back into business as normal. I think part of the job of any President is to keep the people motivated. Keep them stirred up. Keep the issues before them. And I think so far the President has done a good job, but the difficulty of keeping us focused will increase the more time that passes without any additional attacks.

Mr. BOSWELL. Understandably so. The efforts on the war on terrorism are very, very important, no question about it. None of us disagree on that. But there are some pressures from across the country to get back on some of the domestic issues, and justly so. So will that accomplish——

General SCOWCROFT. I think we ought to be able to walk and chew gum and ride a bicycle. But keeping an attention on terrorism is—first of all, the President has declared it the number one mission of the country. Secondly, it's not glamorous. You can't read the reports like you could in World War II of how the battle line changed over the last 24 hours and so on. Lots of times, it would be absolutely quiet and then in the last few days we've caught a few people and there will be an upsurge. But this is not a war that the press will be glued to to keep the American people up for it. And so the administration will have to serve that.

Mr. BERGER. Congressman, if I could add one thing. I think the President is right in saying rather periodically we are going to be attacked again. I think Secretary Rumsfeld is right. I support Secretary Ridge in doing the same thing. It's always a very difficult

balance, how do you warn without creating anxiety? How do you tell people to be alert and go shopping? But the fact of the matter is, Congressman, we are going to be hit again and it is something the American people do have to be reminded of continually so that they will demand that these problems get addressed, that we learn from what happened, that they are not inert in their daily lives but alert in their daily lives.

I think the President is doing the right thing by saying from time to time we're going to be attacked again. That is true, and that's part of maintaining the concentration and focus of the American people and we ought not, in my judgment, to be dismissing that as alarmism.

Mr. BOSWELL. Moving to another point, General Scowcroft, through your long career you have witnessed a number of strategic surprises that result in dramatic shifts in the international relations environment—the rapid fall of the Soviet bloc, the end of the Cold War in '89, Saddam Hussein's invasion of Kuwait, discoveries in '91 about his development of mass destruction weapons and others. Is there in your mind or could you give us your thoughts, is there some common characteristic to the way our government does intelligence and strategic analysis that leads us to missing dramatic paradigm shifts such as these?

General SCOWCROFT. That's a really tough question to answer. I don't know. I'm not aware of it. One of the real problems is that if you start to look far out and anticipate contingencies and bring those to the decisionmakers, they say don't bother me with something 10 years away. I've got something 10 minutes away. Or he'll say, well, that's a possibility, but I have 10 others that are just as likely. It's very hard to do long range planning.

And I have been involved in it both in the military and the NSC, which supposedly is supposed to do it. It is incredibly hard to integrate it into government whose primary job is putting out fires as a practical matter.

Mr. BERGER. Congressman, let me just add one perspective on this. I think there's information and context. I think often the problem is failure to understand the context, which is why I said in my remarks how important it is to build up the analytical side as well as the collection side and to bring outside experts in. Why did we not see the Holocaust coming when you can look back now and see plenty of signs? Why did we not see the Khmer Rouge coming into Cambodia even though there were telltale signs? Why did we not see in the eighties Saddam likely to invade his neighbor after what he had done to the Kurds? Why do the greatest experts on Yugoslavia not understand that the breakup of Yugoslavia would lead to rabid nationalism and wars against humanity?

Those were only partly failures in information. These are generally failures of understanding and context. And I think we always have to wrap the question of information, finding that needle in the haystack, with understanding the haystack.

Mr. BOSWELL. Do you have suggestions how we might?

Mr. BERGER. I think we live in a world, Congressman, in which expertise increasingly does not exist in the government. It's a very complicated world. And the five people who know Afghanistan the best or Sierra Leone the best are probably located either in aca-

demia, in think tanks or in companies, not to devalue the people of the government. So we have to find a way in my judgment to integrate the expertise that exists on the outside with the information that exists on the inside. I suggested some kind of—we tried this with the National Intelligence Council counsel once under Joe Nye. I think it was a good experiment.

We ought to look at some sort of a quasi-official institute where top level academics and top level businessmen can give two years, not necessarily working for the CIA, which continues to be a bit of a tank going back to academia, but can be some place where they have access to classified information, they have access to our best people, our best people have access to them and we're able to put the consequences of the footprint we left in Saudi Arabia after the Gulf War in a better context.

Mr. BOSWELL. Thank you. General, I am informed that in the early nineties when the generals began to make clear the threat of nuclear proliferation, while you were at the White House, you once considered creating a nonproliferation agency to focus on addressing the threat. Can you share with us your thinking behind considering this and other proposals that you might have had to deal with this high priority situation?

General SCOWCROFT. Yes. At one time, as the Cold War turned off, if you will, the issue of the proliferation of nuclear weapons—first their extent, proliferation within the old Soviet Union and therefore into some of the successor states—the general issue became an important one. And that at one time, as we were looking at the Arms Control and Disarmament Agency, which seemed no longer to serve a purpose for so large an agency over an issue which was declining in importance, we looked at the possibility of turning that into a nonproliferation agency.

I happen to think it was a pretty good idea. But some of my more frugal colleagues thought it was better to eliminate an agency and that nonproliferation was everybody's business and that putting it in one agency would be most likely to leave the other agencies not to pay any attention to it because it wasn't their job anymore, and nonproliferation was everybody's job.

Mr. BOSWELL. I think the last question, Mr. Chairman, to Mr. Berger, that a lot of senior policymakers complain that there's relentless focus on the "in box" need to respond to short-term crisis, which I think you touched on just a moment ago, at the expense of having time for long-term strategic thinking. Is it true, and what can we do about it and what would be a role we could play?

Mr. BERGER. I think it's unquestionably true that the urgent tends to drive out the important. I think that's probably true for your day as it is for the day of a policymaker in the executive branch or a CEO of a company. I don't have a magical solution except to understand that if you don't go to work every day with the idea of what are the three things you want to get done and then go home, if you got one of them done you're feeling pretty good and two of them are still left undone and then you'll get to the in box, I don't think you ever overcome the problem. I think you've identified a problem, I think, that clearly exists.

Mr. BOSWELL. Was there time to conclude that the al-Qa'ida was this high priority? Did you have time, or were you constantly badgered with all the other things going on?

Mr. BERGER. Congressman, there was no question in my mind. This is a problem I woke up at night about. We were focused on this. I wish we could have gotten bin Ladin, but it was not because it was not a priority, sir.

Mr. BOSWELL. Thank you, Mr. Chairman. I want to thank you for bringing these witnesses to us today. I appreciate it very much, and I want to personally thank each of you for your contribution to our country. Thank you.

Chairman GRAHAM. Thank you very much, Mr. Boswell. We have committed to our witnesses, who have been extremely generous obviously in the amount of time that they took in thoughtfully preparing the remarks they've given and now responding to our questions, we committed that at 5 o'clock we would call this to an end. What I'd like to suggest is maybe in the remaining 13 minutes if we could restrict ourselves to one final question and then at 5 o'clock, we will adjourn.

Vice Chairman SHELBY. Is that one final question per person?

Chairman GRAHAM. One final question per person.

Mr. BERGER. This is a commitment that I have from some of your colleagues.

Chairman GRAHAM. I am going to ask the first question and I will try to ask a precise question and it will be to General Scowcroft and maybe he can give a precise answer. I know that you have been heading up the external review of the Intelligence Community and until the President makes some decisions you are constrained in terms of what you can say, but in our morning panel we did have considerable discussion about the proposal to establish within the Department of Defense an Under Secretary for Intelligence. Could you comment on that in terms of what from your review of the structure and architecture of the Intelligence Community that might mean?

General SCOWCROFT. Well, let me just say that while the things I have heard about it make it look like a housekeeping measure within the Defense Department, I really think that it ought to be viewed in the light of the structural discussions that are going on, whether it's the report of my group, and there are many others going on, because it will have profound implications for the Intelligence Community as a whole.

And it seems to me to make one single step unassociated with all the other things that your committees are now deliberating would be a mistake, because then you would predetermine the direction of the structure or you have to change it to go back again. So I would urge as a first step that no decision be made on anything which ipso facto will affect the entire community.

Chairman GRAHAM. Thank you, General. Congressman Goss.

Chairman GOSS. Thank you very much for your testimony and for taking the time to be here, and it's a pleasure to see you both and we appreciate the assistance. It's hard to restrict ourselves one question to you because you have so much to offer us on your views on the fixes that we need, and I appreciate, Mr. Berger, the seven points that you've outlined in your testimony, and I know that

General Scowcroft has other points for the structure of the Community as well which we anxiously looking forward to reading.

My question is for both of you. I believe that the Aspin-Brown Commission identified a problem that still exists in the Community which is extremely important, and that is the relationship between the President of the United States and the Community. Is there anything that we in Congress can do to ensure that that is always functioning in a way that gets the best out of the Community to serve the President and the country?

Mr. BERGER. If we had a DCI who was head of the Community and not only head of 15 percent of the Community and was able to integrate all of these priorities working with his colleagues, I think automatically that would change the nature of the relationship.

General SCOWCROFT. I don't disagree with that.

Chairman GOSS. I am glad to hear that we are in agreement on that. Thank you very much, Mr. Chairman.

Chairman GRAHAM. Senator Shelby.

Vice Chairman SHELBY. Thank you, Mr. Chairman. I am going to try to have one question in several parts, I hope. We were talking with Mr. Berger earlier about a group. Was this the so-called White House Working Group on Terrorism? You said the FBI met two or three times a week.

Mr. BERGER. Counterterrorism Security Group, sir.

Vice Chairman SHELBY. And did they meet about three times a week more or less?

Mr. BERGER. Sometimes every day. As much as necessary. There were also meetings at the deputy level probably every two weeks.

Vice Chairman SHELBY. Did you go to some of these meetings?

Mr. BERGER. The principals met on terrorism during our years frequently, the last two years probably once a week or once every two weeks.

Vice Chairman SHELBY. Did you ever hear or know of the group talking about the possibility of terrorists using airplanes in some ways as weapons?

Mr. BERGER. You would have to ask Mr. Clarke. My understanding is——

Vice Chairman SHELBY. He headed this group, did he not?

Mr. BERGER. Yes, he did. I don't know that that issue was brought to that group with clarity.

Vice Chairman SHELBY. Do you know whether or not the Counterterrorism Center over at Langley ever discussed or considered or gained the possibility that terrorists would or could use airplanes as weapons considering the fact that they were aware of the Philippine situation in '95, the French dealing with the Eifel Tower and a lot of other threats?

Mr. BERGER. I can't answer that question.

Vice Chairman SHELBY. I would have to go to that group. Do you know, General? I know you were not there then.

Okay. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator. The next speakers will be Congresswoman Pelosi, Senator DeWine, Ms. Harman, Mr. Roemer, Mr. Reys and then Senator Edwards.

Ms. PELOSI. Thank you very much, Mr. Chairman. So many questions, so little time. I want to join our distinguished chairman and my colleagues in thanking you for your testimony today and for your very distinguished service, both of you, to our country. It really was a very valuable presentation that you both made and we appreciate it very much. I have so many questions, and this is the one I am going to ask because I think it is of major concern to the American people.

Following September 11, one of the biggest fears that we had was use of some radioactive material or some weapon of mass destruction or act of bioterrorism, et cetera, that as horrible as September 11 was, and it has scarred our souls forever, would have many more deaths than that. In addition to that, stopping the proliferation of weapons of mass destruction is the pillar of our foreign policy. It is an overarching issue in terms of a presidential priority to stop it. When we go to address the issue, we are looking at the end user rather than the source.

From your experience can you tell me why—certainly the capacity that some countries have in the Persian Gulf area, more than one, is not indigenous to them nor is their delivery system indigenous. Why is it, as a matter of policy if this is a pillar of our foreign policy and it is a major priority for the President of the United States, that we're not more serious as a country in stopping proliferation at the source rather than always dealing with it at the end user?

General SCOWCROFT. Congresswoman Pelosi, I'm not sure I accept the premise. I think we have taken serious steps against possible proliferation, the Nunn-Lugar legislation. I think it is inadequately funded, but it is designed precisely for that question and that is by all odds the largest source of potential proliferation in the world. All others are dwarfed by it. One of the other major proliferators is North Korea, and it's a proliferation partly of know-how and partly of components and so on. We have tried to stop that in a variety of ways. The same with some Chinese exports.

So I don't think—I know you're focused on a particular potential user now, but I think we have tried to control proliferation at the source. I think it has been inadequately funded.

Ms. PELOSI. If I may just say, of course, Nunn-Lugar—God bless Senator Nunn and Senator Lugar. We are all deeply in their debt and this is a most significant and discrete area of the technology as well as know-how.

Mr. Berger.

Mr. BERGER. I share your concern about this priority. I do think some progress has been made, not nearly enough. When the Nonproliferation Treaty was signed in 1975, the expectation was at the time there will be 30 nuclear nations in 20 years. There are eight, three putative nuclear nations. But I agree absolutely more has to be done. Number one, for purposes of this committee, I think there is an active role that covert action can play in this agenda. I will say no more. But we can try to stop things from moving from place A to place B.

I agree on Nunn-Lugar, and I suppose some of us will disagree. I happen to believe that international regimes like the Comprehensive Test Ban Treaty and Biological Weapons Convention strength-

en the international norm. We're not perfect, but that means when states are outside that norm it is easier, as in the case of Iraq, to rally the world to see they are out of compliance with the international norm. So I do believe that international regimes are useful.

Ms. PELOSI. Thank you very much to both of you. Thank you very much, Mr. Chairman.

Chairman GRAHAM. We have now less than two minutes left.

Senator DEWINE. Let me just thank both of you very much. I wholeheartedly agree with your comment that this is the opportunity for this country to make fundamental reforms in intelligence. It's interesting on page 7 of Anthony Lake's testimony he also talks about reform. I'd ask my colleagues to take a look at that. Let me play the devil's advocate because I want to touch on a couple of questions that I think are questions that should be asked.

One, Mr. Berger, how do you make sure that the DCI in your plan is not a czar—up a little higher but really with no authority or even less authority than he has under the system today—once you take the CIA out? And second, Mr. Scowcroft, how do you deal with the military's ability to control their fear that they're going lose ability to control their assets if you follow that plan?

Mr. BERGER. My proposal, Senator, and I think I said the commission should consider—I mean this is a complicated subject. The DCI would have primary responsibility on budget resources and priorities. He would not own these individual agencies. They'd still be run by the Defense Department and by other agencies. There might be some consolidation that's possible, but I think that would help in prioritizing and particularly putting a higher priority on the number one war we face, which is the war against terrorism.

General SCOWCROFT. Senator, I can't answer your question explicitly, but there are—it is a valid concern the military getting what they need, and there are ways to provide for that in a way that doesn't require them to own the assets.

Senator DEWINE. Thank you very much.

Chairman GRAHAM. Thank you, Senator. We are now at the 5 o'clock hour. The record will remain open through the end of business on Monday. So any of those who did not get to ask the questions that they wished to ask, if they would submit them in writing, we will forward them to the person to whom you would like them directed.

I wish to take this opportunity on behalf of the Joint Committee to thank again General Scowcroft and Mr. Berger for their excellent presentations. I recognize the special effort that both of you extended to do this for which I am personally and the members of the——

Mr. BERGER. I am told by my friend here we have probably a few minutes if Congressman Roemer or——

Chairman GRAHAM. There is a man of truly generous heart. Can you stay a few more minutes?

Mr. BERGER. There's another meeting of Senators that I'm supposed to be at in five minutes.

Chairman GRAHAM. Then the next would be—everything I just said still counts—Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman. The witnesses are all friends of mine and I just decided I like them a lot better than I like you. Just a joke, Mr. Chairman.

Chairman GRAHAM. I am deeply wounded and offended.

Ms. HARMAN. I want to thank them for their prior service to our country and for their future service, and it would be very valuable if they served our country in the future, too, because they are so highly skilled. I want to ask another question about risk aversion.

Chairman GRAHAM. Ms. Harman, one question.

Ms. HARMAN. Risk aversion, Mr. Bereuter was asking about it. My question is, given the fact that on 9/11 the audience changed, given the fact that these committees have criticized 1995 guidelines and recruitment of human spies and they have been changed, given the fact that I think the whole country is focused on this now, do you feel that our Intelligence Community, the 14 agencies in our Intelligence Community, have finally overcome what one could call risk aversion and are aggressively in every way possible going after the terrorist targets?

General SCOWCROFT. No.

Mr. BERGER. We can always do better. I think I mean the whole country is focused much more intensely than they were before 9/11.

Ms. HARMAN. Thank you. Thank you, Mr. Chairman.

Chairman GRAHAM. Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman. Nice to see you, General, thank you, Sandy, and thank you for your service to the Clinton administration. My one question that I get to ask here is not going to be knowing you are a big Oriole fan; it's going to be about General Scowcroft has spearheaded an effort to try to make some institutional changes in the way the CIA has responsibility and jurisdiction for budgets and issues and so forth. This Joint Committee will probably make some sweeping institutional recommendations at some point when they finish their job.

I guess my question is—well, let me just underscore one more point. The Department of Defense has now recommended an Under Secretary of Defense for Intelligence which may run counter or may run in sync with what you recommend. I don't know. What do you think about the creation of that Under Secretary position, both of you, and when might your recommendations be available to the committee for review?

General SCOWCROFT. I think that a recommendation such as the one that Secretary Rumsfeld made ought to be considered in the light of overall structural considerations and should not be acted on in the absence of the comprehensive review that is now going on. I can't answer the question.

Mr. BERGER. I agree.

Chairman GRAHAM. Thank you, Mr. Roemer.

Mr. Reyes.

Mr. REYES. I just have one question and I also wanted to thank both you gentleman for your service to the country. My question is, do you think that there is sufficient diversity in the Intelligence Community to address the current challenge as we see it against this country?

Mr. BERGER. I don't know if I can answer that question. I think we need a lot more people, Congressman, who are from the countries of concern here whose heritage is Arab and Islamic and in particular who speak the language and are able to function with sophistication in our societies.

General SCOWCROFT. And primarily whatever we need to get inside the ethos of different countries and how they will react to different stimuli, and so on and so forth, we're not very good at that and I think diversity, as you suggest, would help that problem a lot.

Chairman GRAHAM. Thank you.

Senator Edwards.

Senator EDWARDS. Thank you, Mr. Chairman. First of all, thank you to the witnesses very much for being here. I have been following this hearing very closely during the course of the day and thank you both for what you have done for our country. Almost every question I had has been asked at least twice so far, so I do have a quick anecdote I want to tell before I yield the mike.

When I went on this committee originally, which was about a year-and-a-half ago, the first thing I did was to call Sandy Berger and asked him to come meet with me. He came and met with me and this was long before 9/11. And he was sitting on my sofa and I said I am going on this committee, what are the things I need to be concerned about?

And Mr. Berger's response was, two things are going to dominate us for at least the next decade. The first is the threat of terrorism, and the second is weapons of mass destruction.

Given what has happened on 9/11 and the ongoing national debate now about Iraq, it is a clear indication of you being on the front edge of what we need to be focused on and what needed to be done. I am confident if you were saying that to me, I am not the only person you were saying it to, and I think it was an extraordinary prediction of where we would be.

Thank you for what you have done and for all of the help you have given me and others in my position.

Mr. BERGER. Thank you.

Chairman GRAHAM. Thank you, Senator.

Any concluding comments? If not, again, thank you for your very generous and helpful participation.

[Whereupon, at 5:15 p.m., the hearing was adjourned.]

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DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

NOV 26 2002

DEC 10 2002

The Honorable Porter Goss
Chairman
House Permanent Select Committee on Intelligence
United States House of Representatives
Washington D.C. 20515-0914

Dear Chairman Goss,

Thank you for your letter dated October 18, 2002. Attached please find the Department's responses to the questions posed in your letter.

A similar letter has been sent to Chairman Graham, Vice Chairman Shelby and Representative Pelosi.

Sincerely,

Paul Wolfowitz

Attachment:
As stated

1. What steps did the Bush administration take to counter terrorism that were not taken by the Clinton Administration?

The Department of Defense (DoD) participated in discussions from the first days of the Bush Administration that resulted in a significant change in policy regarding al Qaeda -- from an approach that focused on containment and limited response to specific terrorist acts, to an approach that far more aggressively seeks to eliminate the ability of al Qaeda and other terrorist groups to conduct attacks against us. The U.S. Central Command and other Government agencies put specific elements of this policy into action shortly following the attacks of September 11, 2001. The Administration's ability to take aggressive action after the attacks was partly the result of the policy development process that was underway prior to September 11, 2001.

Following are some of the additional steps DoD took to improve U.S. counter-terrorism capabilities prior to September 11, 2001:

- The 2001 Quadrennial Defense Review, drafted prior to September 11, 2001, identified homeland defense as DoD's highest priority. It also identified critical shortfalls in intelligence collection, targeting, and analysis and made recommendations for significant enhancements to provide warning and guard against surprise.

- The DoD combating terrorism program was increased from $6.2 billion in FY01 to $7.3 billion in FY02 and $7.4 billion in FY03.

- In June 2001, DoD established a Joint Intelligence Task Force - Combating Terrorism (JITF-CT) at the Defense Intelligence Agency (DIA) to serve as the focal point for DOD's counter-terrorism intelligence support, to enhance terrorist threat warning and analysis capabilities, and to enhance connectivity and sharing among DIA, the FBI, and the CIA significantly.

2. Who in the Department of Defense received the August 6, 2001 President's Daily Brief and the August 7, 2001 Senior Executive Intelligence Brief?

The President's Daily Brief is provided to an extremely limited group of Cabinet-level officials. The Senior Executive Intelligence Brief is provided to a considerably wider range of senior policy makers. Further specific questions about the distribution of these documents should be directed to the Office of the Director, Central Intelligence or to the National Security Council staff.

3. In his testimony on September 19, 2002, Secretary Armitage noted that an April 30, 2001 Deputies meeting led to directions to the Department of Defense to develop contingency military plans for Afghanistan. Was this done? Please describe the plans and the nature of the Intelligence Community support that would have been required.

Existing DoD contingency plans already accounted for many of the potential scenarios under consideration. DoD prepared additional plans to address the remaining scenarios, once the Administration's counter-terrorism policy was approved in September 2001. As part of the contingency planning process, DoD received (and continues to receive) the full cooperation of the Intelligence Community.

4. In the hearing on September 19, 2002, you mentioned a September 5, 2001 Principals' meeting in which it was decided that the Administration would look at major military options for Afghanistan. What were these options? What tasking was given to the military as a result of this decision to formulate military options? Was the Intelligence Community given any tasking to support the formulation of these options? If so, what was the nature of that tasking?

National Security Council staff has requested that we not provide any details regarding the September 5, 2001 Principals' meeting. Accordingly, any additional questions on this matter should be directed there. Our understanding is that their request is based on the responsibility of the Executive Branch to protect material related to the deliberations and decision-making by the President and his senior advisors and the confidential flow of information to them.

5. On September 19, 2002, Mr. Armitage testified that, within a month of the Bush national security team being in place, there was enough intelligence to go after al-Qa'ida. What actions beyond planning were taken by the Department of Defense to go after al-Qa'ida before September 11, 2001? Why did the Administration not put U.S. "boots on the ground" before September 11?

DoD was an active participant in the policy deliberations and planning that led to the preparation of the Administration's counter-terrorism policy. Once that policy was approved in September 2001, DoD executed numerous overseas military actions, as directed by the President.

In addition, DoD executed a series of classified military actions prior to September 11, 2001. We have already provided details of these actions to 9/11 Inquiry staff during interviews earlier this year.

Regarding why we did not have "boots on the ground" prior to September 11, 2001, I understand that Deputy National Security Advisor Steve Hadley received a similar question and is responding on behalf of the Administration.

United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

May 19, 2003

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TO: Rick Cinquegrana
Deputy Director
Joint Inquiry
Room H-2167 Ford House Office Building
2nd or 3rd and D Street, SW

FROM: Jim Landé
Bureau of Legislative Affairs
Room 7418, Department of State

Please find faxed with this note the following items in response to your recent request on Consular Affairs matters raised by Representative Harman at the Joint Inquiry's September 19, 2002 Hearing:

- Fact Sheet: "Visa Procedures: Overview of Future Changes; Status of Review of Procedures for Visa waiver Program"

- Fact Sheet "Visa Systems Improvements Since 9/11"

UNCLASSIFIED

VISA PROCEDURES: OVERVIEW OF FUTURE CHANGES;
STATUS OF REVIEW OF PROCEDURES FOR VISA WAIVER PROGRAM (VWP)

2/4

Talking Points:

- Our first priority is ensuring our nation's security. We continue to improve visa processing in order to protect U.S. borders while facilitating legitimate travel.

- In 2002, we enhanced consular training, significantly expanded lookout information, and added new security clearances for counterterrorism purposes.

- In 2003, we will be working with DHS to improve visa procedures, as the Secretary of Homeland Security assumes authority over visa adjudications. Our objectives include training refinements, creation of software for pre-interview case analysis, clear standard operating procedures for consular operations, and establishment of biometric standards for travel documents.

- We are working with INS to review the Visa Waiver Program (VWP) countries' continued eligibility.

- The Department's experience in the use of biometrics will be an asset as we work with DHS to define standards that will deeply influence the future of travel documents.

- With the cooperation of other agencies, we continue to rationalize the namecheck process.

- We are working to ensure that training for consular officers better prepares them for today's challenges.

Issue Background:

- We conducted VWP reviews of Italy, Portugal, Slovenia, Belgium, and Argentina. Argentina was removed and we now await the Attorney General's concurrence that the four European countries may remain in the program. An INS report on a review of Uruguay in 2001 is still pending.

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VISA SYSTEMS IMPROVEMENTS SINCE 9/11

Talking Points:

- Since 9/11, our namecheck database has more than doubled. (Now contains names of over 13,000,000 individuals.)

3/4

- Deployed a new tamper-resistant non-immigrant visa with enhanced security features (Lincoln Visa).

- We are now sharing all visa issuances with INS in near real time.

- For foreseeable future the Bureau of Consular Affairs will place heavy emphasis upon modernizing systems both to meet the mandates of border security legislation and to improve our overall border security process.

- All posts now scan applications of those denied visas on Category I grounds (Terrorists, drug trafficker, etc.) and enter these images into the Consular Consolidated Database, which is accessible by all officers worldwide.

- Started to restrict Foreign Service National (FSN) employee access to namecheck records.

- Implemented an interim system to track foreign students (ISEAS): system remained operational until the INS system SEVIS became operational in mid February.

Issue Background:

- Since 9/11, the Bureau of Consular Affairs has accelerated its systems efforts:

Namecheck Processing:

- Added 7 million records from the FBI's National Crime Information Center (NCIC)and a threefold increase in namecheck records from the intelligence community (through TIPOFF).

- Started automated crosschecking of new derogatory information (including TIPOFF entries) against records of previously issued visas.

- Developed a Hispanic algorithm (an algorithm is the equivalent of a fuzzy search) that is now ready for testing: completed the East Asian algorithm linguistic study.

4/4

- Implemented a backup/alternate site for our namecheck system, CLASS, outside the Washington area, which will be operational in March.

Visa Processing:

- Included 25 additional data elements, selected in close coordination with the law enforcement and INTEL communities, in the NIV processing system.

end

Office of
Samuel R. Berger
SUITE 300 WEST
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5698
FAX (202) 637-5910

MEMORANDUM

TO: The Hon. Bob Graham, Chairman, Joint Inquiry Committee
The Hon. Porter Goss, Chairman, Joint Inquiry Committee
The Hon. Richard Shelby, Vice Chair, Joint Inquiry Committee
The Hon. Nancy Pelosi, Vice Chair, Joint Inquiry Committee

FROM: Samuel R. Berger

SUBJECT: Reply to Additional Joint Inquiry Questions

DATE: November 4, 2002

Thank you for this opportunity to respond to your list of additional questions from the Joint Inquiry into the events of September 11.

I have paraphrased each of your questions, followed by my answers.

Did DCI Tenet ever seek to reprogram funds from lesser priorities to strengthen our intelligence capacities against terrorism? In fact, didn't the administration cut the resources devoted to analyzing terrorism by roughly one third? How is this consistent with the commitments made by the President on August 20, 1998 that "we must be prepared to do all that we can for as long as we must?" (Senator Kyl)

> In fact, the overall decline in intelligence budgets which began with the end of the Cold War in the late 1980s was reversed during the Clinton Administration. Resources for counterterrorism generally more than doubled from FY '96 to FY'00, including substantial increases in CIA CT funds. This was at a time of balancing the budget and zero net growth for most programs. I would suggest the Joint Committee consult with then OMB Director Jack Lew for further details.

An August 12, 2002 Time Magazine article states that Secretary of Defense Cohen and General Shelton were "dead set against" a special forces "boots on the ground" operation to get Bin Laden. Was the Special Operations community against "boots on the ground?" If not, why were DoD officials so risk averse? Were you satisfied

with senior DoD reluctance to conducts special operations? Were you satisfied with the U.S. response to the USS Cole? (Senator Kyl)

We reviewed the so-called "boots on the ground" Special Forces options with the military leadership periodically after August 1998. President Clinton was particularly interested in exploring this option.

President Clinton's top military advisers examined this course. They advised us that there would be a low probability of success for such operations in Afghanistan (before 9/11 when we did not have the cooperation of Pakistan and other bordering nations) in the absence of substantial lead-time actionable intelligence (i.e. specific advanced knowledge of where bin Laden would be at a specific time and place). There were many obstacles to deploying ground troops into Afghanistan from staging areas at some distance, including a serious possibility of detection, difficulty of basing back-up forces nearby and logistical difficulties. (The lack of reliable, predictive intelligence on bin Laden's whereabouts was a continuing challenge. We have seen since 9/11 how difficult predictive intelligence is on bin Laden's whereabouts.)

I did not think at the time that the military's well-articulated reservations about such an operation were unreasonable. President Clinton relied upon the best judgment of his senior-most military advisers. I am certain that their guidance to us was informed by a variety of inputs, including the views of the Special Operations community.

Regarding the USS Cole, when President Clinton left office, neither the CIA nor the FBI had reached the judgment that bin Laden was responsible for this attack. It would have been irresponsible for us to have taken military actions before responsibility was clear. Such a judgment apparently was reached sometime before President Bush ascribed the Cole attack to al Qaeda in his address to the Congress after 9/11.

If the al-Qa'ida facilities attacked by the Clinton Administration in August 1998 were so important, why didn't the Clinton Administration attack them again? Why didn't the Clinton Administration ever attack Bin Laden and his terrorist network with military force after the August 1998 cruise missile strike? (Senator Kyl)

Al Qaeda had a number of training facilities in Afghanistan. Physically, there were not elaborate and easy to rebuild. In August 1998, President Clinton

ordered 60 cruise missiles fired at a camp at Khost, not based on any intrinsic value of the facility, but because the Intelligence Community advised us that a large number of al Qaeda lieutenants were expected to gather there, possibly including bin Laden. According to the after-action reporting by the DCI, this strike killed 20-30 senior al Qaeda leaders and reportedly missed bin Laden by a matter of hours.

From August 1998 until the end of the Clinton Administration, obtaining actionable intelligence with which to strike bin Laden and his key lieutenants was our highest intelligence priority. Regrettably, never again did intelligence information emerge that provided us another opportunity to get bin Laden or al Qaeda leadership.

After August 1998, consideration was given to bombing al Qaeda training facilities in the absence of intelligence information regarding the whereabouts of al Qaeda leaders. We concluded that doing so without getting bin Laden or other al Qaeda leadership would have been counterproductive: making the U.S. appear feckless and ineffective, while elevating and glorifying bin Laden.

Beyond missile strikes, additional military force in the form of war against Afghanistan would not have been feasible before the globally galvanizing events of September 11. I am not aware of anyone in the Administration or the Congress who suggested such action before 9/11.

Did you truly believe the August 1998 cruise missile strike would defeat or deter future terrorist attacks by Bin Laden and his network? (Senator Kyl)

The August 1998 attacks on our two African embassies, killing twelve Americans and hundreds of Africans, was the first instance in which the intelligence and/or law enforcement communities reached clear judgments of al Qaeda responsibility. From that point on, our objective was to get bin Laden and his lieutenants and disrupt al Qaeda worldwide to the extent feasible.

While we did not assume that our August 1998 missile strikes alone would have ended the al Qaeda threat, we did recognize a value in killing many al Qaeda leaders at Khost, including the potential opportunity to kill bin Laden.

Unfortunately, after August 1998, we never again had actionable intelligence information reliable enough to warrant another attack against bin Laden or his lieutenants. If we had, President Clinton would have given the order. The President ordered two submarines loaded with cruise missiles on perpetual deployment off the coast of Pakistan for that very purpose. We also were engaged in a number of covert efforts I cannot discuss in this unclassified format.

President Clinton and his national security team were intensely focused on getting bin Laden. President Clinton approved every strike or other action against bin Laden proposed by his intelligence, military and national security advisors. Fundamentally, we lacked the information necessary to launch an attack against him (with missiles, special forces or other means) with any reasonable expectation of success.

An August 2002 Time Magazine article said that Richard Clarke presented a strategy paper on how to take the fight to al-Qa'ida, which you shelved for the next administration, not thinking it appropriate to launch a major initiative against Bin Laden. Was the Clarke paper a "strategy paper" or a full operation plan to capture or kill Bin Laden? Knowing that it would take the new administration a while to get up to speed, why would you not at least initiate some of the activities in Clarke's strategy paper in November or December? (Senator Kyl)

The Clinton Administration was engaged in an active strategy against bin Laden and was continuously examining new initiatives for defeating bin Laden and al Qaeda, given what was known and the allies available at the time. For example, in 2000, we developed the Predator program, which was successfully tested in late 2000 and was available to be operationalized as a critical intelligence platform to confirm intelligence on his whereabouts when the weather cleared in the Spring of 2001.

During the transition between the Clinton and Bush Administrations, incoming officials were briefed thoroughly on the al Qaeda threat, and I personally did everything in my power to convey the sense of urgency we felt. All aspects of the threat, ongoing and potential efforts were transmitted. However, no new operational plan (or "war plan" as was reported by Time magazine) was considered by senior Clinton Administration officials in the Fall of 2000 (and deferred or shelved) and, to my knowledge, no such plan was presented to the incoming Bush Administration.

Were you aware of a 1996 Tariq Aziz offer allegedly made to Tony Lake that Iraq would provide information on terrorists in exchange for the U.S. dropping sanctions against Iraq? Please provide a detailed explanation. (Senator Kyl)

I am not aware of any such offer.

Were you satisfied with the quality of human intelligence you received during your tenure as National Security Adviser? Please provide a detailed explanation. (Representative Castle)

The quality of human intelligence I received as National Security Advisor varied with the particular area. For example, I believe our intelligence on the crisis in the Balkans generally was quite good. I think our intelligence on Haiti in the pre-invasion period was quite poor.

On al Qaeda and bin Laden, I believe that the DCI shared our sense of priority and urgency in obtaining knowledge on al Qaeda threats and, more specifically, actionable intelligence (humint or otherwise) which we could use to get bin Laden and his lieutenants. I believe the quality of the CTC improved significantly during the period 1997-2000 when I was NSA. The intelligence community was operating in a different environment before 9/11, without support from Pakistan and other front-line countries. Our inability to obtain such intelligence was a frustration – for the President, senior national security officials and the DCI.

What is your assessment of the military's attitude toward involvement in Afghanistan before September 11, 2001? (Representative Bereuter)

The military was actively engaged in efforts to attack bin Laden in Afghanistan after August 1998, stationing submarines in the Arabian Sea and preparing to strike again if actionable intelligence became available.

On the potential for attacking al Qaeda with ground forces, so-called "boots on the ground" Special Forces options, President Clinton's top military advisers believed that such efforts were unlikely to succeed in the absence of specific, tactical intelligence, given the distances involved, the chances of detection, the absence of back-up forces nearby and other related factors. Regarding a full-scale war with Afghanistan prior to 9/11, I am not aware of anyone in the

Administration or the Congress, including the military, who advocated such an undertaking during the Clinton Administration.

Can you provide a copy of the February 2000 memo to President Clinton outlining where the Administration stood in terms of countering Bin Laden, upon which President Clinton wrote "Unsatisfactory – must do better"?

I do not have possession of any classified documents.

S.R.B.

cc: Eleanor Hill, Staff Director, Joint Inquiry

Office of
Samuel R. Berger
SUITE 300 WEST
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5698
FAX (202) 637-5910

November 4, 2002

Ms. Eleanor Hill
Staff Director
Joint Inquiry Staff
211 Hart Senate Office Building
Washington, DC 20510

RE: Comments on Joint Inquiry Staff Statements

Dear Ms. Hill:

Over the past months, you and your staff have undertaken a monumental effort in an attempt to understand a complex mosaic of facts related to terrorism and September 11. I appreciate the professional way in which you have approached that task.

Having read the seven staff statements you presented to the Joint Committee between September 18 and October 17, 2002, I want to offer a few comments where I think your characterizations are unfair or inaccurate, in the spirit of seeking to enhance your ability to characterize the record as accurately as possible.

1. **Communicating the Threat to the U.S. Public**

"...our review has found little evidence, prior to September 11, of a sustained national effort to mobilize public awareness ..." (Joint Inquiry Staff Statement, September 18, 2002, page 18)

"...there is little indication of any sustained national effort to mobilize public awareness of the gravity and immediacy of the threat prior to September 11." (Joint Inquiry Staff Statement, October 1, page 5)

In early September, I provided your staff with a binder containing 200 single space pages of speeches, statements and other public remarks by President Clinton on terrorism generally and bin Laden specifically. Though President Clinton's statements began in the first months of 1993, the statements cited in your testimony begin in 1998 and unfortunately leave out both President Clinton's 1995 landmark address to the United Nations General Assembly

calling for a global fight against terrorism as well as his significant speech at The George Washington University in 1996 declaring that terrorism was "the enemy of our generation."

Contrary to the statement that there was "little evidence" of a sustained effort to promote public awareness, there's extensive evidence that President Clinton continuously attempted to raise public awareness of the terrorist threat, as a central challenge to our country and our future, including in every State of the Union address for eight years.

Under separate cover, I will re-forward to you another copy of the compilation of the hundreds of statements President Clinton made on terrorism between 1993-2001. I hope you personally will review it.

It may be that, as a country, we were not ready to listen before September 11, but the fact that this was an important and intensifying theme of the Clinton Presidency is, I believe, indisputable.

2. <u>Resources</u>

"A lack of counterterrorism resources has been a repeated theme through the course of these hearings ... " (Joint Inquiry Staff Statement, October 17, 2002, pages 4-5)

Future presentations of the resources issue will hopefully acknowledge that the Clinton Administration more than doubled the federal government's counterterrorism spending (from $5 billion in FY 1996 to over $11 billion in FY '00) at a time of strong bipartisan effort to achieve balanced budgets that resulted in highly constrained spending for most programs. As you know, during the Clinton Administration, the FBI's counterterrorism staff budget increased by 250% and their counterterrorism budget increased by nearly 350%. Similar increases were made in the CIA counterterrorism budget. You may want to interview former OMB Director Jack Lew, who can provide you with more detailed information on this period.

3. <u>Afghanistan</u>

"... the Departments of State and Defense [were not heavily focused] ...on meeting the challenge of Afghanistan, even though they recognized the dangers emanating from terrorist camps there ... outside experts warned publicly of the problem of Afghanistan and called for action prior to September 11 ... there was little effort

to integrate all the instruments of national power – diplomatic, intelligence, economic and military – to address this problem." (Joint Inquiry Staff Statement, October 8, 2002, pages 11 & 14)

In fact, there was concerted military, economic and diplomatic pressure on Afghanistan and the Taliban, handicapped of course by Pakistani support for the regime which was unshakeable before 9/11.

As you know, after August 1998, the U.S. government conducted a significant effort, through military and covert means, to get bin Laden and his lieutenants in Afghanistan, working with the assets we had before 9/11. Whether, in the context of the times, more could have been done by the intelligence community or others in this connection is a fair question. But that there was, at the highest levels, a serious effort against bin Laden in Afghanistan between 1998-2000 is a fact. In the one instance when reliable, predictive intelligence was obtained, President Clinton ordered the firing of 60 cruise missiles on bin Laden's camp in Afghanistan, killing many and, to the best of our knowledge, narrowly missing bin Laden himself.

These efforts came in the context of broader attempts to put diplomatic, economic and political pressure on the Taliban. There were continuing efforts to obtain cooperation from succeeding governments in Pakistan (e.g. repeated interventions by President Clinton, including a risky visit to Islamabad in 2000 to press Musharraf). Other countries were pressed to pressure the Taliban to turn over bin Laden (e.g. Saudi Arabia). Comprehensive economic sanctions were imposed on the Taliban, first domestically and, with U.S. leadership, through the UN, demanding an end to support for terrorism. More than $200 million of Taliban assets were frozen by the U.S. government; Ariana Airlines was shut down under U.S.-UN economic pressure. And in 1998, senior U.S. officials delivered to senior Taliban officials in private the same message President Bush repeated in public after 9/11: that they would be held accountable for further acts of terrorism against U.S. targets. I believe we see even more clearly after 9/11 how closely linked the Taliban and al Qaeda were, and what they were prepared to lose to avoid any break.

It is true that we did not launch a war against Afghanistan before 9/11; I am aware of no one in the Administration, the Congress or outside of government who called for such action, even after twelve Americans and hundreds of Africans were killed in the Embassy bombings in August 1998 – the first time the intelligence and/or law enforcement communities concluded that al Qaeda was responsible for an attack against Americans. Such a course would not have

been feasible before the globally galvanizing events of September 11. (Your report acknowledges this reality on page 13.) Regarding bombing of training camps, there is a serious argument which must be acknowledged that to have bombed additional primitive al Qaeda training facilities without getting bin Laden or his lieutenants would have made the U.S. appear feckless and ineffective, while glorifying and strengthening bin Laden.

4. <u>Military vs. Law Enforcement Approach to Terrorism</u>

"Problems and Steps Not Taken" – "A 'law enforcement' approach to terrorism. In part because options such as military force were not promising or deemed feasible, the United States defaulted to countering terrorism primarily through arrests and trials." (Joint Inquiry Staff Statement, October 8, 2002, page 13)

"... the U.S. continued to rely on what was primarily a law enforcement approach to terrorism ... the masterminds of past and future attacks often remained beyond the reach of justice." (Joint Inquiry Staff Statement, October 17, page 5)

Where military tools were available and feasible, we employed them, as when President Clinton ordered an attack on bin Laden's camp in Afghanistan. (As I testified before the Joint Committee, we weren't trying to arrest bin Laden with cruise missiles. We were trying to kill him with this distinctly *military* effort.) We made other military efforts that I have discussed with you in the past, but am not at liberty to detail in this unclassified format.

As you know, the military considered our request for "boots on the ground" options and concluded such efforts were unlikely to succeed under the circumstances then prevailing without actionable intelligence. That the U.S. government had such intelligence only once between 8/98 and 9/11 is a serious concern. But it was not because it was trapped in a "law enforcement" paradigm.

Moreover, law enforcement assets and techniques have a legitimate role in the fight against terrorism – then and now – and are not simply a "default" or fallback approach. As your report acknowledges (page 11), the law enforcement tools we brought to the fight on terrorism (renditions, arrests, prosecutions, investigations, interrogations) helped preempt terrorist attacks and constituted important steps forward that increased our ability to fight terrorism and al Qaeda.

5. <u>Airplanes as Weapons / Al-Qa'ida's "shift in lethality"</u>

"From 1994 through as late as August 2001, the Intelligence Community had received information indicating that international terrorists had seriously considered the use of airplanes as a means of carrying out terrorist attacks." (Joint Inquiry Staff Statement, Part I, September 18, 2002, page 9)

"...the strategic implications of [al-Qa'ida's] shift in lethality do not appear to have been fully recognized. Terrorism had gone from a nuisance that, though frightening and appalling, killed only hundreds [in the 1980s], to a menace that directly threatened the lives of tens of thousands of Americans [in the 1990s]." (Joint Inquiry Staff Statement, October 8, 2002, page 8)

It seems clear from the Committee's work and other disclosures after 9/11 that there were relevant pieces of evidence of this conspiracy that were not adequately integrated by the law enforcement and intelligence communities at the time. And I do not question the accuracy of the statement regarding airplanes. In a larger context, however, it must be seen that the amount of intelligence regarding airplanes as weapons was no greater (perhaps less, as I follow the post-9/11 revelations) than dozens of other modalities for terror: car bombs, truck bombs, assassinations, kidnappings, embassy attacks, CBRN weapons, nuclear energy sites, critical infrastructure, tourist and historic landmarks, etc. It is, of course, easier to put together a puzzle after you have seen a picture of what it looks like assembled.

Regarding the assertion that the Clinton Administration failed to fully recognize that the terrorism of the 1990s was somehow qualitatively worse or strategically more significant than the terrorism of the 1980s, I respectfully disagree. Terrorism was an increasingly central priority during the late '90s. Perhaps this in part explains the fact that the number of Americans actually killed by foreign terrorists in the '90s (less than 70) decreased more than 80% from the number killed in the '80s (almost 500) – also largely by Islamic radicals.

The Clinton Administration regarded terrorism as a deadly menace from our first days in office and warned our successors of the potential lethality of al Qaeda.

(The timeframe of the October 8 report, as represented in its title, covers the period of February 1993 to September 2001. As your official staff chronology begins in 1982 and the parameters of this Congressional investigation begin

with the establishment of the CTC in 1986, I hope future reports match this wider timeframe.)

6. **Al-Qa'ida's Culpability for Attacks on the U.S.**

"The central figures in these plots [World Trade Center and Day of Terror] were Ramzi Yousef and Shaykh Omar Abd al-Rahman, both of whom have been linked to Usama Bin Laden ..." (Joint Inquiry Staff Statement, Part I, September 18, 2002, page 11)

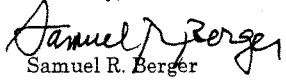
From this and other language, including a reference to Yousef's Manila-based Bojinka plot (page 11) and the September 20 testimony that "... *individuals with ties to Usama Bin Ladin ... carried out an attack on USS Cole ...*" one could logically but erroneously infer that the U.S. knew bin Laden was behind these attacks before September 11.

To my knowledge, Ramzi Yousef and the Shaykh were *not* clearly linked by the Intelligence Community to bin Laden, either at the time of the 1993 plots or during the 1995 Bojinka episode or by the end of the Clinton Administration (if not before the events of September 11). So too, the conclusion that bin Laden was behind the USS Cole attack was not made by the intelligence or law enforcement communities at the time, nor before the end of the Clinton Administration.

* * *

I hope these considerations will assist you in the final writing of your report and remain available to help in any way possible as you complete your work.

Sincerely,



Samuel R. Berger

SRB:jtc

cc: The Hon. Bob Graham, Chairman
The Hon. Porter Goss, Chairman
The Hon. Richard Shelby, Vice Chair
The Hon. Nancy Pelosi, Vice Chair

United States Department of State

Washington, D.C. 20520

JUL 11 1997

Dear Mr. Chairman:

On behalf of the Secretary of State, I am transmitting to you a report as required by Report 104-676 of the House Committee on Appropriations on plans to improve Department of State access to FBI criminal information for visa purposes. The report was jointly prepared by the Department of State and the Federal Bureau of Investigation. The Department of Justice has cleared this report for transmittal. The Office of Management and Budget has also reviewed the report and has no objections to its transmittal.

We hope this report is useful to you. Please let us know if we can provide any further information.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable
Harold Rogers, Chairman,
Subcommittee on Commerce, Justice, State, the
Judiciary, and Related Agencies,
Committee on Appropriations,
House of Representatives.

Report on Plans to Improve Department of State Access to FBI Criminal Information for Visa Purposes

(House Committee on Appropriations, Report on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1996, H.R. Rep. 104-676, July 16, 1996, page 98)

SEP 19 2002 6:56PM JOINT INTEL INQUIRY STAFF NO 708 P. 28

This report is submitted in response to Congress's request that the Secretary of State and the Director of the Federal Bureau of Investigation (FBI) prepare a joint report detailing plans to ensure that the Department of State (DOS) will have access to information currently available to the FBI regarding aliens with criminal records or who are subject to warrants and holds. The congressional request expressed the expectation that the planned program would help exclude criminal aliens from the United States, while minimizing the impact on the visa adjudication process.[1]

INTRODUCTION

A working group of representatives of the FBI and DOS has been constituted to identify the issues involved in giving DOS greater access to FBI criminal information while minimizing the impact on the visa process and to develop implementation options that would meet these goals. The working group has focused on three areas: identification of legal obstacles and preferred solutions; identification of policy issues and stakeholders who should be consulted; and identification of operational requirements that will affect the development and feasibility of different options. The group agreed that it would be desirable to have explicit legislation authorizing the information sharing required; that the policy issues involved should be discussed with the Criminal Justice Information Services (CJIS) Advisory Policy Board (a federal-state-local criminal law enforcement advisory group discussed in more detail below), and that two specific options appeared as the most likely to be viable.

The following is a more detailed report on the considerations behind the interagency working group's views and on the two agency's plans for further work on this program. Because this program involves a number of different information systems and different kinds of information, a glossary of acronyms is attached.

LEGISLATIVE BACKGROUND

Pursuant to 28 U.S.C., §534, the Attorney General is permitted to exchange criminal history record information (CHRI) with and for the official use of authorized officials of the Federal Government. This authority is exercised by the FBI pursuant to implementing regulations in Title 28 of the Code of Federal Regulations (CFR), Part 20. (See 28 CFR 0.85(b) and (f).) Under 28 CFR, Section 20.33(a)(1) and (2), CHRI contained in any Department of Justice CHRI system will be made available to criminal justice agencies for criminal justice purposes and to Federal agencies authorized to receive it pursuant to Federal statute or Executive Order. A criminal justice agency is defined in 28 CFR Section 20.3(c) as a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. The administration of criminal justice is defined in 28 CFR Section 20.3(d) as performance of any of the following activities: detection, apprehension,

[1] House Committee on Appropriations, Report on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1996, H.R. Rep. 104-676 (July 16, 1996), page 98; see Joint Explanatory Statement of the Committee of Conference, Conference Report to Accompany H.R. 3610, Making Omnibus Consolidated Appropriations for Fiscal Year 1997, H.R. Rep. 104-863 (Sept. 28, 1996), page 783.

detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

In 1991, the Department of Justice, Office of Legal Counsel, in determining whether the FBI was authorized to charge the Department of State a user fee for conducting visa-related record checks, found that these checks were for a non-criminal justice purpose, as that term is used in the statute authorizing the FBI to charge fees for such checks to non-criminal justice users. In addition, under 28 CFR Part 20, CHRI is not available to the DOS as a criminal justice agency performing the administration of criminal justice. However, DOS, as a Federal agency, is permitted access to CHRI if it is authorized to receive it pursuant to Federal statute or Executive Order (28 CFR 20.33 (a)(2).)

Under Section 140(d) of the Foreign Relations Authorization Act, FY 1994 and 1995 (April 10, 1994), P.L.103-236, as amended by P. L. 103-317, the Department of State Consolidated Immigrant Visa Processing Center, hereafter referred to as the National Visa Center (NVC), is authorized on-line access to the Interstate Identification Index (III) through the National Crime Information Center (NCIC) for the purpose of determining whether a visa applicant has a criminal history indexed in III. To obtain the full content of a criminal record, the DOS must submit the fingerprints of the visa applicant to the FBI. The legislation does not limit the type of visa applicant that the NVC can process. Therefore, DOS consular posts could, in principle, utilize the NVC for the purpose of determining whether a nonimmigrant visa applicant has a criminal history record in the United States. However, given the enormous visa volume it handles throughout the world (over six million issuances annually), to do so would prove impractical and extremely burdensome. Current procedures for the processing of nonimmigrant visas would have to be overhauled and extensive resources committed to allow for the extra step of transmitting a namecheck request to the NVC and waiting for a response. The bottleneck thus created would produce unacceptable delays in visa issuance for bona fide travelers, contrary to the goals expressed by Congress in requesting this report. Consular Officers have little time to spend on each nonimmigrant visa application. Therefore, it is essential that information come directly and immediately to the officer by checking only one system, and that the information be available via a CD ROM backup system when telecommunications lines are down.

It is the FBI's opinion that there is already a system in place, authorized by Federal legislation, by which consular posts can access information currently available to the FBI in order to exclude criminal aliens from entering the United States. That legislation grants direct access to the Interstate Identification Index (III) by the National Visa Center (NVC), however, ~~not to consular posts. Therefore, in order for the DOS consular posts to have access to the~~ Criminal History Record Information managed by the FBI by a means other than the NVC, the FBI has indicated that specific legislation should be enacted authorizing such access, i.e., permitting consular posts to conduct a namecheck of the III or permitting the data extract, with a requirement that in order to receive the full content of the criminal history record, a fingerprint card must be submitted to the FBI. Direct access might also be authorized by Executive Order consistent with the existing regulations. Specific statutory authority for direct access would be the firmest possible legal footing, however, and may be preferable in light of the sensitivity of the information involved and the significance of making that information available for visa adjudication purposes.

The need or desire for more specific legislative authority is partially met by section 236(d) of the INA, 8 U.S.C. 1226, added by Section 303 of the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996 (IIRIRA) (enacted as Division C of the Department of Defense Appropriations Act, 1997, Pub. L. 104-208 (Sept. 30, 1996)). That new provision requires the Attorney General to "devise and implement a system" that will help determine whether persons arrested for aggravated felonies are aliens and that will maintain a computerized current record of aliens convicted of aggravated felonies, including information on whether such aliens have been removed from the United States. This computer record is to be made available to immigration inspectors, border patrol agents, and "to officials of the Department of State for use in its automated visa lookout system." The creation of such a system will address a significant portion of the cases that consular offices need to be aware of when adjudicating visa cases.

Because aliens may be excludable because of criminal activity that does not necessarily result in an aggravated felony conviction, however, DOS's need for criminal history information on aliens who have been in the United States extends beyond the situations addressed specifically by new INA section 236(d). For example, aliens may be excludable under the INA's criminal exclusion provisions if they have committed "crimes of moral turpitude" or for multiple criminal convictions, regardless of whether the convictions are for aggravated felonies. (INA section 212(a)(2)(A), (B).) In addition, some of the criminal exclusions are triggered when there is reason to believe that a person has committed an offense or that the person may engage in criminal activity after admission. (E.g., INA section 212(a)(2)(C), (D).) Criminal history information about activities that may not have resulted in a conviction for an aggravated felony could be relevant to this determination. Thus DOS and FBI have explored options for information sharing independently of the specific requirements of new section 236(d). The Department of State notes, however, that the second of the two options discussed below (the extract option) may be similar to the kind of system apparently contemplated by section 236(d).

POLICY COORDINATION

Specific authorizing legislation would clearly resolve any potential legal obstacles to sharing undistilled data on criminal aliens stored within systems managed by the FBI. However, because state, local, and federal law enforcement agencies contribute the information contained in the system, as a matter of policy, sharing of the data should be coordinated through the Criminal Justice Information Services (CJIS) Advisory Policy Board.

Since its inception, the NCIC has operated under a shared management concept between the FBI and state users. Agencies that enter records in NCIC are responsible for their accuracy, timeliness, and completeness. An agency participating in the NCIC as a Control Terminal Agency (CTA) must assume responsibility for and enforce system security with regard to all other agencies that it in turn services. The CTA is the single state agency in each state through and by which NCIC users in that state access NCIC. FBI responsibilities under this shared management concept include provision of operational, technical, and investigative assistance to NCIC users; telecommunications lines to a state interface; legal and legislative review of matters pertaining to NCIC; timely information on all NCIC aspects of system usage by means of the NCIC Operating Manual, Technical and Operational Updates, and related documents; staff research assistance; and training to the CTAs.

The CJIS Advisory Policy Board, hereafter referred to as the Board, recommends general policy to the FBI with respect to the philosophy, concept, and operational principles of the NCIC

and other CJIS systems. In its deliberations, the Board places particular emphasis on the continued compatibility of the NCIC and state systems, system security, and rules, regulations and procedures to maintain the integrity of NCIC records. The Board is composed of twenty-one elected members, three FBI Director-appointed members, and five at-large members. The elected membership consists of three state law enforcement and two local law enforcement representatives from each of the four Regional Working Groups and the elected Chairman of the Federal Working Group. Three members are appointed by the FBI Director from the federal, state or local level of government as follows: a) judicial; b) prosecutorial; and c) correctional. The five at-large members are representatives (President, Vice-President, or Executive Director) from each of the following professional criminal justice associations: a) American Probation and Parole Association; b) International Association of Chiefs of Police; c) National District Attorneys' Association; d) National Sheriffs' Association; and e) Major Cities Chiefs' Association.

The Board's charter states that the Board shall review and consider security, confidentiality, and privacy aspects of the NCIC System. The issue of NCIC access for nonimmigrant visa purposes was given consideration at the Spring Advisory Policy Board Working Group meetings, which concluded April 10, 1997. Four regions voted in favor of the extract and one region voted in favor of fingerprint-based record checks on all nonimmigrant visa applicants. The opinions of the regions were presented to the Criminal Justice Information Services Advisory Policy Board at its June 1997 meeting. The Board approved a motion that once enabling legislation is enacted, the DOS would be given the option to receive periodic extracts, preferably monthly, with the understanding that: 1) all possible positive hits in III would be followed with fingerprint submissions to the FBI; 2) all physical and electronic copies of this database would be destroyed upon receipt of each new extract; 3) DOS be held to the same security standards as other criminal justice entities; and 4) this information and data will be subject to the same requirements as are currently in force for all law enforcement agencies accessing the same information. The Board approved a motion that this application have no detrimental effects on the NCIC 2000 project.

TECHNICAL SOLUTIONS

Once policy and legal issues are resolved, the exchange of criminal information on aliens would become largely a technical matter of how best to make information from FBI data systems accessible by consular officers.

DOS consular officers currently run name checks for immigrant and nonimmigrant visa applicants against the Consular Lookout and Support System (CLASS). CLASS contains the names of individuals, such as criminals, drug traffickers, and known terrorists, who may not be or definitely are not eligible for visas. Information in CLASS originates primarily with embassies and consulates abroad, but many entries also originate with other agencies. For example, lookouts are currently exchanged with the Immigration and Naturalization Service electronically using the Treasury Enforcement Communications System (TECS), which is administered by the U.S. Customs Service.

CLASS resides on a DOS central computer in Washington, D.C. The system is linked to offices overseas via telecommunications lines that run from the computer in Washington, D.C. to terminals worldwide. Overseas offices use their local terminals to access the central CLASS

SEP 19 2002 9:58AM JOINT INTEL INQUIRY STAFF NO 708 P. 32

system. The design of the CLASS system incorporates the latest technology, including an enhanced ability to search names from different languages and cultures. The CLASS database is also copied monthly onto CD ROM and distributed to each of the visa issuing posts. When the telecommunications link is down, as may frequently occur in various parts of the world, posts perform an automated check against the CD ROM version of the database.

Criminal history information held by the FBI is available on the Interstate Identification Index (III), which is part of the FBI's Identification Automated Services (IDAS). The III database is accessed through the National Crime Information Center (NCIC) system. Persons for whom warrants or holds are outstanding are included in the FBI's Wanted Person File, a sub-part of the NCIC. NCIC, like CLASS, has its own interface with Treasury's TECS system.

The Wanted Person File contains approximately 435,000 records. The number of records on subjects with a foreign place of birth is 52-53,000. Presumably this portion of the file would be primarily aliens, though it could also include United States citizens born abroad. The III affords access to the records of approximately 24,000,000 subjects. Statistics on the number of these records which contain a foreign place of birth are presently unavailable, although it is thought to run between 10 and 15 percent.

As stated above, the Consular Affairs Bureau has access to FBI index records through the NVC in Portsmouth, New Hampshire. For immigrant visa purposes only, an FBI employee at NVC runs the names of prospective immigrants (principal applicants and accompanying family members over the age of 16) through the NCIC. The names are checked against III and the Wanted Person File. Immigrant visa petitions filed overseas are handled via a telegraphic request to the NVC for an NCIC check, usually with a three-day turnaround. If a name check results in a "hit" response, the NVC sends the response to the consular post along with the immigrant visa petition. To insure positive identification, the consular post must submit fingerprints to the FBI to obtain the full content of the criminal history record. If there is a positive identification, the post then receives the criminal record.

For nonimmigrant visa applicants, DOS consular offices currently run name checks against CLASS only. CLASS already includes the names of certain criminal aliens who have been subject to INS proceedings. In addition, the FBI provides certain names, by telegram or fax, primarily relating to national security such as terrorist threats, to DOS to be entered manually into CLASS. There is no check of the Wanted Person File or III database for nonimmigrant visa applicants.

DOS and FBI staff members have explored two options to give consular posts access to the records that exist in the NCIC Wanted Person File and the III on foreign-born individuals for the processing of nonimmigrant visa applications. Both options require the submission of fingerprints to the FBI for positive identification following a name search hit, in order for the DOS consular offices to obtain the full content of the criminal history record. Other options may exist and may surface in future discussions.

It is impossible to estimate the number of "hits" that would result from namechecking all nonimmigrant visa applicants against the Wanted Person file and the III or how many fingerprinting requirements would ensue. The only rough gauge available is our experience with the immigrant program at the NVC. Of 647,035 applicants checked in the program, there were 14,618 hits judged close enough to pursue, slightly over 2 percent of the total. (Ultimately 355 of those cases resulted in visa denials.) If the same hit rate were carried over to the nonimmigrant workload of roughly 6.2 million issuances annually, DOS would expect to follow

SEP 19 2002 6:59PM JOINT INTEL INQUIRY STAFF NO.708 P. 33

up about 124,000 cases each year with the FBI. There is no way to predict whether this estimate would hold true, but it does illustrate the possible resource cost that either option would engender. The expense, in time and staffing, of processing fingerprints is likely to be substantial, regardless of procedures implemented to perform the necessary checks. Delays in visa processing for applicants requiring fingerprint checks will also be substantial -- several months according to the example set by the current immigrant visa program.

Information security, training, and audit concerns must also be addressed before any final implementation could occur. Since each option presents a unique set of risks and security issues, the specific requirements, procedures, and costs can be determined only when the technical process is decided.

SPIN OFF OPTION (Option 1)

The first option is to enhance the existing Treasury Enforcement Communications System (TECS)/CLASS communications link. All 215 consular offices currently have telecommunications links to CLASS to perform name checks. CLASS would have to be modified to spin off III name index queries (QH transactions) and NCIC Wanted Person queries (QW transactions) to be communicated through the TECS communications link to the NCIC.

Using the existing framework for access would maintain the stringent policies and procedures established to preserve the integrity of the NCIC and the III. In addition, the information accessed would be current and real-time.

Several potential issues with this approach are as follows:

- The added volume of inquiries may have an impact on performance for the NCIC, IDAS, CLASS, and TECS. Consular posts currently process about 70-80,000 name checks per day through CLASS, with a recent peak of 115,000 in one day. The current transaction rate for the NCIC is approximately 1,500,000 queries per day, with the Wanted Person File experiencing approximately 880,000 transactions per day. As of December 1996, the per-day transaction rate for the III was approximately 87,500. An increase of less than 10% may not substantially affect the NCIC. However, the transaction rate for the III, a separate database, would effectively double. A throughput assessment and an associated cost estimate must be compiled for the TECS, the currently existing ("legacy") NCIC and III, and for the future NCIC 2000 (now under development) and Integrated Automated Fingerprint Identification System (IAFIS) III segment. Cost considerations may include computer hardware and telecommunications equipment upgrade requirements for each system affected.

- Because the visa function is only concerned with foreign nationals, DOS does not need the potential to return a hit against a U.S. citizen. Ideally, there should be specific modifications to the NCIC and the III, so that consular offices will not unintentionally inquire against a U.S. citizen. The FBI could modify the NCIC and the III to limit the records accessed by the DOS to the records of foreign-born individuals only (which would reduce the number of U.S. citizens to that small percentage born overseas). Citizenship status is not noted in the NCIC or the III. The costs for these modifications must be estimated for both the legacy NCIC and III, and the developmental NCIC 2000 and IAFIS III segment. Additionally, the effect that making these

SEP 19 2002 6:59PM JOINT INTEL INQUIRY STAFF NO. 708 P. 34

modifications would have on the current implementation schedule for the NCIC 2000 and the IAFIS must be considered.

- In those cases in which a "hit" response was generated, there would at present be no restriction on the information consular posts would receive. The FBI could modify the NCIC and the III to limit the information provided in a DOS nonimmigrant visa name check hit response. (The DOS understands that fingerprints would have to be provided to the FBI for positive identification and actual CHRI.) The costs for these modifications must be estimated for both the legacy NCIC and III, and the developmental NCIC 2000 and IAFIS III segment. Additionally, any effects on the schedule for the NCIC 2000 and the IAFIS must also be considered.

- CLASS is not designed to spin off secondary queries. CLASS would require a modification to pass and track queries to TECS and, from there, to the NCIC Wanted Person File and the III, then back through CLASS to the 215 posts overseas. Such a modification would require major changes in system, operational, and process management areas. Auditing procedures would have to be established for all of the consular posts. The costs of such changes would be significant and they would undoubtedly affect the overall performance of CLASS.

- Telecommunications to some consular posts is unreliable at best. At any given time, 10-20% of the lines to the 215 consular posts are not functional. As an example, recently, one office in a remote location was down for over three weeks. Consular posts would be without on-line name check access during their frequently occurring telecommunications outages. The existing DOS process provides for a CD-ROM backup of CLASS data to be used during telecommunications outages. NCIC Wanted Person and III data would not be included in such back-up data.

- The NCIC and the III search for names using stringent matching criteria. This search strategy is not as well suited as the CLASS name search to the searching of names from different languages and cultures.

EXTRACT OPTION (Option 2)

The second option is to provide the DOS with a limited extract of the records of foreign-born individuals from the NCIC Wanted Person File as well as the III. The extract would be merged into the CLASS system and processed as a CLASS system record. The extract would be updated on a periodic basis, either with a completely new extract or with updates only. The format for the extract, called the Interagency Data Exchange Group (IADEG), already exists and is in use by DOS for the sharing of information with other agencies. The data fields required in the extract are minimal, e.g., surname, first name, date of birth, country of birth, and nationality (if known). IADEG also requires a key field, such as FBI number. As with the first option, the cost to develop the extract must be assessed.

An extract approach would have limited impact on the performance of the NCIC, IDAS and TECS, because it would only be necessary to run the initial extract and subsequent periodic updates. Also, the telecommunications outage issue would be mitigated. The existing DOS

process provides for a CD-ROM backup of CLASS data to be used in the event of the inevitable telecommunications outages. The backup, taken monthly, although outdated, is preferable to no information and limits the window of vulnerability to one month. The NCIC Wanted Person and III data, extracted and merged into CLASS, would automatically be part of this backup process. The extract approach would restrict data accessible to consular offices to limited information on foreign-born individuals, thus reducing the chance of U.S. citizen data being unnecessarily included in the database accessible to consular offices. This approach also would allow the agencies to better identify the information in the NCIC Wanted Person and III specifically relevant to visa eligibility, so that only that information would be downloaded to CLASS. This approach would also capitalize on the CLASS name search, which is better suited to searching names from different languages and cultures.

Potential issues with this approach are as follows:

- Security of this sensitive information is an issue. CLASS is an unclassified system. The standard CLASS response to any inquiry provides name, date of birth, place of birth, refusal/lookout code, originating office and date of entry, and 21 character spaces for comments. Access to information in the CLASS system pertaining to individuals indexed in the III must be restricted to DOS Washington, D.C., offices and overseas consular offices, and used only for the purpose of determining the eligibility of applicants for visas. Access by other agencies or for other purposes would be prohibited. Moreover, to the extent that III information contained in CLASS records is found to pertain to U.S. citizens or lawful permanent resident aliens, the DOS would need to take steps to comply with the Privacy Act of 1974, including maintaining an accurate accounting of disclosures of Privacy Act-protected records.

- The FBI will lose control of the dissemination of its name index to the extent of the data provided in the data extract.

- A data extract is inherently outdated. Information would be outdated to the extent of the frequency of the extract. This means that newly entered criminal history data will not be available to the consular offices, and that these offices will not have current and accurate data about expunged records. The significance of this will be somewhat mitigated, however, by the fact that new entries into III generally are people who are in the United States committing crimes—not foreigners applying for nonimmigrant visas.

There are significant resource costs associated with this option as well. The initial download, by present rough estimates of the number of foreign-born subjects in the Wanted Person file and III, could reach 2.5 million records. This is nearly half the size of the current CLASS database. Accommodating such a sizable increase would undoubtedly affect system performance and would require numerous system adjustments. Subsequent downloads to update the records should not present any extraordinary additional burden.

SEP 19 2002 9:59AM JOINT INTEL INQUIRY STAFF NO. 708 P. 36

CONCLUSION

The two options outlined above have been considered by the FBI and DOS. Other options may be advanced. At present, the DOS strongly favors the extract approach. The CJIS Advisory Policy Board, as noted, has sanctioned this approach subject to certain conditions.

New legislation is recommended to ensure that the Department of State and its consular officers have an unquestionable legal basis for greater access to FBI CHRI information. The FBI has used the opportunity of the recent regional advisory board meetings to put forward this policy change, and has obtained the views of the Board. The technical issues of how the information can best be shared remain to be worked out.

SEP 19 2007 7:00PM JOINT INTEL INQUIRY STAFF NO. 708 P. 37

Glossary of Acronyms

CHRI	Criminal history record information
CJIS	Criminal Justice Information Services
CLASS	Consular Lookout and Support System
CTA	Control Terminal Agency
DOS	Department of State
FBI	Federal Bureau of Investigation
IADEG	Interagency Data Exchange Group
IAFIS	Integrated Automated Fingerprint Identification System
IDAS	Identification Automated Services
III	Interstate Identification Index
NCIC	National Crime Information Center
NVC	National Visa Center
TECS	Treasury Enforcement Communication System

SEP 19 2002 7:00PM JOINT INTEL INQUIRY STAFF NO.708 P. 38

JOINT COMMITTEE HEARING ON WHAT THE INTELLIGENCE COMMUNITY KNEW PRE-9/11 REGARDING THE HIJACKERS IN REVIEW OF THE EVENTS OF SEPTEMBER 11, 2001

FRIDAY, SEPTEMBER 20, 2002

U.S. SENATE, SELECT COMMITTEE ON INTELLIGENCE AND
U.S. HOUSE OF REPRESENTATIVES, PERMANENT SELECT
COMMITTEE ON INTELLIGENCE,

Washington, DC.

The committees met, pursuant to notice, at 10:07 a.m., in room SH–216, Hart Senate Office Building, the Honorable Bob Graham, Chairman of the Senate Select Committee on Intelligence, presiding.

Senate Select Committee on Intelligence members present: Senators Graham, Levin, Rockefeller, Feinstein, Wyden, Mikulski, Shelby, Kyl, Inhofe, Hatch, and DeWine.

House Permanent Select Committee on Intelligence members present: Representatives Goss, Bereuter, Burr, Pelosi, Bishop, Roemer, Reyes, and Peterson.

Chairman GRAHAM. I call the Joint Inquiry Committee to order. Welcome.

This is the third public hearing of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence in our joint inquiry into the terrorist attacks of September 11, 2001. Today the Joint Inquiry will receive testimony regarding three of the 19 hijackers. These three are notable because they had come to the attention of the Intelligence Community at least 20 months before the September 11 attacks. We will review what actions the Intelligence Community and the law enforcement agencies took or failed to take with respect to these individuals.

Today's proceedings will be in two parts. First, the Committee will hear from Eleanor Hill, the staff director of our Joint Inquiry, who will present a staff statement on this portion of our inquiry. We will then ask the public and representatives of media organizations to leave the room briefly while we prepare it for the second panel of witnesses. I will explain the purpose of doing so after the room is reopened for the testimony of that panel.

Are there any opening statements, by Chairman Goss?

Chairman GOSS. No, thank you, Mr. Chairman.

Chairman GRAHAM. Senator Shelby.

Vice Chairman SHELBY. Mr. Chairman, I'll try to be brief, if I can, with my opening statement.

We're holding a hearing today, in large part, based on what our intelligence agencies knew about two specific people before they participated in the September 11 attacks. In our first open hearing on Wednesday, several members complained about how much information the Administration has been willing to declassify. That issue, of course, is a concern to all of us.

I would like to point out, however, that there is vital information about these two hijackers that the Administration has shared with the Joint Inquiry staff but which the Chairmen have ordered to be concealed not only from the public but also from members of these two committees and from committee staff.

Mr. Chairman, in the Senate Select Committee on Intelligence we have certain rules that govern how we do business. Among those rules is the requirement that information in the possession of the Committee be shared between the two sides of the aisle. This rule prevents the majority from taking advantage of its status to hide information. As you made clear in our first closed hearing, Mr. Chairman, we do not sit here as a joint committee. The Joint Inquiry is being run concurrently by the Senate and House oversight committees as two separate committees, acting jointly. All records of the Joint Inquiry are simultaneously the investigative records of each committee. I believe it's a violation of Senate committee rules to conceal information in the Committee's possession from members of this Committee and from properly-cleared minority staff.

Unfortunately, this is not the only problem. In discussions with my staff, the FBI has indicated that it has been instructed by the two Chairmen not to share this same vital information with Members or staff of these two committees, the House Committee and the Senate Intelligence Committee. I do not know what legal authority the Chairmen have to tell the FBI to withhold information from Senators and Congressmen, but these are apparently the instructions given to the Bureau.

I do not necessarily propose that we make the information in question about these two people, the hijackers, public at this time. I think it would be dangerous. That's a matter for the proper declassification authorities to determine. I must insist, Mr. Chairman, that we end this policy of withholding crucial information from Committee Members and our staff. Conducting an investigation and pursuing leads without fully informing Members of the very committees who are supposedly in charge of the inquiry is not a precedent any of us should ever condone. I do not know how many members of these committees are aware that information about these two hijackers has been concealed from them by the Committee leadership.

Members of these Committees are privy every day to enormously sensitive compartmented information from across the Intelligence Community. I doubt that they will understand why they may not be permitted to know this information. Before Members of these Committees can consider themselves properly informed about the subject at hand, I think, Mr. Chairman, we must end this practice of withholding information from Committee Members and staff. If we need to discuss this matter in closed session, we should do that, but we must not conduct investigations, I believe, out of the full view of our Members.

With that, Mr. Chairman, I believe that this still promises to be a very productive hearing and I'm looking forward to the testimony. I am concerned, however, that the topics we're about to explore involve a great deal of classified and sensitive law enforcement information. When we begin questioning the witnesses the possibility of an inadvertent disclosure of classified information is very real, and we would not serve the public interest if such disclosure took place.

I strongly support your efforts, Mr. Chairman, to share as much information with the public as possible, but I'm afraid that we may be walking a fine line in this instance. I think we have to be very, very careful. I believe we should conduct this hearing in a secure facility where we can have a full and unrestricted discussion without the risk of an inadvertent disclosure.

After the hearing, we can review the transcript, redact classified and sensitive law enforcement information, and then release it to the public. I wish you would close this hearing, Mr. Chairman.

Chairman GRAHAM. Let me comment on those suggestions and observations. First, as to the very sensitive information, without elaborating, this information is not only extremely sensitive relative to the events leading up to September 11 but has very potentially adverse effects on U.S. current policies.

Two, at the request of the Federal Bureau of Investigation this information was made available to the Chairs and the two Ranking Members of the Committees, with the understanding that it would not be made further available until we could do so at a closed session of this Committee. We have been endeavoring for the past several weeks to make arrangements for that closed hearing of this committee, where that matter will be fully discussed with appropriate safeguards. It had been my hope that we would be able to do that as early as next week. Based on information that I have received this morning, I doubt that we will be in a position to do it next week. But I can assure you, Senator, that it is my desire to have this made available to the Committee at the earliest possible moment, and I believe when the Committee hears the information they will be seized with why the FBI felt that this had to be treated with such special precaution.

Second, as to the hearing we're going to have today, as with the hearings that we had Wednesday and as to those that we will have in the future, the staff report is submitted to the classifying agencies, which in this case included the FBI and the CIA. Those agencies have the responsibility of reviewing it and declassifying. We may at some points disagree with their standards, but in all cases we observe their standards and recognize their ultimate authority to do so.

This hearing is being conducted under those same ground rules, so that all the information that will be presented in the joint staff report will have been previously declassified by the appropriate agency and the witnesses, all of whom are agents of those two agencies, plus one witness from the State Department, are aware of the lines of demarcation between classified and declassified as it relates to this subject matter. So I believe that it is not only possible but highly appropriate that we hold this hearing in public

today so that the American people can become better informed as to the events leading up to September 11.

Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman. I just want to make one point in welcoming our witnesses and commending once again Ms. Hill for her excellent work and that of the staff.

I would reiterate some of what my Chairman, Mr. Goss, said, I don't know if it was yesterday or the day before. We are all committed to having as much information available to the public as is possible, and the only limitations would be not to reveal sources and methods, plans and intentions, and any matters that we couldn't release because of Justice Department activity, that we all value the work of the people at the Federal Bureau of Investigation and the Central Intelligence Agency and others in law enforcement and intelligence-gathering, that they are brave and courageous, and that something went wrong here and we want to find out what it is, and that any information—just to comment on what my distinguished vice chairman from the other body said—that we would not be going down a path that would be dangerous to our national security and reveal sources and methods, plans and intentions, or jeopardize a prosecution, but that we understand our responsibility for the safety of these people and the importance of this information.

I think that we should feel quite comfortable proceeding under the arrangement that is there, with all due respect to the concerns, always legitimate, raised by my distinguished colleague.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman GRAHAM. Thank you very much, Ms. Pelosi.

Ms. Hill.

[The prepared statement of Ms. Hill follows:]

The Intelligence Community's Knowledge of the September 11 Hijackers Prior to September 11, 2001

Eleanor Hill, Staff Director, Joint Inquiry Staff
September 20, 2002

Introduction

Mr. Chairmen, members of this Joint Committee, good morning. I appreciate the opportunity to appear before the Committees, and the American public, once again.

Previously, we have reported on what our review has, to date, confirmed about the evolution of the terrorist threat, as known to the Intelligence Community, prior to the September 11, 2001 attacks on the United States. To summarize:

- By at least 1998, Usama Bin Ladin had declared war on the United States and had carried out attacks against U.S. interests overseas;

- Beginning in mid-1998, the Intelligence Community had acquired information indicating in broad terms that Usama Bin Ladin's network intended to carry out attacks inside the United States. For example, in December 1999, Ahmed Ressam, an individual later determined to have links to Bin Ladin's terrorist network, had been arrested attempting to enter the United States from Canada to carry out an attack in the domestic United States;

- In the spring and summer of 2001, the Intelligence Community had detected indications of a major impending terrorist attack but did not know where, when, or how the attack would occur;

- The Intelligence Community had accumulated information indicating that international terrorists had thought seriously about using airplanes as weapons in terrorist operations; and

- The Intelligence Community knew of but did not fully understand the importance of a key leader in Usama Bin Ladin's terrorist organization who may have been instrumental in the September 11 attacks.

Today, we will report on the Intelligence Community's knowledge, prior to September 11, 2001, of the September 11 hijackers, particularly three of the four individuals who hijacked American Flight 77, which crashed into the Pentagon. In future hearings, we will report on the July 10, 2001 electronic communication (EC) from the Federal Bureau of Investigation's (FBI) Phoenix field office to FBI headquarters and on the FBI's investigation, prior to September 11, 2001, of Zacarias Moussaoui.

While each of these areas is individually important, I want also to emphasize the significance of these matters when viewed collectively. The information regarding these three matters was available in the same section at the FBI headquarters in late August 2001. The first and third matters were addressed in the Director of Central Intelligence's (DCI) Counterterrorist Center (CTC) at approximately the same time. In neither unit did anyone see the potential collective significance of the information, despite the increasing concerns throughout the summer of 2001 of an impending terrorist attack.

Our review has confirmed that, in each of these areas, there were missed opportunities by the Intelligence Community. In each area, there were indications of larger, systemic issues that, at least in part, drove those missed opportunities. And finally, in each area, there were individuals within the Intelligence Community who recognized the importance of what potentially was at stake and tried, though ultimately without success, to get organizations within the Intelligence Community to do the same.

The September 11 Hijackers

Of particular interest to the Joint Inquiry Staff is the extent to which the Intelligence Community had any intelligence or law enforcement information linking any of the suspected September 11 hijackers to terrorism or a terrorist group, prior to September 11, 2001. This would exclude civil or administrative information such as visa applications, driver's licenses, or other types of identification that may have been available to various agencies. That type of information would not have normally triggered any suspicions absent information linking the hijackers to terrorism or a terrorist group.

In pursuing this question of prior knowledge, the Joint Inquiry Staff employed several means of seeking relevant information:

- At the beginning of this inquiry, the Joint Inquiry Staff asked the Intelligence Community to search its records for any information it had prior to September 11, 2001 on any of the 19 hijackers;

- In the case of the Central Intelligence Agency (CIA), the Joint Inquiry Staff also reviewed information compiled by the DCI's "Review Group." This group was created in late 2001 to help the CIA understand why it had not detected the planning of the September 11 attacks prior to September 11, 2001. The group had pulled together all information available in CIA files on Usama Bin Ladin, al-Qa'ida, terrorist plotting against the United States worldwide, etc. Part of that effort resulted in a detailed chronology of terrorist related events stretching back to 1993;

- The Joint Inquiry Staff requested that the agencies conduct searches for documents in their electronic document databases. The Joint Inquiry Staff provided the search terms and other parameters for these searches. At CIA, the DCI's CTC maintains a massive database of terrorist related information going back at least two decades. Within this database are analytic papers, messages between CIA headquarters and CIA stations and bases around the world, signals intelligence reports from the National Security Agency (NSA), and various briefings, memoranda, and working notes. Our goal was to look for any information that might have been missed in the agencies' initial search for documents and to find any additional information that might be of relevance to the Inquiry. The Joint Inquiry Staff was not given direct access

to the agencies' databases, so our searches were serviced by the agencies' own personnel. In some cases, Joint Inquiry Staff personnel observed the queries being entered and run; in others the queries were run based on a formal request without Joint Inquiry Staff present. In all cases, the search terms used and results generated were provided to the Joint Inquiry Staff. We also requested supplemental manual searches of documents and files that are not maintained electronically;

- The Joint Inquiry Staff interviewed CIA analysts and operations officers, FBI analysts and special agents, and other Intelligence Community personnel who would have had firsthand knowledge of information held by the Intelligence Community prior to September 11, 2001 or who had reviewed information of this type after September 11, 2001; and

- The Joint Inquiry Staff reviewed the DCI's and FBI Director's written statements to these two Committees on June 18, 2002. Those statements describe what the Intelligence Community now knows about the September 11 plot. We requested that these statements be declassified to the extent possible and those declassified statements will be entered into this morning's hearing record as they become available.

As of this date, the Joint Inquiry Staff has determined from the fruits of these efforts that, prior to September 11, 2001, the Intelligence Community possessed no intelligence or law enforcement information linking 16 of the 19 hijackers to terrorism or terrorist groups. Indeed, the Joint Inquiry has heard testimony and reviewed documents indicating that the hijackers may have been selected for the September 11 operation at least partly because they did not have previously established ties to terrorist organizations.

The three remaining hijackers – all of whom were aboard American Flight 77, which crashed into the Pentagon – did come to the attention of the Intelligence Community prior to September 11, 2001. The three hijackers in question are: Khalid al-Mihdhar, Nawaf al-Hazmi and Nawaf's brother, Salim al-Hazmi. All three were citizens of Saudi Arabia. Before September 11, 2001, the Intelligence Community had acquired significant information regarding al-Mihdhar and Nawaf al-Hazmi. The Intelligence Community initially acquired some information about Salim al-Hazmi's identity and association with the other two, but nothing further until after September 11, 2001.

The Joint Inquiry Staff is aware of a media report that Ziad Jarrah, a September 11 hijacker suspected of having been the pilot aboard United Flight 93, was stopped by United Arab Emirate (UAE) officials at the behest of the CIA as he arrived in Dubai in January 2001. Based on our investigation, the media reports are incorrect. The Joint Inquiry Staff requested and reviewed all pertinent CIA records to determine whether such a request was made. The Joint Inquiry Staff determined that Jarrah was unknown to the CIA prior to September 11, 2001. UAE officials had detained Jarrah because of an irregularity in his passport, not at the request of the CIA, a fact acknowledged by them to

U.S. Government officials. Additionally, the date in the media stories is incorrect. Jarrah was stopped in January 2000, not January 2001 as reported by the media. Further, our investigation could find no evidence that any other U.S. officials asked that Jarrah be stopped.

Three September 11 Hijackers Who Came to the Attention of the Intelligence Community Prior to September 11, 2001

What follows is a description of how the Intelligence Community developed information on three of the hijackers, and when the Intelligence Community had, but missed, opportunities both to deny them entry into the United States and, subsequently, to generate investigative and surveillance action regarding their activities within the United States. At this stage, we must also reiterate that this is only an unclassified summary of these events. While the Joint Inquiry Staff has studied this intelligence trail in great detail, some aspects involving intelligence sources and methods remain classified. A separate and more detailed classified report is also being submitted to the two Committees.

As mentioned earlier, the Joint Inquiry Staff has also requested that the written statements of the DCI and Director of the FBI be declassified. When they become available, they will further describe what the Intelligence Community now knows about the September 11 plot.

As background, we mention here that watchlists are important to U.S. Government efforts aimed at preventing criminals and terrorists from entering the United States from overseas. The State Department, the Immigration and Naturalization Service (INS) and the U.S. Customs Service all maintain watchlists of named individuals. Names are added to the watchlists based on information provided by the Intelligence Community and various law enforcement agencies. When individuals apply for visas to enter the United States or present themselves to immigration officers at U.S. ports of entry – airports, seaports, and land border crossings – U.S. consular officers, INS officers, and Customs agents check their names against watchlists maintained by their respective agencies. If an individual's name is on a U.S. Government watchlist, he or she may be denied visas or denied entry into the United States.

The story begins in December 1999 with the Intelligence Community on heightened alert for possible terrorist activity as the world prepared to celebrate the new Millennium. A meeting of individuals believed at the time to be associated with Usama Bin Ladin's terrorist network took place in Kuala Lumpur, Malaysia from January 5 to 8, 2000. Khalid al-Mihdhar and Nawaf al-Hazmi were among those attending the meeting in Malaysia, along with an individual later identified as Khallad bin-Atash, a key operative in Usama Bin Ladin's terrorist network. The meeting took place at a condominium owned by an individual named Yazid Sufaat. Sufaat is the same individual who would later, in October 2000, sign letters identifying Zacarias Moussaoui as a representative of his company. U.S. authorities found these letters in the possession of

Moussaoui after the September 11 attacks. Although it was not known what was discussed at the Malaysia meeting, the CIA believed it to be a gathering of al-Qa'ida associates. Several of the individuals attending the meeting, including al-Mihdhar and al-Hazmi, then proceeded to another Southeast Asian country.

By the time these individuals entered Malaysia, the CIA had determined Khalid al-Mihdhar's full name, his passport number, and birth information. Significantly, it also knew that he held a U.S. B-1/B-2 multiple-entry visa that had been issued to him in Jeddah, Saudi Arabia on April 7, 1999 and would not expire until April 6, 2000. Soon after these individuals departed Malaysia for another country on January 8, 2001, the CIA also received indications that Nawaf's last name might be al-Hazmi. Unbeknownst to the CIA, another arm of the Intelligence Community, the NSA, had information associating Nawaf al-Hazmi with the Bin Ladin network. NSA did not immediately disseminate that information, although it was in NSA's database. At this stage, Salim was known to the rest of the Intelligence Community as an associate of Khalid's and Nawaf's and that he was possibly Nawaf's brother. Al-Mihdhar's and Nawaf al-Hazmi's names could have been, but were not, added at this time to the State Department, INS, and U.S. Customs Service watchlists denying individuals entry into the United States.

A CIA communication in early January 2000 states that al-Mihdhar's travel documents, including his multiple entry visa for the United States, were shared with the FBI for further investigation. No one at the FBI recalls having received such documents at the time. No confirmatory record of the transmittal of the travel documents has yet been located at either the CIA or the FBI. In addition, while the Malaysian meeting was in progress, a CIA employee sent an e-mail to a CIA colleague, advising that he had briefed two FBI agents about what the CIA had learned about al-Mihdhar's activities. The CIA employee told us that he had, at the time, been assigned to work at the FBI Strategic Information Operations Center to fix problems "in communicating between the CIA and the FBI." His e-mail, however, makes no mention of the CIA's determination that al-Mihdhar held a U.S. multiple-entry visa. The CIA employee notes in his e-mail that he had told the second FBI agent that:

> "...this continues to be an [intelligence] operation. Thus far, a lot of suspicious activity has been observed but nothing that would indicate evidence of an impending attack or criminal enterprise. Told [the first FBI agent] that as soon as something concrete is developed leading us to the criminal arena or to known FBI cases, we will immediately bring FBI into the loop. Like [the first FBI agent] yesterday, [the second FBI agent] stated that this was a fine approach and thanked me for keeping him in the loop."

The CIA employee told the Joint Inquiry Staff that he does not recall telling the FBI about Mihdhar's visa information and potential travel to the United States.

When interviewed by the Joint Inquiry Staff, neither FBI agent initially recalled discussions with the CIA employee about al-Mihdhar. The first agent did locate his own

handwritten notes that indicated that he did speak with the employee about the Malaysia activities, probably in early January 2000. The second agent knows the CIA employee, but does not recall learning about al-Mihdhar or the Malaysia meeting until after September 11, 2001. An e-mail from the second FBI agent to a superior at FBI headquarters has been located that relates the basic facts of the conversation with the CIA employee. The e-mail makes no mention of al-Mihdhar's visa information or possible travel to the United States. It concludes with "CIA is reporting relevant information as it becomes available."

The CIA maintained its interest in al-Mihdhar and al-Hazmi after their departure from Malaysia, with assistance from foreign authorities. A February 2000 CIA cable in response to a request by foreign authorities to become involved reiterated CIA's primacy in the case and intent "to determine what the subject is up to."

In early March 2000, CIA headquarters, including both the CTC and the special Bin Ladin unit, received information from an overseas CIA station involved in the matter that Nawaf al-Hazmi had entered the United States via Los Angeles International Airport on January 15, 2000. No further destination for Khalid al-Mihdhar was noted in the CIA cable. The cable carrying the information was marked "Action Required: None, FYI." The following day, another overseas CIA station noted, in a cable to the Bin Ladin unit at CIA headquarters, that it had "read with interest" the March cable, "particularly the information that a member of this group traveled to the U.S...." The CIA did not act on this information. Nor did it consider the possibility that, because Nawaf al-Hazmi and Khalid al-Mihdhar had been together in Malaysia and continued on together to another Southeast Asian country, there was a substantial probability that they would travel further together. In fact, al-Mihdhar, who had traveled with al-Hazmi, continued on with him to the United States on January 15, 2000.

Again, at this point, these two individuals, who later participated in the September 11 attacks, could have been added to the State Department's watchlist for denying individuals entry into the United States. Although the individuals had already entered the United States, the sharing of this information with the FBI and appropriate law enforcement authorities could have prompted investigative efforts to locate these individuals and surveil their activities within the United States. Unfortunately, none of these things happened. The Joint Inquiry Staff has interviewed the individual at CIA headquarters who had direct responsibility for tracking the movement of individuals at this meeting in Malaysia. That person does not recall seeing the March message. In his testimony before the Joint Inquiry on June 18, 2001, the DCI acknowledged that the CIA should have acted to add these individuals to the State Department's watchlist in March 2000 and characterized this omission as a mistake.

During the course of our interviews, we attempted to identify the reasons why that mistake occurred. We were told that there was, at the time, no formal system in place at the CTC for watchlisting suspected terrorists with indications of travel to the United States. CIA personnel also told us that they received no formal training on watchlisting. One CIA employee said they learned about the watchlisting process through "on-the-job

training." Another CIA employee who had been aware of al-Mihdhar's participation in the Malaysia meeting told us that, prior to September 11, 2001, it was "not incumbent" on CTC's special Bin Ladin unit to watchlist such individuals. Finally, a CTC employee who in 2000 handled the cable traffic on the Malaysia meeting told us that the meeting was not considered "important" (relative to other counterterrorist activities occurring at that time) and that there were "not enough people" to handle CTC's workload at the time. As a result, informational cables – such as the March 2000 message – received less attention than "action" items. Several other employees told us that they typically did not have time to even read information cables.

The failure to watchlist al-Mihdhar and al-Hazmi or, at a minimum, to advise the FBI of their travel to the United States, is perhaps even more puzzling because it occurred shortly after the peak of Intelligence Community alertness to possible Millennium-related terrorist attacks. In the fall of 1999, there was debate within the Intelligence Community about whether intelligence information that had been collected earlier that year meant that Usama Bin Ladin's network intended to carry out terrorist attacks in the midst of the celebrations ushering in the new Millennium. Intelligence information, along with the arrest of Ahmed Ressam at the U.S.-Canadian border, prompted the U.S. Government and various foreign governments to arrest, detain, and otherwise disrupt numerous individuals associated with Bin Ladin's network in various locations around the world. These disruption operations occurred between December 1999 and February 2000. Thus, the Malaysia meeting of January 5-8, 2000 and the March 2000 information that al-Hazmi had entered the United States developed at a time when the Intelligence Community had only recently confronted the real possibility of a Bin Ladin attack. However, it apparently was still focused on the organization and aftermath of the previous operations.

In interviews with the Joint Inquiry Staff, a number of working level CIA personnel who were following the Malaysia meeting and other terrorist activities in the Millennium timeframe have characterized the Malaysia meeting as just one of many counterterrorist efforts occurring at that time. In contrast, documents reviewed by the Joint Inquiry Staff show that the Malaysia meeting was deemed sufficiently important at the time that it was included – along with several other counterterrorist activities – in several briefings to the DCI in January 2000. We were told, however, that the matter was "dropped" when the CIA employee handling the matter moved on to other issues and, as a result, no CIA officer was following the al-Mihdhar group by the summer of 2000.

By March 2000, al-Mihdhar and Nawaf al-Hazmi had settled into a residence in San Diego. In the course of their time in San Diego, they used their true names on a rental agreement, as al-Mihdhar also did in obtaining a California motor vehicle photo identification card. In May 2000, they took flight lessons in San Diego but abandoned the effort. On June 10, 2000, al-Mihdhar left the United States on a Lufthansa flight from Los Angeles to Frankfurt.

Nawaf al-Hazmi remained in the United States. On July 7, 2000, a week shy of the expiration of the six-month visa to stay in the United States that he had been granted

on January 15, 2000, al-Hazmi applied to the INS for an extension to his visa. He used on his INS application the Lemon Grove, California address for the residence that he shared with al-Mihdhar before the latter's departure in early June 2000. The INS recorded receipt of the extension request on July 27, 2000. The INS has advised the Joint Inquiry Staff that it assumes a receipt was generated and sent to al-Hazmi at the address he listed. Lemon Grove is the community al-Hazmi lived in until December 2000. At that time, he moved to Mesa, Arizona with Hani Hanjour, who in December had just returned to the United States and would later be the most likely hijacker to have piloted American Flight 77. The INS does not have a record of a further extension request by al-Hazmi, who remained in the United States illegally after his initial extension expired in January 2001.

On October 12, 2000, two individuals with ties to Usama Bin Ladin's terrorist network carried out an attack on *USS Cole* as the Navy destroyer was refueling in Aden, Yemen. In the course of its investigation of the attack, the FBI developed information indicating that an individual named Tawfiq Mahomed Saleh Atash, also known as Khallad, had been a principal planner in the *Cole* bombing and that two other participants in the *Cole* conspiracy had delivered money to Khallad at the time of the January 2000 Malaysia meeting. The FBI shared this information with the CIA, and it prompted analysts at CIA to take another look at the January 2000 meeting in Malaysia.

In that process, the CIA acquired information in January 2001 indicating that Khallad had attended the meeting in Malaysia. This information was significant because it meant that the other attendees, including al-Mihdhar and Nawaf al-Hazmi, had been in direct contact with the key planner in Usama Bin Ladin's terrorist network behind the *Cole* attack. However, CIA again apparently did not act and did not add Khalid al-Mihdhar and Nawaf al-Hazmi to the State Department's watchlist for denying individuals entry into the United States. At this time, Khalid al-Mihdhar was abroad, while Nawaf al-Hazmi was still in the United States.

In May 2001, personnel at the CIA provided an Intelligence Operations Specialist (IOS) at FBI headquarters with photographs taken in Malaysia, including one of al-Mihdhar. The CIA wanted the FBI to review the photographs to determine whether an individual in custody in connection with the FBI's *Cole* investigation (who had carried the money to a Southeast Asian country for Khallad in January 2000) could be identified in the photographs. When interviewed, the FBI IOS who received the photographs told the Joint Inquiry Staff that the CIA told her about Mihdhar's meeting in Malaysia and travel to another Southeast Asian country, but said nothing about his potential travel to the United States. Nor did the CIA advise the FBI that the photographs were from a meeting that it believed Khallad had attended. Again, no action was taken to watchlist al-Mihdhar or al-Hazmi.

On June 11, 2001, FBI headquarters representatives and CIA representatives met with the New York FBI agents handling the *Cole* investigation. The New York agents were shown, but not given copies of, the photographs and told they were taken in Malaysia. When interviewed, one of the New York agents recalled al-Mihdhar's name

being mentioned. He also recalled asking for more information on why the people in the photographs were being followed and for access to that information. The New York agents were advised they could not be told why al-Mihdhar and the others were being followed. An FBI headquarters representative told us in her interview that the FBI was never given specific information until it was provided after September 11, 2001. The CIA analyst who attended the New York meeting acknowledged to the Joint Inquiry Staff that he had seen the information regarding al-Mihdhar's U.S. visa and al-Hazmi's travel to the United States. But, he stated that he would not share information outside of the CIA unless he had authority to do so and unless that was the purpose of the meeting.

On June 13, 2001, Khalid al-Mihdhar obtained a new U.S. visa in Jeddah, using a different passport than the one he had used to enter the United States on January 15, 2000. On his visa application, he checked "no" in response to the question of whether he had ever been in the United States. On July 4, 2001, al-Mihdhar re-entered the United States.

On or about July 13, 2001, a CIA officer assigned to the FBI accessed CIA's electronic database and located a CIA cable, for which he had been searching, that contained information the CIA had acquired in January 2001 indicating that Khallad had attended the meeting in Malaysia. The presence of Khallad in Malaysia deeply troubled the CIA officer, who immediately sent an email from FBI headquarters to the DCI's CTC saying of Khallad: "This is a major league killer, who orchestrated the *Cole* attack and possibly the Africa bombings."

A review at the CIA of all prior cables concerning the Malaysia meeting was launched, a task that fell to an FBI analyst assigned to the CTC. On August 21, 2001, the FBI analyst put together two key pieces of information. These were the intelligence that the CIA had received in January 2000 that al-Mihdhar had a multiple entry visa to the United States and the information it had received in March 2000 that Nawaf al-Hazmi had entered the United States on January 15, 2000. Working with an INS representative assigned to the CTC, the analyst obtained information that al-Mihdhar had entered the United States on January 15, 2000 and had departed on June 10, 2000. Additional investigation revealed that al-Mihdhar had re-entered the United States on July 4, 2001, with a visa that allowed him to stay in the United States through August 22. CIA suspicions were further aroused by the timing of al-Mihdhar's and al-Hazmi's arrival in Los Angeles in January 2000, the same general timeframe in which Algerian terrorist and Bin Ladin associate Ahmed Ressam was to have arrived in Los Angeles to conduct terrorist operations.

On August 23, 2001, the CIA sent a cable to the State Department, INS, Customs Service, and FBI requesting that "Bin Ladin related individuals" – al-Mihdhar, Nawaf al-Hazmi, and two other individuals at the Malaysia meeting – be watchlisted immediately and denied entry into the United States "due to their confirmed links to Egyptian Islamic Jihad operatives and suspicious activities while traveling in East Asia." Although the CIA believed al-Mihdhar was in the United States, placing him on the watchlist would enable authorities to detain him if he attempted to leave.

Meanwhile, the FBI headquarters' Usama Bin Ladin Unit sent to the FBI's New York field office a draft document recommending the opening of an intelligence investigation on al-Mihdhar "...to determine if al-Mihdhar is still in the United States." It also stated that al-Mihdhar's confirmed association with various elements of Bin Ladin's terrorist network, including potential association with two individuals involved in the attack on *USS Cole*, "make him a risk to the national security of the United States." The goal of the investigation was to locate al-Mihdar and determine his contacts and reasons for being in the United States." This document was sent to New York in final form on August 28. New York FBI agents told us that they tried to convince FBI headquarters to open a criminal investigation on al-Mihdhar, given the importance of the search and the limited resources that were available to intelligence investigations. FBI headquarters declined to do so because there was, in its view, no way to connect al-Mihdhar to the ongoing *Cole* investigation without using some intelligence information.

At the State Department, a visa revocation process was begun immediately. Al-Mihdhar, Nawaf al-Hazmi, Khallad, and the other individual who had been at the Malaysia meeting were added to the watchlists maintained by INS and Customs Service, on the chance that they had not yet entered the United States.

The FBI contacted the Bureau of Diplomatic Security at the State Department on August 27, 2001 to obtain al-Mihdhar's and Nawaf al-Hazmi's visa information. The visa information was provided to the FBI on August 29, 2001. It revealed that, on entering the United States on July 4, 2001, al-Mihdhar had indicated on his application that he would be staying at a Marriott hotel in New York City. An FBI agent working with a Naval Criminal Investigative Service agent determined on September 5, 2001 that al-Mihdhar had not registered at any New York area Marriott hotel, including the Marriott World Trade Center Hotel. On September 10, 2001, the New York FBI field office prepared a request that the FBI office in Los Angeles check registration records for all Sheraton Hotels located in the Los Angeles metropolitan area. The request also asked the Los Angeles field office to check with United Airlines and Lufthansa for travel and alias information since al-Mihdhar and al-Hazmi had used those airlines when they entered and when al-Mihdhar departed the United States. The Los Angeles FBI office conducted the search after September 11, 2001, with negative results.

In short, the CIA had obtained information identifying two of the 19 hijackers, al-Mihdhar and al-Hazmi, as suspected terrorists carrying visas for travel to the United States as long as eighteen months prior to the time they were eventually watch-listed on August 24, 2001. There were numerous opportunities during the tracking of these two suspected terrorists when the CIA could have alerted the FBI and other U.S. law enforcement authorities to the probability that these individuals either were or would soon be in the United States. That was not done, nor where they placed on watchlists denying them entry into the United States. In his closed-door testimony of June 18, 2002 before the Joint Inquiry, as mentioned earlier, the DCI acknowledged that the CIA had made a mistake in not watch-listing these two individuals prior to August 2001.

It is worth noting that the watchlists mentioned above are aimed at denying named individuals from entering the United States. Prior to September 11, 2001, these watchlists were not used to screen individuals boarding domestic flights within the United States. Thus, even though al-Mihdhar and al-Hazmi had been placed on U.S. watchlists two weeks prior to September 11, 2001, this did not prevent them from boarding American Flight 77 on September 11.

Beyond the watchlist issue, the story of al-Mihdhar and al-Hazmi also graphically illustrates the gulf that apparently existed, at least prior to September 11, 2001, between intelligence and law enforcement counterterrorist efforts. An effective defense against terrorist groups such as al-Qa'ida requires close collaboration between both law enforcement and foreign intelligence agencies as well as within the FBI between the unit responsible for criminal investigations and the unit responsible for counterintelligence and counterterrorism investigations. There are a number of factors that make effective integration of law enforcement and intelligence investigations against terrorism difficult. These include differences in experience, tactics, objectives, legal authorities, and concern for protecting intelligence sources and methods. A brief explanation of certain legal distinctions between law enforcement and foreign intelligence investigations is important to understand aspects of how CIA and FBI dealt with information about the hijackers as well as the FBI's handling of the Moussaoui investigation.

The May 17, 2002 opinion of the United States Foreign Intelligence Surveillance Court (FISC) concerning "minimization procedures" that control the dissemination of information collected by the FBI pursuant to the Foreign Intelligence Surveillance Act (FISA) addresses the legal issue of the appropriate relationship between the law enforcement and foreign intelligence aspects of a counterterrorism investigation. Historically, the U. S. Government has recognized two distinct, albeit occasionally overlapping, spheres of investigative activity: domestic criminal investigations and foreign intelligence collection. The former is the exclusive province of federal, state and local law enforcement agencies; the National Security Act of 1947 forbids the CIA from having any internal security or law enforcement powers. Domestic law enforcement activity is carefully circumscribed by constitutional protections in the 4th, 5th, and 6th amendments and various statutory controls on electronic surveillance and physical searches. In general, the government is required to establish probable cause to believe a search will obtain evidence of criminal activity in order to obtain a search warrant in a criminal investigation.

Foreign intelligence collection, on the other hand, is the responsibility of the Intelligence Community under the guidance of the DCI. Collection of such information is carefully regulated when U.S. persons are the targets or when electronic surveillance or physical searches are conducted in the United States against foreign powers or their agents pursuant to FISA. The rules governing foreign intelligence collection are different than those pertaining to the collection and dissemination of information for law enforcement purposes. In general, this differentiation is explained by the national security purpose of foreign intelligence collection, i.e., to enable the conduct of foreign policy and military operations and to counter hostile intelligence services and

international terrorists. While it is possible that evidence of criminal conduct may be obtained in the course of such a surveillance, the FISC's May 17 opinion holds that the acquisition of such evidence may not be the primary purpose of such a surveillance. Surveillance for domestic law enforcement purposes, by contrast, obviously may be conducted for the purpose of subsequent criminal prosecution.

The existence of two categories of surveillance rules and the perceived need to keep them discrete raises practical problems in managing an investigation that straddles the divide as counterintelligence and counterterrorism investigations often do. The first question is whether to apply criminal or foreign intelligence rules in a particular case. The second is how to regulate coordination and interaction between intelligence and law enforcement personnel.

One way to ensure against violation of rules limiting such coordination and interaction is the imposition of a "wall" that requires someone not involved in either the foreign intelligence surveillance or the criminal investigation to decide what information should be passed from intelligence personnel to criminal investigators. That is one issue the FISC addresses in the May 2002 opinion mentioned above.

There is, however, a second type of wall that can also limit the flow of information to criminal investigators from intelligence agencies; that wall exists to protect foreign intelligence sources and methods from disclosure in a criminal prosecution. Intelligence agencies often provide information to the FBI, for example, with a limitation that it may only be used for lead purposes as distinct from evidentiary purposes. In the case of al-Midhar and al-Hazmi, evidently, assisting the important *USS Cole* criminal investigation was deemed insufficient to justify breaching the "wall" that prevented the full sharing of relevant intelligence information with the agents handling that criminal investigation.

An August 29, 2001 e-mail exchange between FBI headquarters and a FBI agent in New York is illustrative. The agent, who had been involved in the *Cole* criminal investigation since the day of that attack, asked FBI headquarters to allow New York to use the full criminal investigative resources available to the FBI to find al-Mihdhar. Headquarters responded that its National Security Law Unit advised that this could not be done. This was the exchange:

- From FBI Headquarters: "A criminal agent CAN NOT be present at the interview. This case, in its entirety, is based on [intelligence]. If at such time as information is developed indicating the existence of a substantial federal crime, that information will be passed over the wall according to the proper procedures and turned over for follow-up criminal investigation." [Emphasis in original.]

- From FBI agent, New York: "Whatever has happened to this - someday someone will die – and wall or not – the public will not understand why we were not more effective and throwing every resource we had at certain

> 'problems.' Let's hope the [FBI's] National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most 'protection.'"

Within two weeks after the September 11 attacks, the FBI prepared an analysis of Bin Ladin's responsibility as part of the State Department's development of a "White Paper" that could be shared with foreign governments. That analysis relied, at least in part, on the connection between the attack on the *USS Cole* investigation and al-Mihdhar and al-Hazmi:

> "Even at this early stage of the investigation, the FBI has developed compelling evidence which points to Usama Bin Ladin and al-Qa'ida as the perpetrators of this attack. By way of illustration, at least two of the hijackers met with a senior al-Qa'ida terrorist, the same al-Qa'ida terrorist which reliable information demonstrates orchestrated the attack on the *USS Cole* and who was involved in the planning of the East Africa Embassy Bombings."

The two hijackers referred to were al-Mihdhar and al-Hazmi. The senior al-Qa'ida terrorist was Khallad. The place that they met was Malaysia. Thus, the facts linking these two individuals to Khallad and therefore to Usama Bin Ladin formed the crux of the case made by the State Department to governments around the world that Usama Bin Ladin should be held accountable for the September 11 attacks.

Data Flow to the TIPOFF Watchlist

The case of the two hijackers who were watchlisted too late, al-Hazmi and al-Mihdhar, and the case that will be discussed later of another suspected terrorist, who, according to the State Department, was watchlisted in time, dramatically illustrate that the prompt, routine, and accurate flow of names of suspected terrorists from U.S. intelligence and law enforcement agencies to the State Department's TIPOFF watchlist is an important part of the U.S. Government's efforts to keep terrorists out of the United States.

The Consular Lookout and Support System (CLASS) watchlist is an automated database that was created in 1994 to prevent issuance of visas to inadmissible aliens. Congress required the Department of State to implement the automated database after it was reported that the mastermind of the 1993 attack against the World Trade Center, Sheik Abdul Rahman ("the Blind Sheik"), had been issued a visa even though the United States had information to deny him entry to the United States. Today, CLASS contains over six million names. The derogatory information on those individuals (crimes, drug dealing, etc.) comes from a variety of sources.

TIPOFF is a small part of CLASS. TIPOFF is an intelligence database that receives information on suspected terrorists from U.S. law enforcement, intelligence, and

other agencies. It currently contains over 70,000 names of suspected terrorists who are either members of foreign terrorist organizations, known hijackers, car bombers, assassins, or hostage-takers. It was designed to enhance border security by using classified intelligence information and privileged law enforcement material to identify terrorists, sanitizing the information into basic identification indicators and making that information available to consular officers abroad, and to INS agents and Customs officials performing security checks at U.S. borders and points of entry. Consular officers must certify that they have checked the CLASS and TIPOFF systems before issuing visas, and are liable to criminal penalties if they do not. Any name that is checked and results in a "hit," i.e., a double zero (00), must be adjudicated by a State Department officer in Washington, D.C. and requires a formal response to the field before a visa may be issued.

The CIA, FBI, and NSA collect information on terrorist threats to the United States. The Federal Aviation Administration (FAA), Drug Enforcement Agency (DEA), INS, and other agencies also perform a limited amount of collection. As names emerge in connection with those terrorist threats, names of terrorist suspects are provided to the State Department managers of the TIPOFF system. The threshold for adding a name to TIPOFF is low. If there is reasonable suspicion that the named individual is a terrorist or affiliated with a terrorist organization , that individual may be watchlisted in TIPOFF. Therefore, TIPOFF depends on intelligence flowing to it from all of these agencies, but particularly the NSA, CIA, and FBI.

The Joint Inquiry Staff has examined the extent to which these agencies supported the TIPOFF system before and after September 11, 2001, including the intelligence data flow into the TIPOFF watchlist. Despite Congressional concern regarding the flow of data, including a Fiscal Year 1996 Commerce/Justice/State Appropriations Report, and despite a signed January 2001 Memorandum of Understanding (MOU) between CIA, FBI, NSA, and State's TIPOFF Program regarding procedures and safeguards for sharing data, State Department officials we interviewed complained that a number of Central Intelligence Reports (CIRs) from CIA containing terrorist names were not provided to the TIPOFF program prior to September 11, 2001. The Joint Inquiry Staff also learned that at least 1,500 CIRs that had not been disseminated to the TIPOFF Program by CIA prior to September 11, 2001 were provided by CIA to the TIPOFF Program approximately one month after September 11, 2001. Because of this large volume of data and its limited resources, the TIPOFF Program asked that the CIA analyze these CIRs. That analysis yielded the names of approximately 150 suspected terrorists and resulted in the addition of 58 new suspected terrorist names on the TIPOFF watchlist.

As further evidence of shortcomings in the flow of intelligence data to the TIPOFF system, State Department officials pointed to a 455% increase in names being entered into the TIPOFF system after September 11, 2001. Specifically, according to data from the TIPOFF Program, 1,761 names of suspected terrorists were added to TIPOFF from June 1, 2001 to September 11, 2001, whereas 4,251 suspected terrorists were added to TIPOFF from September 12, 2001 to December 24,2001. An official in the State Department's TIPOFF program states that this post-September 11, 2001 spike in

terrorist names being provided was, in large part, due to the fact that our intelligence and investigatory assets were on a "war footing."

In response to a Joint Inquiry Staff question, CIA acknowledged:

> "Agency management realized that it needed to improve its system for providing watch listing information on suspected or known terrorists. The Headquarters desk level and field components' practice for watch listing was often based upon an individual officer's level of personal experience with, and understanding of, how other government agencies received and used this information. There also may have been too much emphasis on making certain there was a minimum fixed amount of information on an individual before he or she was watch listed. In response to this determination CIA lowered the threshold for reporting names of possible terrorists to other agencies, decreased the amount of minimum data required to file a notice/streamlined the reporting process, and sent stations new instructions to improve the field process for reporting."

State Department personnel who had briefed CIA personnel prior to September 11, 2001 regarding the TIPOFF program reported that they found little awareness of watchlisting policies and procedures among these personnel. In addition, during the Joint Inquiry's closed hearing on June18 and 19, 2002, CIA officials testified that, prior to September 11, 2001, officers in the CTC had different understandings of their responsibilities to the watchlist process and the criteria for watchlisting. Representatives of the CIA also acknowledged that, prior to September 11, 2001, the organization had not made clear to CTC personnel what they needed to know about the watchlist process.

There has also been, according to State Department officials, difficulty obtaining data for watchlisting purposes from the National Crime Information Center's Interstate Identification Index (NCIC III), which is managed by the FBI. The former Assistant Secretary of State in the Bureau of Consular Affairs advised the Joint Inquiry Staff that, until legislation was enacted after September 11, 2001, the State Department had never had access to the names and criminal history record information contained in that index. The former Assistant Secretary says that the State Department had attempted to secure access to that information for ten years, without success, because of its utility to the CLASS watchlist. While this database had been made available to local and state law enforcement officers on laptop computers, it had not been made available to the State Department to help prevent potential terrorists from entering the United States.

In addition to the Department of State, intelligence officers at the Departments of Transportation and Energy also expressed strong opinions regarding the desirability of access to the NCIC III information for watchlist and other security purposes. The Commerce, Justice, and State Appropriations Bills for Fiscal Years 1996 and 1997 requested that State and FBI prepare a report detailing their plan for the sharing and utilization of this FBI information. The USA Patriot Act sought to resolve this issue, even though pursuant to 28 U.S.C. Section 534, the Attorney General had been permitted

to exchange criminal history record information with other agencies and authorized officials of the Federal Government. Agreements are now being developed between the FBI and the State Department concerning the incorporation of certain files from NCIC III into CLASS, with the eventual goal of incorporation of all useable and relevant data.

Review of the Hijackers' Visas and the Visa Issuance Process

The Joint Inquiry Staff has conducted a review of the passport and visa history of the 19 hijackers who were involved in the September 11 attacks to determine whether they entered the United States legally. In addition, the review concerned whether there might have been any indicators or anomalies in the process by which the hijackers obtained U.S. visas and were enabled to enter the United States. Based on the information provided thus far to the Joint Inquiry there appears to be very little in the visa process regarding the September 11 hijackers that should have aroused suspicions or otherwise triggered actions by the U.S. Government to deny them entry into the United States.

An important reality to understand about the visa process is its magnitude. Visas are issued by the Department of State through embassies and consular offices abroad. The State Department reports that there are over 10 million applications per year worldwide for visas to the United States at approximately 250 consular locations. Visa applications are submitted and selected applicants are interviewed. Consular officers at the posts abroad review all applications for completeness and accuracy. Consular officers average 3 to 5 minutes per application. Consular officers must certify in writing, as has been explained earlier, that they have checked the applicant's name against the State Department's CLASS, which includes TIPOFF, a database fed by intelligence and other information. Therefore, the visa issuance process at consular offices abroad is the first opportunity to screen out suspected terrorists by not issuing them a visa.

The consular officers' review is predicated on two priorities: first, determining whether the individual is likely to return to his or her country of origin in accordance with the visa; and, second, checking the CLASS and TIPOFF watchlists to make sure that the individual applying is not suspected of involvement in criminal or terrorist activities. As explained earlier, if a foreign applicant has been identified in the TIPOFF system, i.e., "watchlisted," as a suspected terrorist, a "double zero" (00) appears automatically on the consular officer's computer screen and a visa cannot be issued until that case is reviewed in Washington, DC.

A visa obtained legally at an overseas post does not guarantee entry into the United States. Rather, it is a travel document that allows the traveler to present himself or herself to an immigration officer at a port-of-entry. Thus, the next occasion for screening individuals entering the United States with non-immigrant visas takes place at U.S. ports-of-entry – airports, seaports, and land borders. The immigration officer is charged with reviewing the visa and determining the type and length of stay. It is the INS officer's action that makes the stay in the United States legal and official. The length of

the visa's validity depends on the country of origin of the applicant and follows from government-to-government agreements. The INS watchlist is called NAILS and incorporates a subset of TIPOFF information on suspected terrorists as well as other lists of felons, drug dealers, and organized crime associates.

The Joint Inquiry Staff's review of the visa history of the 19 hijackers revealed that visas were issued to them at consular offices abroad in accordance with routine procedures. As noted earlier in this statement, two of the hijackers should have been included on the State Department's TIPOFF watchlist as of early 2000, but this was the responsibility of the intelligence and law enforcement agencies. According to data received thus far, it appears that the majority of the hijackers sought new passports shortly before requesting their visas. Requests for new passports are not unusual and frequently stem from theft, loss, or accidental destruction. However, the Joint Inquiry Staff was told that suspected terrorists often try to hide prior travel to countries that provide terrorist training.

Multiple-entry visas were issued to the hijackers for periods ranging from two to ten years. Eighteen of the 19 received B-1/B-2 visas for tourist and business purposes in accordance with applicable procedures. The nineteenth hijacker, Hani Hanjour, was issued a B-1/B-2 visa in error. He should have been issued an F-1 visa for study in the United States since he had expressed a desire to study English while in the United States. Recognizing the error, the INS issued Hanjour an F-1 visa when he arrived in the United States. The normal issuance period for a B-1/B-2 visa is six months, whereas an F-1 visa is issued for the "duration of status" which would frequently be one or several years.

At their ports-of-entry, the 19 hijackers were issued "stay visas" by the INS. These are typically valid for a six-month tourist/business stay. Thus, some of the 19 hijackers – Mohamed Atta, Hani Hanjour, Marwan al-Shehhi, Khalid al-Mihdhar, and Ziad Jarrah – entered and re-entered the United States for several six-month periods prior to September 11, 2001. They would stay for five or six months, return to their country of origin or another destination, stay abroad for a period of weeks or months, re-enter the United States, and seek an additional six-month business/tourist stay from the INS upon re-entry.

Since 15 of the 19 hijackers were Saudi nationals and were issued passports in Saudi Arabia, questions have been raised about a program called "Visa Express." "Visa Express" is the name given to a process that exists in many countries and that encourages visa applicants to submit their non-immigrant visa applications to designated travel agencies or other collection points that then forward the applications to the U.S. Embassy for processing. State Department officials tell the Joint Inquiry Staff that "Visa Express" is only an application collection process and not a visa adjudication, issuance, or determination process. According to State Department officials, all non-immigrant visas require a formal application and "Visa Express" is one way of "dropping the application off." The travel agencies assist by providing the applicants with the correct forms, helping non-English speakers fill out the required forms properly, and collecting the relevant fees. There are approximately 60 embassies and consulates throughout the

world that have some type of arrangement to use travel agencies or business referrals in this manner. The real difference is that the "Visa Express" program in Saudi Arabia became the only way of delivering visa applications to the embassy; elsewhere, it was one of several ways of delivering the visa application, including delivering it in person to the embassy.

State Department officials advise the Joint Inquiry Staff that there is a formal vetting process to selecting the travel agencies, but those officials have not been able to identify the specific criteria that are used for this purpose. They state that the travel agencies have to be trustworthy and efficient, and not overcharge the applicants for the service. Reasons for using travel agencies include physical space and security considerations in the U.S. Embassies. State Department officials who served as consular officers in the Middle East and in South America state that, until the Lebanon Marine barracks bombing in 1983, there was no physical protection between U.S. employees and applicants waiting for visas. This posed significant risks to U.S. Embassy employees. Designated collection points also allow the U.S. Embassies to shift the burden of data entry and grouping of applications – a mundane task – to travel agencies and free U.S. Government employees to focus on reviewing the applications.

The "Visa Express" program in Saudi Arabia began in May 2001. Five of the nineteen hijackers applied for visas in Saudi Arabia after the "Visa Express" program began, so it is likely that these five individuals used travel agencies in Saudi Arabia to acquire the application forms and deliver them to the embassy. The five June 2001 applicants in Saudi Arabia were: Khalid al-Mihdhar, Abdulaziz al-Omari, Salem al-Hazmi, Saeed al-Ghamdi, and Fayez Banihammad. None of the five, including Khalid al-Mihdhar, were on the watchlist at that time. Thus, when the obligatory name check was performed before issuing their visas, the system showed no derogatory terrorist information. In cases where derogatory information did exist in the system, as was true with regard to another suspected terrorist, who applied for a visa in Saudi Arabia on August 5, 2001 under the "Visa Express" program, the applicant was denied a visa because the watchlist system blocked the visa issuance.

State Department officials say that the "Visa Express" program was terminated in Saudi Arabia as of July 19, 2002 because reporting about the program had created an impression that it somehow allowed Saudi applicants to skirt the normal visa issuance process. The Bureau of Consular Affairs at the Department of State has informed the Joint Inquiry Staff that travel agency and business referral programs to assist the delivery of completed applications to the consular officers exist in 60 embassies and consulates throughout the world. According to officials at the State Department, the "Visa Express" program did not affect the number of Saudis interviewed, since applicants were selected for interviews on the basis of indications in their applications that the individual might intend to immigrate. They also explain that all applications, including those delivered to consular officers under the "Visa Express" program in Saudi Arabia, were checked against the CLASS watchlist to determine if there were any indications that this individual might be a suspected terrorist. Currently, all Saudi applicants for visas between the ages of 16 and 45 are interviewed by consular affairs officers.

State Department officials tell the Joint Inquiry Staff that only U.S. consular officers who have been trained are authorized to review applications and issue visas. Furthermore, all consular officers must determine which applicants require a personal interview. This determination is based on the quality of the information provided in the application. While all visas are issued following a review of the CLASS system and determination of the potential for the applicant to become an illegal immigrant, it was not until September 11 that the State Department focused on terrorism as a key review item. However, State Department officials say that, unless there is derogatory information in CLASS, they are unable to determine who may be a potential terrorist. As to the value of personal interviews, State Department officials explain that they were of little value in Saudi Arabia before September 11, 2001 as Saudi Arabia was one of the countries that did not fit the profile for terrorism or illegal immigration.

Information provided by the State Department indicates that 15 of the 19 hijackers were Saudi nationals; all 15 were issued visas in Saudi Arabia. The Joint Inquiry Staff's review of the visa applications submitted by the hijackers indicates that at least one, Hani Hanjour, was interviewed by a State Department consular officer. Discussions with State Department officials indicate that this interview was not related to any concerns about terrorist activity. Our review and the State Department's review are unable to determine if any other hijackers appeared in person to discuss their applications with a U.S. official.

The Joint Inquiry Staff also received pertinent information from INS concerning the 19 hijackers. Two of the hijackers, Satam al-Suqami and Nawaf al-Hazmi, had overstayed the visas issued by the INS upon their entry into the United States. Hani Hanjour was, as mentioned earlier, issued an F-1 visa by the INS to study English in Oakland, California but he never registered for classes there so he was "a non-immigrant status violator." However, INS was not aware of this violation until after September 11, 2001.

Overstay violations on non-immigrant visas and students who choose not to register for classes pose an enormous problem for the INS. According to the INS, there are approximately four million overstays who initially entered the United States legally. INS only has some 1,300 agents nationwide to locate overstays, but that is a relatively low priority when considering other illegal alien violations. For purposes of comparison, the Capitol Hill Police Force has approximately the same number of police officers to cover about 270 acres as the INS has special agents to cover the entire United States. In the absence of other derogatory information, INS stipulates that there would have been no particular reason to seek out these two individuals for overstays or Hani Hanjour for not registering for his English language program.

The State Department was contacted by the CIA after regular business hours on August 23, 2001 regarding Khalid al-Mihdhar and Nawaf al-Hazmi as explained earlier. These two individuals were immediately watchlisted on August 24, 2001 and a process begun on August 24, 2001 to revoke their visas. The Bureau of Diplomatic Security at the State Department was contacted on August 28, 2001 and asked to supply the FBI with

visa information but was not asked to assist in locating the individuals, nor was any other information provided to it that would have indicated either a high priority or imminent danger. The same is true of INS, since the notice regarding these two individuals was considered to be routine. Thus, INS provided FBI only with the address listed on al-Mihdhar's I-94 immigration form and did not query its database for other locator information.

INS indicates that, if it had been asked to locate the two suspected terrorists, Nawaf al-Hazmi and Khalid al-Mihdhar, in late August on an urgent, emergency basis, it would have been able to run those names through its extensive database system and might have been able to locate them. Absent a sense of highest priority, however, INS states that it equated the search for these two individuals with other, more routine name searches, sometimes 50 or more per day, that it was running at the time. The Bureau of Diplomatic Security at the State Department also has told the Joint Inquiry Staff that it has extensive means of locating individuals who are involved in visa fraud or visa violations and also contends that it might have been able to locate the two suspected terrorists if it had been asked to do so.

Preliminary Conclusions

September 11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi came to the attention of the Intelligence Community in early 2000 but entered the United States unobserved soon after. The Intelligence Community succeeded in determining that these Bin Laden operatives were in Malaysia in January 2000 and in obtaining important information about them. The system broke down, however, in making the best use of that information and in ensuring that it was effectively and fully shared with agencies, like the FBI, the State Department and the INS, that could have acted on it to either prevent them from entering the United States or surveil them and uncover their activities while in the United States.

In addition, the FBI and the CIA had responsibilities to respond to the October 2000 attack on *USS Cole*. Each had information that the other needed to carry out those responsibilities. But, at a key meeting in New York on June 11, 2001, the CIA did not provide to the FBI information about the Malaysian meeting and its participants that could have assisted the FBI in its investigation. These events reflect misunderstandings that have developed over the last several years about using information derived from intelligence gathering activities in criminal investigations.

The problems of communication between organizations that are demonstrated by the al-Mihdhar/al-Hazmi situation existed not only between the CIA and FBI, but also within the FBI itself. Once it was determined in late August 2001 that Khalid al-Mihdhar was in the United States, the search to determine his whereabouts was limited by U.S. Government policies and practices regarding the use of intelligence information in FBI criminal investigations. This limited the resources that were made available for the FBI

to conduct the search during a time in which al-Mihdhar and al-Hazmi were purchasing their September 11 tickets and traveling to their last rallying points.

STATEMENT OF ELEANOR HILL, STAFF DIRECTOR, JOINT INQUIRY STAFF

Ms. HILL. Thank you, Mr. Chairman. Good morning. I am pleased to be here again this morning, and this morning I have a statement, as you have alluded to, that describes what our review has found regarding what the government knew about the hijackers prior to September 11, 2001.

I am going to summarize this in an oral statement, but I do have and would offer for the record a full written statement that, as the Chairman has mentioned, has been declassified through again a long and arduous process with the working group set up by the Intelligence Committee to declassify our work. They have done so, and I would offer for the record a copy of that statement, written statement, which is certified by the lead member of that declassification group as being cleared for public release and also certified separately by the Justice Department representative as being cleared for public release in terms of their concerns about ongoing litigation.

I would also mention that they have initialed; both of those individuals have initialed each page of the written statement indicating that in toto it is appropriate for public release. So I would offer that for the record and then proceed to offer a summarized version for the hearing.

[The certifications of declassification follow: The initialed documents referred to were submitted for inclusion in the Joint Inquiry Committee classified record.]

Date: September 19, 2002

Memorandum for the Record

I have reviewed the attached document titled "The Intelligence Community's Knowledge of the September 11 Hijackers Prior to September 11, 2001," dated September 19, 2002 consisting of 22 pages and certify that it is ~~appropriate for public release~~. DECLASSIFIED.

Signature

Congressional Liaison Officer
Position

Addendum: This denotes that the above cited statement requires further review and clearance by the following agencies:
1. Department of State
2. Department of Justice
3. Immigration and Naturalization Services
4. Homeland Security.

Patrick E. Kelly. I have reviewed and coordinated with Department of Justice and AUSA personnel on issues related to trial of ZACARIAS MOUSSAOUI. Patrick E. Kelly 19 SEP. 2002

Ms. HILL. My testimony today will focus on the Intelligence Community's knowledge prior to September 11, 2001, of the hijackers, particularly three of the five individuals who hijacked American Flight 77, which crashed into the Pentagon. Later in this inquiry we will focus on the July 10, 2001, electronic communication from the Phoenix field office of the FBI to FBI headquarters and on the FBI's investigation prior to September 11 of Zacarias Moussaoui.

While each of these areas is equally important, I do want to emphasize the significance of these matters when viewed collectively. The information regarding all three matters was available in the same section at FBI headquarters in August 2001. The first and third matters were addressed in the DCI's Counterterrorist Center at approximately the same time. In neither unit did anyone see the potential collective significance of the information, despite increasing concerns throughout the summer of 2001 about an impending terrorist attack.

In each of these areas there were missed opportunities by the Intelligence Community. In each area there were indications of larger systemic issues that, at least in part, drove those missed opportunities. And finally, in each area, there were individuals within the Intelligence Community who did recognize the importance of what was potentially at stake and tried, though ultimately without success, to get organizations within the community to do the same.

Of particular interest to this inquiry is the extent to which the Intelligence Community had any intelligence or law enforcement information linking any of the suspected hijackers to terrorism or to a terrorist group prior to the eleventh of September. Today the Joint Inquiry staff has determined that prior to September 11 the Intelligence Community possessed no intelligence or law enforcement information that would have linked 16 of the 19 hijackers to terrorism or terrorist groups. The three remaining hijackers, all of whom were aboard American Flight 77, did come to the attention of the community prior to September 11.

The three hijackers in question are Khalid al-Mihdhar, Nawaf al-Hazmi, and Nawaf's brother, Salim al-Hazmi. What follows and what I'm going to present this morning is a description of how the community developed information on these individuals and when the Intelligence Community had, but missed, opportunities both to deny them entry into the United States, and, subsequently, to generate investigative and surveillance action regarding their activities within the United States.

At this stage we must also reiterate that this is only an unclassified summary of our work to date regarding these events. The staff is at this point continuing its review of other information pertaining to the hijackers and some information and areas under review remain classified. A separate and more detailed classified statement will be submitted for inclusion in the sealed record at a later point.

The story begins in December 1999 with the Intelligence Community on heightened alert for possible terrorist activity as the world prepared to celebrate the new millennium. A meeting of individuals believed at the time to be associated with Usama bin Ladin's terrorist network took place in Kuala Lumpur, Malaysia, from January 5 to January 8, 2000. Khalid al-Mihdhar and Nawaf al-Hazmi

were among those attending the meeting, along with an individual later identified as Khallad bin Atash, a key operative in Usama bin Ladin's network. Although it was not known what was discussed at the Malaysia meeting, the CIA believed it to be a gathering of al-Qa'ida associates. Several of the individuals attending the meeting, including al-Mihdhar and al-Hazmi, then proceeded to another southeast Asian country.

By the time these individuals entered Malaysia, the CIA had determined Khalid al-Mihdhar's full name, his passport number, and his birth information. Significantly, it also knew that he held a United States B1/B2 multiple-entry visa that had been issued to him in Jeddah, Saudi Arabia, on April 7, 1999, and would not expire until April 6, 2000.

Soon after these individuals departed Malaysia on January 8, 2001, the CIA also received indications that Nawaf's last name might be al-Hazmi. Unbeknownst to the CIA, another arm of the Intelligence Community, the National Security Agency, had information associating Nawaf al-Hazmi with the bin Ladin network. NSA did not immediately disseminate that information, although it was in NSA's data base.

At this stage, Salim al-Hazmi was known to the rest of the Intelligence Community as an associate of Khalid's and Nawaf's and that he was possibly Nawaf's brother. Al-Mihdhar and Nawaf al-Hazmi's names could have been, but were not, added at this time to the State Department, INS, and U.S. Customs Service watch lists denying individuals entry into the United States.

A CIA communication in early January 2000 states that al-Mihdhar's travel documents, including his multiple-entry visa for the United States, were shared with the FBI for further investigation. We have interviewed the supervisor of the unit in which this document was written, and that individual has no independent recollection of the documents being sent to the FBI. No one at the FBI recalls having received such documents at the time. No confirmatory record of the transmittal of the travel documents has yet been located at either the CIA or the FBI.

In addition, while the Malaysia meeting was in progress, a CIA employee sent an e-mail to a CIA colleague advising that he had briefed two FBI agents about what the CIA had learned about al-Mihdhar's activities. The CIA employee told us that he had at the time been assigned to work at the FBI's Strategic Information Operations Center to fix problems "in communicating between the CIA and the FBI."

His e-mail, however, makes no mention of the CIA's determination that al-Mihdhar held a U.S. multiple-entry visa. The CIA employee noted in his e-mail that he told the second FBI agent that "this continues to be an [intelligence] operation. Thus far a lot of suspicious activity has been observed, but nothing that would indicate evidence of an impending attack or criminal enterprise. Told"—and he refers to the first FBI agent—"that as soon as something concrete is developed leading us to the criminal arena or to known FBI cases, we will immediately bring FBI into the loop, like"—and he refers to the first FBI agent—"yesterday, the second FBI agent stated that this was a fine approach and thanked me for keeping him in the loop."

The CIA employee told our staff that he does not recall telling the FBI about al-Mihdhar's visa information and potential travel to the United States. When interviewed by our staff, neither FBI agent initially recalled discussions with the CIA employee about al-Mihdhar. The first agent did locate his own handwritten notes that indicated that he did speak with the employee about Malaysia activities, probably in early January 2000. The second agent knows the CIA employee but does not recall learning about al-Mihdhar or the Malaysia meeting until after September 11, 2001.

An e-mail from the second FBI agent to a superior at FBI headquarters has been located that relates the basic facts of the conversation with the CIA employee. The e-mail, however, makes no mention of al-Mihdhar's visa information or possible travel to the United States. It concludes with, "CIA is reporting relevant information as it becomes available."

In early March 2000, CIA headquarters, including both the CTC and the special bin Ladin unit, received information from an overseas CIA station involved in the matter that Nawaf al-Hazmi had entered the United States via Los Angeles International Airport on January 15, 2000. No further destination for Khalid al-Mihdhar was noted in the CIA cable. The cable carrying the information was marked "action required, none, FYI."

The following day, another overseas CIA station noted, in a cable the to bin Ladin unit at CIA headquarters, that it had "read with interest" the March cable, "particularly the information that a member of this group traveled to the U.S." The CIA did not act on this information, nor did it consider the possibility that, because Nawaf al-Hazmi and Khalid al-Mihdhar had been together in Malaysia and continued on together to another southeast Asian country that there was a possibility that they would travel further together. In fact, al-Mihdhar, who traveled with al-Hazmi, continued on with him to the United States on January 15, 2000.

Again, at this point these two individuals could have been added to the State Department's watch list for denying individuals entry into the United States. Although they had already entered the United States, the sharing of this information with the FBI and appropriate law enforcement authorities could have prompted investigative efforts to locate these individuals and possibly surveil their activities within the United States. Unfortunately, none of these things happened.

The Joint Inquiry staff has interviewed the individual at CIA headquarters who had direct responsibility for tracking the movement of individuals at this meeting in Malaysia. That person does not recall seeing the March message. In his testimony before the Joint Inquiry on June 18, 2001, the Director of Central Intelligence acknowledged that the CIA should have acted to add these individuals to the State Department's watch list in March 2000 and characterized this omission as "a mistake."

During the course of our interviews we attempted to identify the reasons why that mistake occurred. We were told that there was, at the time, no formal system in place at the CTC for watchlisting suspected terrorists with indications of travel to the United States. CIA personnel also told us that they received no formal training on watchlisting. One CIA employee said they learned about the

watchlisting process through "on-the-job training." Another CIA employee who had been aware of al-Mihdhar's participation in the Malaysia meeting, told us that prior to September 11, 2001, it was "not incumbent" on CTC's special bin Ladin unit to watchlist such individuals. Finally, a CTC employee who in 2000 handled the cable traffic on the Malaysia meeting told us that the meeting was not considered "important" relative to other counterterrorist activities occurring at the time, and that there were not enough people to handle CTC's workload at the time.

As a result, informational cables such as the March 2000 message received less attention than action items. Several other CIA employees told us that they typically did not have time to even read informational cables.

Senator MIKULSKI. Mr. Chairman, when will we recess for the vote?

Chairman GRAHAM. We have ten minutes left on the vote. Ms. Hill, there is a vote on in the Senate and we're going to have to leave. Is there a point that would be better in terms of your presenting the story that you're going to reach in the next five minutes?

Ms. HILL. If you would like to break, if you want to break, we could break now or I can continue, however you want me to do it.

Chairman GRAHAM. The meeting will be suspended for such as it takes the Members of the Senate to vote and return, and I would urge expeditious return.

[Whereupon, from 10:35 a.m. until 11:22 a.m., the Committees stood in recess.]

Chairman GOSS [presiding]. Chairman Graham asked me to proceed with the continuation of Ms. Hill's presentation to us because of the urgency of some other scheduling matters that some of our lead questioners have. I see Senator Levin has returned, so in that case, Ms. Hill, would you continue, please?

Ms. HILL. Yes, Mr. Chairman. Thank you.

I'll continue right where I left off. The failure to watchlist al-Mihdhar and al-Hazmi or, at a minimum, to advise the FBI of their travel to the United States is perhaps even more puzzling because it occurred shortly after the peak of Intelligence Community alertness to possible millennium-related terrorist attacks.

In the fall of 1999 there was a debate within the community about whether intelligence information that had been collected earlier that year meant that bin Ladin's terrorist network intended to carry out attacks in the midst of the celebrations ushering in the new millennium. Intelligence information, along with the arrest of Amhad Ressam at the U.S.-Canadian border, prompted the U.S. Government and various foreign governments to arrest, detain, and otherwise disrupt numerous individuals associated with bin Ladin's network in various locations around the world.

These disruptions occurred between December 1999 and February 2000. Thus, the Malaysia meeting of January 5 through 8, 2000, and the March 2000 information that al-Hazmi had entered the United States developed at a time when the Intelligence Community had only recently confronted the real possibility of a bin Ladin attack. However, it apparently was still focused on the organization and aftermath of the previous operations.

In interviews with the staff, a number of working level CIA personnel who were following the Malaysia meeting and other terrorist activities in the millennium time frame have characterized the Malaysia meeting as just one of many counterterrorist efforts occurring at the time. In contrast, documents reviewed by the Joint Inquiry staff show that the Malaysia meeting was deemed sufficiently important at the time that it was included, along with several other counterterrorist activities, in several briefings to the DCI in January 2000. We were told, however, that the matter was "dropped" when the CIA employee handling the matter moved on to other issues and, as a result, no CIA officer was following the al-Mihdhar group by the summer of 2000.

By March 2000 al-Mihdhar and Nawaf al-Hazmi had settled into a residence in San Diego. In the course of their time in San Diego they used their true names on a rental agreement, as al-Mihdhar also did in obtaining a California motor vehicle photo ID card. In May 2000 they took flight lessons in San Diego but abandoned the effort.

On June 10, 2000, al-Mihdhar left the United States on a Lufthansa flight from Los Angeles to Frankfort. Nawaf al-Hazmi remained in the United States. On July 7, 2000, a week shy of the expiration of the six-month visa to stay in the United States, al-Hazmi applied to the INS for the extension to his visa. He used on his INS application the Lemon Grove, California address for the residence that he shared with al-Mihdhar before the latter's departure in early June 2000. The INS recorded receipt of the extension request on July 27, 2000. The INS has advised the staff that it assumes a receipt was generated and sent to al-Hazmi at the address he listed. The INS does not have a record of a further extension request by al-Hazmi, who remained in the United States illegally after his initial extension expired in January 2001.

On October 12, 2000, two individuals with ties to bin Ladin carried out an attack on the USS *Cole*. The Navy destroyer was refueling in Aden, Yemen. In the course of its investigation of the attack, the FBI developed information indicating that an individual named Tawfiq Mahomed Saleh Atash, also known as Khallad, had been a principal planner in the *Cole* bombing, and that two other participants in the *Cole* conspiracy had delivered money to Khallad at the time of the January 2000 Malaysia meeting. The FBI shared this information with the CIA, and it prompted analysts at the CIA to take another look at the January 2000 meeting in Malaysia.

In that process the CIA acquired information in January 2001 indicating that Khallad had attended the meeting in Malaysia. This information was significant because it meant that the other attendees, including al-Mihdhar and Nawaf al-Hazmi had been in direct contact with the key planner in bin Ladin's network behind the *Cole* attack. However, CIA again apparently did not act and did not add Khalid al-Mihdhar and Nawaf al-Hazmi to the State Department's watchlist. At this time, Khalid al-Mihdhar was abroad, while Nawaf al-Hazmi was still in the United States.

In May 2001, personnel at the CIA provided an intelligence operations specialist at FBI headquarters with photographs taken in Malaysia, including one of al-Mihdhar. The CIA wanted the FBI to review the photographs to determine whether an individual in cus-

tody in connection with the *Cole* investigation could be identified in the photographs. When interviewed, the FBI intelligence operations specialist who received the photographs told the staff that the CIA told her about al-Mihdhar's meeting in Malaysia and travel to another southeast Asian country but said nothing about his potential travel to the United States. Nor did the CIA advise the FBI that the photographs were from a meeting that it believed Khallad had attended. Again, no action was taken to watchlist al-Mihdhar or al-Hazmi.

On June 11, 2001, FBI headquarters representatives and CIA representatives met with the New York FBI agents handling the *Cole* investigation. The New York agents were shown but not given copies of the photographs and were told they were taken in Malaysia. When interviewed, one of the New York agents recalled al-Mihdhar's name being mentioned. He also recalled asking for more information on why the people in the photographs were being followed and for access to that information. The New York FBI agents were advised that they could not be told why al-Mihdhar and the others were being followed. An FBI headquarters representative told us in her interview that the FBI was never given specific information until it was provided after September 11, 2001.

The CIA analyst who attended the New York meeting acknowledged to the Joint Inquiry staff that he had seen the information regarding al-Mihdhar's U.S. visa and al-Hazmi's travel to the United States, but he stated that he would not share information outside of the CIA unless he had authority to do so and unless that was the purpose of the meeting.

On June 13, 2001, Khalid al-Mihdhar obtained a new U.S. visa in Jeddah using a different passport than the one he had used to enter the United States on January 15, 2000. On his application he checked "no" in response to the question of whether he had ever been in the United States. On July 4, 2001, al-Mihdhar reentered the United States.

On or about July 13, 2001, a CIA officer assigned to the FBI, who I believe will testify this morning, accessed CIA's electronic data base and located a CIA cable for which he had been searching that contained information the CIA had acquired in January 2001 indicating that Khallad had attended the meeting in Malaysia. The presence of Khallad in Malaysia deeply troubled the CIA officer, who immediately sent an e-mail from FBI headquarters to the DCI's CTC saying of Khallad, "this is a major league killer who orchestrated the *Cole* attack and possibly the Africa bombings."

A review at the CIA of all prior cables concerning the Malaysia meeting was launched, a task that fell to an FBI analyst assigned to the CTC. On August 21, 2001, the FBI analyst put together two key pieces of information. These were the intelligence that the CIA had received in January 2000 that al-Mihdhar had a multiple-entry visa to the United States and the information the CIA had received in march 2000 that Nawaf al-Hazmi had entered the United States on January 15, 2000. Working with an INS representative assigned to the CTC, the analyst obtained information that al-Mihdhar had entered the United States on January 15, 2000 and had departed on June 10, 2000. Additional investigation revealed that al-

Mihdhar had reentered the country on July 4, 2001, with a visa that allowed him to stay through August 22.

CIA suspicions were further aroused by the timing of al-Mihdhar and al-Hazmi's arrival in Los Angeles, in the same general time frame in which Algerian terrorist and bin Ladin associate Ahmad Ressam was to have arrived in Los Angeles to conduct terrorist operations.

On August 23, 2001, the CIA sent a cable to the State Department, the INS, the Customs Service and the FBI requesting that bin Ladin-related individuals al-Mihdhar, Nawaf al-Hazmi, and two other individuals at the Malaysia meeting be watchlisted immediately and denied entry into the United States, "due to their confirmed links to Egyptian Islamic Jihad operatives and suspicious activities while traveling in east Asia." Although the CIA believed al-Mihdhar was in the United States, placing him on the watchlist would have enabled authorities to detain him if he attempted to leave.

Meanwhile, the FBI headquarters bin Ladin unit sent to the FBI's New York field office a draft document recommending the opening of an intelligence investigation on al-Mihdhar to determine if al-Mihdhar is still in the United States. It also stated that al-Mihdhar's confirmed association with elements of bin Ladin's terrorist network, including potential association with two individuals involved in the attack on the USS *Cole* "make him a risk to the national security of the United States."

The goal of the investigation was to locate al-Mihdhar and determine his contacts and reasons for being in the country. New York FBI agents told us that they tried to convince FBI headquarters to open a criminal investigation in al-Mihdhar, given the importance of the search and the limited resources that were available to intelligence investigations. FBI headquarters declined to do so because there was, in its view, no way to connect al-Mihdhar to the ongoing *Cole* investigation without using some intelligence information.

At the State Department, a visa revocation process was begun immediately. Al-Mihdhar, Nawaf al-Hazmi, Khallad and the other individual who had been at the Malaysia meeting were added to the watchlist. The FBI contacted the Bureau of Diplomatic Security at the State Department on August 27, 2001, to obtain al-Mihdhar and Nawaf al-Hazmi's visa information. The visa information revealed that on entering the U.S. al-Mihdhar had indicated on his application that he would be staying at a Marriott hotel in New York City. An FBI agent, working with a Naval Criminal Investigative Service agent, determined on September 5 that al-Mihdhar had not registered at any New York area Marriott hotel.

On September 10, 2001, the New York FBI field office prepared a request that the FBI office in Los Angeles check all Sheraton hotels located in the L.A. area. The request also asked that the Los Angeles field office check with United Airlines and Lufthansa for travel and alias information, since al-Mihdhar and al-Hazmi had used those airlines. The Los Angeles FBI office conducted the search after September 11, 2001, with negative results.

In short, the CIA had obtained information identifying two of the 19 hijackers, al-Mihdhar and al-Hazmi, as suspected terrorists carrying visas for travel to the United States as long as 18 months

prior to the time they were eventually watchlisted. There were numerous opportunities during the tracking of the two suspected terrorists when the CIA could have alerted the FBI and other U.S. law enforcement authorities to the probability that these individuals either were or would soon be in the United States. That was not done. Nor were they placed on watchlists denying them entry into the United States.

It is worth noting that the watchlists mentioned above are aimed at denying named individuals from entering the United States. Prior to September 11, 2001, these watchlists were not used to screen individuals boarding domestic flights within the United States. Thus, even though al-Mihdhar and al-Hazmi had been placed on watchlists two weeks prior to September 11, this did not prevent them from boarding American Flight 77 on September 11.

Beyond the watchlist issue, the story of al-Mihdhar and al-Hazmi also graphically illustrates the gulf that apparently existed, at least prior to September 11, between intelligence and law enforcement counterterrorist efforts. There are a number of factors that make effective integration of law enforcement and intelligence investigations against terrorism difficult. These include differences in experience, tactics, objectives, legal authorities and concern for protecting intelligence sources and methods.

For example, limitations on the flow of information to criminal investigators from intelligence agencies can be imposed to protect foreign intelligence sources and methods from disclosure in a criminal prosecution. In the case of al-Mihdhar and al-Hazmi, even the importance of the USS *Cole* criminal investigation was evidently deemed insufficient to justify the full sharing of relevant intelligence information with the agents handling the criminal case.

An August 29, 2001, e-mail exchange between FBI headquarters and an FBI agent in New York is illustrative. The agent, who had been involved in the *Cole* criminal investigation since the day of that attack, and who, I might add, is present here today to testify, asked FBI headquarters to allow New York to use the full criminal investigative resources available to the FBI to find al-Mihdhar. Headquarters responded that its national security law unit advised that this could not be done. The headquarters response—and I will read it—is as follows:

"A criminal agent CANNOT be present at the interview. This case in its entirety is based on intelligence. If at such time as information is developed indicating the existence of a substantial federal crime, that information will be passed over the wall according to the proper procedures and turned over for follow-up criminal investigation." I will refrain from reading the agent's response in his e-mail because I believe he's here today and he will read that to you himself, which is certainly more appropriate than me reading it.

Within two weeks after the September 11 attacks, the FBI prepared an analysis of bin Ladin's responsibility as part of the State Department's development of a white paper that could be shared with foreign governments. That analysis relied, at least in part, on the connection between the attack on the USS *Cole* and al-Mihdhar and al-Hazmi. "Even at this early stage of the investigation, the FBI has developed compelling evidence which points to Usama bin

Ladin and al-Qa'ida as the perpetrators of this attack. By way of illustration, at least two of the hijackers met with a senior al-Qa'ida terrorist, the same al-Qa'ida terrorist which reliable information demonstrates orchestrated the attack on the USS *Cole* and who was involved in the planning of the East Africa bombings."

The two hijackers referred to were al-Mihdhar and al-Hazmi, the senior al-Qa'ida terrorist was Khallad. The place that they met was Malaysia. Thus, the facts linking these two individuals to Khallad and to bin Ladin formed the crux of the case made to governments around the world after September 11 that bin Ladin should be held accountable for those attacks.

In closing I would just say we have a few preliminary conclusions, and they are as follows. September 11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi came to the attention of the Intelligence Community in early 2000 but entered the United States unobserved soon after. The Intelligence Community succeeded in determining that these bin Ladin operatives were in Malaysia in January 2000 and in obtaining important information about them. The system broke down, however, in making the best use of that information and in ensuring that it was effectively and fully shared with agencies like the FBI, the State Department and the INS that could have acted on it to either prevent them from entering the United States or surveil them and uncover their activities while in the United States.

In addition, the FBI and CIA had responsibilities to respond to the October 2000 attack on the USS *Cole*. Each had information that the other needed to carry out those responsibilities. But, at a key meeting in New York on June 11, 2001, the CIA did not provide to the FBI information about the Malaysian meeting and its participants that could have assisted the FBI in their investigation.

These events reflect misunderstandings that have developed over the last several years about using information derived from intelligence-gathering activities in criminal investigations. The problems of communication between organizations that are demonstrated by the al-Mihdhar/al-Hazmi situation existed not only between the CIA and the FBI but also within the FBI itself. Once it was determined in late August 2001 that Khalid al-Mihdhar was in the United States, the search to determine his whereabouts was limited by U.S. government policies and practices regarding the use of intelligence information in FBI criminal investigations. This limited the resources that were made available for the FBI to conduct the search during a time in which al-Mihdhar and al-Hazmi were purchasing their September 11 tickets and traveling to their last rallying point.

Mr. Chairman, that concludes the statement. I would only add one minor correction. I believe when I read it I noted that Director Tenet had testified before these committees on June 18, 2001. That was an error. It should be June 18, 2002. So that needs to be clear for the record.

Thank you.

Chairman GRAHAM. Thank you, Ms. Hill.

As I indicated earlier, at the conclusion of Ms. Hill's staff presentation we're going to ask the room be cleared briefly and then we will make necessary arrangements within the room and resume

with the three witnesses. I'd ask that all but approved personnel leave the room.

[Whereupon, a brief recess was taken, the room was cleared, a screen to protect the identity of two witnesses was set up, the witnesses were brought in and seated, and the doors were reopened for the public and press.]

Chairman GRAHAM. I call the hearing to order.

Before we proceed with the witnesses, I will ask unanimous consent for three actions—one, that the full declassified staff statement that has just been presented by Ms. Hill be placed in the record. Is there objection?

[No response.]

Chairman GRAHAM. Two, that a classified staff statement be placed in the classified portion of the record. Is there objection?

[No response.]

Chairman GRAHAM. And, third, that Chairman Goss and I, acting jointly after consultation with Vice Chairman Shelby and Ranking Member Pelosi, be authorized to place in an appropriate place in the record classified and unclassified exhibits that are designated for inclusion by the staff director of the Joint Inquiry or any Member of the two Committees. Is there objection?

[No response.]

Chairman GRAHAM. Without objection, so ordered.

Due to the continuing sensitivity of their counterterrorism responsibilities, two of our next witnesses will testify while sitting behind an opaque screen. All cameras have been relocated so as not to photograph these two witnesses. It is our procedure to ask that all witnesses be sworn. Therefore, I would ask if you would please stand and raise your right hand.

Senator FEINSTEIN. No, don't make them stand.

Chairman GRAHAM. I'm sorry. Our witnesses are taller than our screen, so would the two identified witnesses please stand and would the two non-identified witnesses please raise their right hand?

Do you solemnly swear that the testimony you will give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ROLINCE. I do.

CIA OFFICER. I do.

FBI AGENT. I do.

Mr. KOJM. I do.

Chairman GRAHAM. As we commence the witness testimony, I would ask that all Members of the Committee refer to the two unidentified witnesses as being either the CIA officer or the FBI agent.

The two other witnesses will be Mr. Michael Rolince, FBI Special Agent in Charge of the Washington Field Office, and Chris Kojm, Deputy for Intelligence Policy and Coordination of the State Department Bureau of Intelligence and Research. We very much appreciate all of your participation in this important hearing. The hearing has been reopened to the public and the press.

Two of our witnesses, one from the CIA and one from the FBI, will be shielded by the screen during their testimony. Neither of these witnesses are to be addressed by name. This is necessary be-

cause both are currently engaged in sensitive counterterrorism activities. We have introduced the other two open witnesses. I would ask that the witnesses be called upon to make your oral statements in the following order—first the CIA officer, second Mr. Rolince, third the FBI agent, and then finally Mr. Kojm.

The CIA officer.

[The prepared statement of the CIA Officer follows:]

STATEMENT FOR THE RECORD
SSCI/HPSCI JOINT INQUIRY STAFF
9-11 HEARING
20 SEPTEMBER 2002

Mr. Chairman, Members and Staff, I am a senior officer attached to the DCI's Counterterrorist Center (CTC) currently assigned to the FBI. From September 1998 until May 2001, as an Operations Manager, I was privileged to work alongside a group of extraordinary officers from the CIA, as well as other agencies, who were and remain committed to combating the threat posed by Bin Ladin and those he has inspired. In May of 2001, I moved over to the Federal Bureau of Investigation (FBI), where I have since worked as a CIA detailee in the Counterterrorism Division, a position in which I have also focused on the Bin Ladin menace.

Before we begin, I would like to observe that even after 10 months of incredible effort by the U.S military and others in Afghanistan, and by the agencies you see represented before you here today and others here and abroad, al-Qa'ida remains poised to strike again.

What we say in this venue over the coming weeks will be closely followed by the very people who are trying to destroy you, me, our families and our way of life. I want to stress, speaking on behalf of those still carrying the war to al-Qa'ida inside Afghanistan and out, that we do not and cannot for the foreseeable future view this group and its emulators and supporters as anything less dangerous than they were at this time last year. While we have an obligation to ensure that flaws in our procedures have been identified and corrected, we must also take great care that we not educate the enemy while we are at it.

With those comments, I now turn to the specific topic we have been invited here to review. Your staff has laid out the basic facts, so I won't repeat them in detail, but I'd like to walk through the most significant elements in summary form.

In late 1999, the U.S. counterterrorist community launched a global effort aimed at disrupting terrorist operations we knew were being planned for the millennium turnover, and that we suspected would carry over into the

end of the Muslim month of Ramadan in early January 2000. Dozens of terrorists and terrorist support nodes were disrupted. Both CIA and the FBI surged large numbers of officers for this effort, and they worked round the clock through 15 January 2000.

During that heightened alert, the CIA, CTC, FBI, and other members of the Intelligence Community were also working over data they had shared relevant to the Nairobi and Dar es Salaam Embassy bombings of August 1998. In December 1999, this intelligence provided a kind of tuning fork that buzzed when two individuals reportedly planning a trip to Kuala Lumpur were linked indirectly to what appeared to be a support element that had been involved with the Africa bombers. A CTC officer, noting the linkage, set in motion a complex set of operations aimed at determining their identity, their contacts, and, ideally, what they were doing.

The operation succeeded in its first phase. Within a very short period of time, we learned the name of one of the travelers—Khalid al-Mihdhar. We learned where they were staying and the name of several of their local contacts. We were unable to complete the second phase of the operation, however: we did not learn the identities of the other participants in the meeting and were unable to determine—and still do not know—what they discussed during their meeting.

While the meeting was in progress, via CIA officers detailed to the FBI, CTC kept the FBI advised of developments via verbal briefings. As you know, for a number of years, the FBI has had agents and analysts working in CTC—in the UBL element and elsewhere—and CIA officers have also served in various components of the FBI, including the UBL Unit at FBI HQS. Part of the job on either side, especially during moments of crisis, is to provide verbal briefs on the fly, before shifting attention to the next facet of the crisis.

We prefer to document significant transfers of information, both to assure ourselves that it was passed and to create a detailed record for our own operations officers and analysts, who at a later date draw on such data to do a variety of tasks. In this case, CTC did not formally document to the FBI the conversations between the CIA referents and the FBI supervisors they briefed. CTC did note in a cable to the field that al-Mihdhar's passport information had been passed to the FBI, but to date we have been unable to confirm either passage or receipt. So we cannot say what the exact details were that were passed.

As the operations unfolded, a piece of data that in hindsight turned out to be critical revealed al-Mihdhar's passport information and that he had earlier obtained a visa to the United States. Under ideal conditions, that passport data should have been provided to the State Department's TIPOFF program, which is designed to help keep terrorists from entering the U.S. from abroad. At this point, both al-Mihdhar and his companion—who would turn out to be another hijacker, Nawaf al-Hazmi—had their visas.

Later, in early March 2000, long after the dust had settled in Malaysia, information surfaced indicating that al-Mihdhar's partner was named Nawaf al-Hazmi. In early March CIA also received information indicating that al-Hazmi had booked a flight that terminated in Los Angeles on 15 January 2000. Again, the new information on al-Hazmi was not disseminated.

After the October 2000 bombing of the USS Cole, the al-Mihdhar and al-Hazmi data resurfaced when the FBI learned that an individual alleged to have been a key planner of the Cole attack had been in Southeast Asia at the same time as the Malaysia meeting. Seeking to develop more information on that hypothesis and related to other information linking some Cole operatives to possible unknown contacts in Malaysia, the FBI and CIA sought to develop more information about the other people at the meeting. Early in 2001, more intelligence was developed that strengthened the hypothesis that this key planner had

been one of the participants in the January meeting with al-Mihdhar and al-Hazmi. At the time, the focus was on the USS Cole investigation and on understanding what had occurred in Malaysia—not on whether these individuals had been watchlisted.

In mid-summer 2001, although the presence of the key planner in Malaysia had yet to be confirmed, while burrowing through intelligence related to other terrorist activity in Malaysia, the data from January 2000 and January 2001 was put together in a different way, and both the FBI and the CIA began working to flesh out their understanding of all the people linked to the key planner. In the course of that work, in mid-August 2001, CIA learned that al-Mihdhar had entered the U.S. in January 2000, departed at a later date, and then re-entered in July 2001. CTC notified a number of agencies officially within a short time, and the FBI began an investigation to backtrack from al-Mihdhar's immigration documents in an effort to find him. But he had not registered at the hotels indicated on his forms, and time ran out before other venues could be searched.

How could these misses have occurred? I do not want to speculate at any length about this, because I do not have the definitive answer. But I should try to put the events into some kind of context. The events I've summarized above took place in the context of a worldwide campaign that also focused on people we knew were trying to kill Americans. The CIA operators focused on the Malaysia meeting while it occurred; when it was over, they focused on other, more urgent operations against threats real or assessed. Of the many people involved, no one detected that the data generated by this operation crossed a reporting threshold, or, if they did, they assumed that the reporting requirement had been met elsewhere.

In a later session, officers who served in CTC after 9/11 will expand on the revisions and new training that have been put into place to reduce the chances of this happening again. There are new types of watchlists and

new, very low thresholds for entering names onto them. They will be discussed by others more familiar with the protocols and detail. What I will say here is that, new procedures and training aside, they are also the kinds of misses that happen when people—even very competent, dedicated people such as the CIA officers and FBI agents and analysts involved in all aspects of this story—are, simply, overwhelmed.

The counterterrorism business often does not feature a large team going after a single target, but rather one or two officers juggling multiple activities against many people, simultaneously trying to make sense of what it means, which target deserves priority attention, and balancing the interests of multiple stations, liaison services, and other U.S. agencies. I would like to say that we will get it right 100 percent of the time. In fact, we're in a business where we have to get it right 100 per cent of the time, because the enemy only has to get it right once. While I can't promise that we'll ever completely reach that goal of perfection, I have no doubt that those working in counterterrorism will never stop trying to get there.

STATEMENT OF AN OFFICER OF THE CENTRAL INTELLIGENCE AGENCY

CIA OFFICER. Mr. Chairman, Members and staff, I'm a senior officer attached to the DCI's Counterterrorist Center, currently assigned to the FBI.

From September 1998 until May 2001 as an operations manager I was privileged to work alongside a group of extraordinary officers from the CIA, the FBI, and other agencies who were and remain committed to combating the threat posed by bin Ladin and those he has inspired.

In May of 2001 I moved over to the Federal Bureau of Investigation, where I have since worked as a CIA detailee in the Counterterrorism Division, a position in which I've also focused on the bin Ladin menace.

I would like to read a short statement and then the written version will be submitted for the record.

Chairman GRAHAM. Thank you.

CIA OFFICER. Before we begin, I would like to observe that even after ten months of incredible effort by the U.S. military and others in Afghanistan and by the agencies you see represented before you here today and others here and abroad, al-Qa'ida remains poised to strike again. What we say in this venue over the coming weeks will be closely followed by the very people who are trying to destroy you, me, our families and our way of life. I want to stress, speaking on behalf of those still carrying the battle to al-Qa'ida inside Afghanistan and out that we do not and cannot for the foreseeable future view this group and its emulators and sympathizers as anything less dangerous than they were at this time last year. While we have an obligation to ensure that our flaws are identified and corrected, we must also take great care that we not educate the enemy while we are at it.

With those comments, I turn to the specific topic we have been invited here to review. Your staff has laid out the basic facts so I won't repeat them in detail. But I'd like to walk through the most significant elements in summary form.

In late 1999 the U.S. counterterrorist community launched a global effort aimed at disrupting terrorist operations we knew were being planned for the millennium turnover and that we suspected would carry over into the end of the Muslim month of Ramadan, which was to occur in early January 2000. Dozens of terrorists and terrorist support nodes were disrupted. Both CIA and the FBI, as well as other members of the Intelligence Community, surged large numbers of officers for this effort, and they worked around the clock through roughly mid-January, through 15 January 2000.

During that heightened alert the CIA and the FBI and other members of the Intelligence Community were also working over data they had shared relative to the Nairobi and Dar es Salaam embassy bombings that had occurred in August 1998. In December 1999 this intelligence provided a kind of a tuning fork that buzzed when two individuals reported planning and trip to Kuala Lumpur were linked indirectly to a support element that we suspected had played a role with the Africa bombers.

A CTC officer, noting the linkage, set in motion a complex series of operations aimed at determining their identity, their contacts

and, ideally, what they were doing. The operation succeeded in its first phase. Within a very short period of time we learned the name of one of the travelers, Khalid al-Mihdhar. We learned where they were staying and the names of several of their local contacts. We were unable to complete the second phase of the operation, however; we did not learn the identities of the other participants in the meeting at the time, and were unable to determine and still do not know what they discussed during that meeting.

While the meeting was in process, via CIA officers detailed to the FBI, the CTC kept the FBI advised of developments via verbal briefings. As you know, for a number of years the FBI has had agents and analysts working integrally with CTC, including in the CTC's bin Ladin element. And CIA officers in turn have also served in various components of the FBI, including also in the bin Ladin unit at FBI headquarters.

Part of the job on either side, especially during moments of crisis, is to provide verbal briefs on the fly before shifting attention to the next facet of the crisis.

We prefer to document significant transfers of information both to assure ourselves that it was passed and also to create a detailed record for our own operations officers and analysts, who at a later date draw on such data to do a variety of tasks. In this case, CTC did not formally document to the FBI the conversations between the CIA referents and the FBI supervisors they briefed. CTC did note in a cable to the field that al-Mihdhar's passport information had been passed to the FBI, but to date we have been unable to confirm either passage or receipt of the information, so we cannot say what the exact details were that were passed.

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Later, in early March 2000, long after the dust had settled in Malaysia, information surfaced indicating that al-Mihdhar's partner was named Nawaf al-Hazmi. In early March CIA also received information indicating that al-Hazmi had booked a flight that terminated in Los Angeles on 15 January 2000. Again, the new information on al-Hazmi was not disseminated.

After the October 2000 bombing of the USS *Cole*, the al-Mihdhar and al-Hazmi data resurfaced when the FBI learned that an individual alleged to have been a key planner of the *Cole* attack had been in southeast Asia at the same time as the Malaysia meeting. This raised the possibility that the planner of that *Cole* attack had been at the meeting. The person I'm discussing was this person Khallad, who was mentioned in the previous testimony. I at the time I wrote this I did not have the full declassified version.

Seeking to develop more information on that hypothesis, that Khallad had been at the meeting, and related to other information linking some *Cole* operatives to possible unknown contacts in Malaysia, the FBI and CIA sought to develop more information about

the other people at the meeting. Early in 2001 more intelligence was developed that strengthened the hypothesis that this key planner had been one of the participants in the January 2000 meeting with al-Mihdhar and al-Hazmi. At the time, the focus was on the USS *Cole* investigation and understanding what had occurred in Malaysia, not on whether these individuals had been watchlisted.

In mid-summer 2001, although the presence of the key planner in Malaysia had yet to be confirmed, while burrowing through intelligence related to other terrorist activity in Malaysia the data from January 2000 and January 2001 was put together in a different way, and both the FBI and CIA began to work to flesh out their understanding of all the people linked to the key planner of the *Cole* attack, of all the people linked to Khallad.

In the course of that work, in mid-August 2001 CIA and FBI learned that al-Mihdhar had entered the U.S. in January 2000, departed at a later date, and then reentered in July 2001. CTC notified a number of agencies officially within a short time and the FBI began an investigation to backtrack from al-Mihdhar's immigration documents in an effort to find him. But he had not registered at the hotels indicated on his forms and time ran out before other venues could be searched.

How could these misses have occurred? I do not want to speculate at any great length about this at this point, because I really don't have a definitive answer. But I should try to put the events into some kind of context. The events I've summarized above took place in the context of a worldwide campaign that also focused on people we knew were trying to kill Americans. The CIA operators focused on the Malaysia meeting while it occurred. When it was over, they focused on other more urgent operations against threats, real or assessed.

Of the many people involved, no one detected that the data generated by this operation, the Malaysia meeting, crossed a reporting threshold or, if they did, they assumed that the reporting requirement had been met elsewhere.

In a later session, officers who served in CTC after 9/11 will expand on the revisions and new training that have been put into place to reduce the chances of this happening again. There are new types of watchlists and new very low thresholds for entering names onto them. They will be discussed by others more familiar with the details and the protocols. What I will say here is that, new procedures and training aside, they are also the kinds of misses that happen when people, even very competent, dedicated people such as the CIA officers and the FBI agents and analysts involved in all aspects of this story are simply overwhelmed.

The counterterrorism business often does not feature a large team going after a single target but, rather, one or two officers juggling multiple activities against many people, simultaneously trying to make sense of what it means, which target deserves priority attention, and balancing the interests of multiple stations, liaison services and U.S. agencies. I would like to say that we will get it right 100 percent of the time, and in fact we're in a business here where we have to get it right 100 percent of the time, because the enemy only has to get it right once.

While I can't promise that we'll ever completely reach that goal of perfection, I have no doubt that those working in counterterrorism will never stop trying to get there. And I will just add a little statement that's not in my prepared statement. We appreciate the help.

Thank you.

CHAIRMAN GRAHAM. Thank you.

Mr. Rolince.

[The prepared statement of Mr. Rolince follows:]

PREPARED REMARKS OF
MICHAEL E. ROLINCE

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2002

Introduction:

Messrs. Chairmen, members of the Committees, I am pleased to appear before you today to describe the FBI's role within the Intelligence Community (IC) and our knowledge and actions from approximately December 1999 through September 11, 2001. My testimony will cover the knowledge of and actions taken by the FBI prior to September 11, 2001 regarding Khalid al-Mihdhar and Nawaf al-Hazmi, as well asinformation learned about them after the attack. I will touch upon the issue of the FBI 's investigation of al-Mihdhar as an intelligence case versus a criminal target. I will discuss the interaction betweenthe FBI and the CIA, as well as others in the Intelligence and Law Enforcement Community. I would also like to provide an overview of the makeup of the International Jihad Movement and explain how it encompasses many groups and organizations, to include Usama Bin Laden and the Al Qaeda network.

Information Shared with FBI:

As members of the IC, we have been asked to discuss the exchange and flow of information within the IC and its impact into the events leading up to September 11. In that context, we have

also been asked to discuss specifically the investigative efforts into two of the September 11 hijackers. The investigation into the activities of Khalid al-Mihdhar and Nawaf al-Hazmi illustrates, with acute clarity, that considerable individual effort and collective resources will not always result in a successful outcome. Notwithstanding the improvements over the last few years within the IC in exchanging personnel and information, and despite the extensive work performed by many individualsin the various IC agencies in the war on terrorism, the desired goal to protect our country was not realized. We have all learned that isolated events and unintentional incidents of inaction, do not remain in a vacuum - individually, and certainly collectively, they have consequences.

Through a collaborative effort within the IC, the CIA received information that a meeting of individualspossibly associated with Usama Bin Laden's (UBL) terrorist network took place in Kuala Lumpur, Malaysia in early January 2000. Among those attending the meeting were Khalid al-Mihdhar and Nawaf al-Hazmi, along with a key UBL operative. At the time al-Mihdhar and al-Hazmi were arriving in Malaysia, the CIA advised the FBI of their interest in these twoindividuals and indicated they would keep the FBI advised of further developments if warranted.

In March 2000, the CIA received information concerning the entry of al-Mihdhar and al-Hazmi into the United States.

In January 2001, the CIA obtained information which indicated a key individual associated with the *U.S.S. Cole* bombing had also attended the aforementioned Malaysia meeting. This was important because it placed al-Mihdhar and al-Hazmi in direct contact with a key operative of UBL.

During the Spring and Summer of 2001, analytical personnel from the CIA and FBI were working together to pursue investigative avenues into the bombing of the *U.S.S. Cole*. On August

23, 2001, the CIA advised FBIHQ that on June 13, 2001, al-Mihdhar obtained a U.S. visa in Jeddah, Saudi Arabia, using a Saudi Arabian passport and provided his intended address as the Marriott Hotel, NYC. The visa was valid until October 3, 2001. That same day, the FBI received a copy of a CIA communication to "watch-list" al-Mihdhar. This information was e-mailed to FBI New York on August 24, 2001.

On August 24, 2001, FBIHQ received a copy of al-Mihdhar's visa application from the U.S. Embassy in Jeddah, Saudi Arabia, indicating al-Mihdhar had sponsored his own travel to the United States. The application listed al-Mihdhar's plans to remain for one month, to depart August 4, 2001. Subsequent information received from INS determined al-Mihdhar reentered the United States on July 4, 2001 on a B-1 visa, flying to New York City, and would stay at the "Marriott Hotel" in New York City. This information was immediately relayed verbally to the CIA and FBI New York.

On August 27, 2001, FBIHQ verbally advised FBI New York of the information contained in the FBIHQ email to FBI New York on August 24, 2001, and further informed FBI New York that FBIHQ strongly suggested the initiation of a full field intelligence investigation to locate and fully identify this individual.

The FBI possessed no information relevant to al-Mihdhar's possible involvement in a terrorist attack, but focused on al-Mihdhar because he had attended a meeting with a key individual associated with the *U.S.S. Cole* bombing. On August 28, 2001, a full briefing was provided to FBI New York in order to initiate a full field intelligence investigation to locate and fully identify al-Mihdhar.

On August 30, 2001, FBI agents contacted security for the Marriott Corporation, which agreed to do a search of all guests registered at Marriott Hotels in the entire New York metropolitan

area. On September 5, 2001, they advised their search for al-Mihdhar was negative.

On September 10, 2001, based upon previously received intelligence, a lead was sent to FBI Los Angeles to conduct a similar search with the security officer of the Sheraton Corporation. This lead was not covered until after the September 11 attacks and was also negative.

Intelligence v. Criminal Investigation

As you are probably aware, there was debate between FBI HQ and FBI New York Field Office personnel on whether to open an intelligence or criminal investigation on Khalid al-Mihdhar. There are two important points to be made in response to this issue. First, the decision to handle the al-Mihdhar investigation as an intelligence investigation was made under procedures which were designed to prevent terrorist acts. Second, although it is not uncommon to open a parallel criminal investigation, we did not have specific credible evidence of criminal activity to do so.

Information Sharing - Wall Issues:

The restrictions of Intelligence agencies and foreign services in the sharing of information within our agency limited the free flow of information. This contributed to our inability to pull together related information. It was frequently difficult to obtain the originating agency's concurrence to pass the information to criminal investigators, even for lead purposes. In terrorism cases, this became so complex and convoluted that in some FBI field offices agents perceived "walls" where none actuallyexisted. In fact, one New York supervisor commented that "so many walls had created a maze," which made it very difficult for the criminal investigators.

Internally, the FBI adheres to the restrictions/caveats placed on intelligence information by the originating agency or foreign services. The need for these restrictions/caveats to protect sources

and methods of intelligence information is obvious and needs no further explanation. Routinely, Intelligence agencies evaluate their disseminable information to determine whether protections beyond basic classification are required. If caveats are required, such as Originator Controlled (ORCON), the classified information remains under the control of the originating agency. The FBI is prohibited from disclosing information originally classified by another agency without its authorization.

At times, criminal investigators are also frustrated by a "wall" procedure imposed by the Foreign Intelligence Surveillance Court(FISC). In a class by itself, FISA information is controlled by statute. Although the statute does not preclude the passing of information to criminal investigators, there are restrictions on the use of the information. The FISC and the Department of Justice have been cautious through the years of permitting intelligence and criminal investigators to become closely associated for fear their cooperation would be interpreted as an attempt to circumvent the criminal process. Accordingly, the FBI has been required to maintain a certain degree of separation between the intelligence and criminal investigators.

With the enactment of the PATRIOT Act after September 11, it is much clearer that the sharing of information is a Government policy issue. Some procedures were relaxed and the policy to share was codified. Post-PATRIOT Act, the only sharing obstacles relate to the possibility of prosecutorial control of the FISA process. By Court order, the FBI is prohibited from discussing a substantive FISA issue with prosecutors unless the Department of Justice, Office of Intelligence Policy and Review is invited to participate. The same requirement does not pertain to contact between intelligence and criminal agents, although criminal agents cannot control the FISA or the FISA process.

International Jihad Movement

The events of September 11 have brought the focus of the entire nation to Usama Bin Laden and the Al Qaeda network. As we press forward in working within the IC to combat terrorism, it is important to place UBL and his followers into the larger context of what the United States faces.

The forced withdrawal of Soviet troops from Afghanistan in 1989 signaled an end to communist occupation in one Muslim nation while at the same time heralded the beginning of a terrorist threat for which much of the world would be ill-prepared to meet. Inspired by a victory over the Russian army, former Arab-Afghan *mujahedin* proclaimed that they had won more than just the war in Afghanistan...they had demonstrated the "power of Islam." Between 1990 and 2000, Afghan-spawned terrorists dedicated to "international *jihad*" would be responsible for a number of significantacts of global terrorism resulting in numerous deaths and injuries all over the world. The United States and its interests would be a primary target for several of these attacks.

Influenced by radical spiritual leaders such as terrorist financier Usama Bin Laden (UBL), former Arab-Afghan *mujahedin* would later integrate into an international terrorist infrastructure. This terrorist network is comprised of a myriad of followers encompassing various nationalities and group affiliations, and this network dedicates its efforts towards globalized *jihad*. With the globalization of radical Islam, the next task was to gain adherents and promote the international *jihad*. A major tool used for this purpose was the promotion of terrorism training camps that had long been established inAfghanistan. It is important to note, that while terrorist adherents of what we have come to know as the Al Qaeda organization trained in the camps, many other groups and individualsdid as well. For example, according to the convicted terrorist Ahmed Ressam, cells at training camps were formed, dependent, in part, on the timing of the arrival of the trainees rather

than on any cohesive or pre-existing organizational structure. Ressam, who was not a member of Al Qaeda, has stated that the cells were independent, but were given lists of the types of targets that were approved and were initiated into the doctrine of international *jihad*. Ressam explicitly noted that his own attempted terrorist attack did not have Usama Bin Laden's blessing or his money, but Ressam believed it would have been given had he asked for it.

The terrorist attacks conducted by the international *jihad* movement are increasingly overshadowing attacks conducted by other terrorist groups and state sponsors. In addition, as a result of the integration of former Arab-Afghan *mujahedin* with extensive explosives and combat experience, the level of sophistication and lethality of attacks has significantly increased.

While the international *jihad* movement may not represent a "new terrorist threat" to the United States (radical Islam did not just suddenly evolve), it certainly presents a significant counterterrorism challenge to U.S. law enforcement and intelligence agencies, as well as to foreign services. As evidenced over the past several years, the threat emanating from terrorists operating within this movement is no longer restricted to their respective homelands/governments or the traditional label of a particular terrorist group. Rather, terrorists operating within the international *jihad* movement have proven their ability to stretch their terrorist arm around the world and strike with deadly force against a variety of targets without direction by one specific organization or leader.

The lesson to be drawn is that Al Qaeda is but one faction of a larger and very amorphous radical anti-western network that uses Al Qaeda members as well as others who share common hatred or are sympathetic to Al Qaeda's ideas or that share common hatreds. Terrorists world-wide speak of *jihad* and wonder why the western world is focused on groups rather than on the concepts that make them a community. Al Qaeda is far less a large organization than a facilitator, sometimes

orchestrator, of Islamic militants around the globe. These militants are linked by ideas and goals, not by organization structure. The intent is establishment of states ruled by Islamic law and free of western influence. Usama Bin Laden's contribution to the Islamic *jihad* is as a creature of the modern world. He has spawned a global network of individuals with common, radical ideas, kept alive by modern communications and sustained through large amounts of money.

In the final analysis, the international *jihad* movement is comprised of dedicated individuals and numerous groups committed to establishing a Muslim community through terrorist means. Many of these are people who attended universities together, trained in the camps together, traveled and lived together. Al Qaeda and other international terrorist groups remain focused on the United States as their primary target. The United States and its allies must continue to adapt to changing circumstances.

Conclusion:

As we continue to learn more about the individuals involved in the planning and execution of the terrorist acts of September 11-- the FBI and other members of the Intelligence and Law Enforcement Communities are using all the tools provided by the U.S. Government, such as the Patriot Act, to ensure more comprehensive efforts in the collection, analysis and sharing of information to prevent terrorist acts and prosecute those responsible. The FBI is continuing its efforts to work hand-in-hand with our partners to improve information sharing.

I would be pleased to answer your questions at this time.

STATEMENT OF MICHAEL ROLINCE, SPECIAL AGENT IN CHARGE, WASHINGTON FIELD OFFICE, FEDERAL BUREAU OF INVESTIGATION

Mr. ROLINCE. Thank you, Mr. Chairman.

Before I begin my prepared remarks, I would just like to say for the record that I am honored and proud to follow an individual with whom I've worked closely for the last several years and who I consider to be one of the finest counterterrorism experts in the world.

Mr. Chairman, Members of the Committees, I am pleased to appear before you today to describe the FBI's role within the Intelligence Community and our knowledge and actions from approximately December 1999 through September 11, 2001. My testimony will cover the knowledge of and actions taken by the FBI prior to September 11, 2001, regarding Khalid al-Mihdhar and Nawaf al-Hazmi, as well as information learned about them after the attack. I will touch upon the issue of the FBI's investigations of al-Mihdhar as an intelligence case versus a criminal target. I will discuss the interaction between the FBI and CIA as well as others in the intelligence and law enforcement community. I would also like to provide an overview of the makeup of the international jihad movement explain how it encompasses many groups and organizations, to include bin Ladin and the al-Qa'ida network.

As members of the Intelligence Community, we have been asked to discuss the exchange and flow of information within the community and its impact on the events leading up to September 11. In that context, we've also been asked to discuss specifically the investigative efforts into two of the September 11 hijackers. The investigation into the activities of Khalid al-Mihdhar and Nawaf al-Hazmi illustrates with acute clarity that considerable individual effort and collective resources will not always result in a successful outcome. Notwithstanding improvements over the last few years within the Intelligence Community and exchange of personnel and information, and despite the extensive work performed by many individuals in the various Intelligence Community agencies in the war on terrorism, the desired goal to protect our country was not realized.

We have all learned that isolated events and unintentional incidents of inaction cannot remain in a vacuum. Individually and certainly collectively they have consequences.

Through a collaborative effort within the community, the CIA received information that a meeting of individuals possibly associated with Usama bin Ladin's terrorist network took place in Kuala Lumpur, Malaysia, in early January 2000. Among those attending the meeting were Khalid al-Mihdhar and Nawaf al-Hazmi, along with a key UBL operative, Khallad. At the time al-Mihdhar and al-Hazmi were arriving in Malaysia, the CIA advised the FBI of their interest in these individuals and indicated they would keep the FBI advised of further developments, if warranted.

In March 2000 the CIA received information concerning the entry of al-Mihdhar and al-Hazmi into the United States. In January 2001 the CIA obtained information which indicated a key individual associated with the USS *Cole* bombing had also attending the aforementioned Malaysia meeting. This was important because

it placed al-Mihdhar and al-Hazmi in direct contact with a key operative of UBL.

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Subsequent information received from INS determined al-Mihdhar had reentered the United States on July 4, 2001, on a B1 visa, flying to New York City, and that he would stay at the Marriott Hotel in New York. This information was immediately relayed verbally to CIA and FBI in New York.

On August 27, 2001, headquarters verbally advised New York of the information contained in the headquarters e-mail to FBI New York on August 24, 2001, and further informed FBI in New York that headquarters strongly suggested the initiation of a full intelligence investigation to locate and fully identify the individual. The FBI possessed no information relevant to al-Mihdhar's possible involvement in a terrorist attack but focused on al-Mihdhar because he had attended a meeting with a key individual associated with the USS *Cole* bombing.

On August 28, 2001, a full briefing was provided to FBI New York in order to initiate that full field investigation to locate and identify al-Mihdhar.

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On September 10, 2001, based upon previously-received intelligence, a lead was sent to FBI Los Angeles to conduct a similar search with the security office of Sheraton Corporation. This lead was not covered until after the September 11 attacks and was also negative.

As you are probably aware, there was a debate between headquarters and FBI New York personnel on whether to open an intelligence or criminal investigation on Khalid al-Mihdhar. There are two important points to be made in response to this issue. First, the decision to handle the al-Mihdhar investigation as an intelligence investigation was made under procedures which were designed to prevent terrorist acts. Second, although it is not uncommon to open a parallel criminal investigation, we did not have specific credible evidence of criminal activity to do so.

The restrictions on intelligence agencies and foreign services in the sharing of information within our agency limited the free flow of that information. This contributed to our inability to pull together related information. It was frequently difficult to obtain the originating agency's concurrence to pass the information to criminal investigators even for lead purposes. In terrorism cases this became so complex and convoluted that in some FBI field offices FBI agents perceived walls where none actually existed. In fact, one New York supervisor commented that "so many walls had created a maze" which made it very difficult for the criminal investigators.

Internally, the FBI adheres to the restrictions and caveats placed on intelligence information by the originating agency or foreign services. The need for these restrictions and caveats to protect sources and methods of intelligence information is obvious and needs no further explanation. Routinely intelligence agencies evaluate their disseminable information to determine whether protections beyond basic classification are required. If caveats are required, such as originator controlled or ORCON, the classified information remains under the control of the originating agency. The FBI is prohibited from disclosing information originally classified by another agency without its authorization.

At times criminal investigators are also frustrated by wall procedures imposed by the Foreign Intelligence Surveillance Court. In a class by itself, FISA information is controlled by statute. Although the statute does not preclude the passing of information to criminal investigators, there are restrictions on the use of the information.

The FISA Court and Department of Justice have been cautious through the years of permitting intelligence and criminal investigators to become closely associated for fear their cooperation would be interpreted as an attempt to circumvent the criminal process. Accordingly, the FBI has been required to maintain a certain degree of separation between intelligence and criminal investigators. With the enactment of the PATRIOT Act after September 11, it is much clearer that the sharing of information is a government policy issue. Some procedures were relaxed and the policy to share was codified. Post-PATRIOT Act, the only sharing obstacles relate to the possibility of prosecutorial control over the FISA process.

By Court order the FBI is prohibited from discussing a substantive FISA issue with prosecutors unless the Department of Justice Office of Intelligence Policy and Review is invited to participate. The same requirement does not pertain to contact between intelligence and criminal agents, although criminal agents cannot control the FISA or the FISA process.

Mr. Chairman, the remainder of my statement as regards the international jihad movement will be submitted for the record in the interest of time. That concludes my oral remarks and I will be happy to answer questions.

Chairman GRAHAM. Thank you, Mr. Rolince.

The FBI Agent.

[The prepared statement of the FBI Special Agent follows:]

PREPARED STATEMENT OF
A NEW YORK SPECIAL AGENT

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2002

Messrs. Chairmen, Vice Chairman Shelby, Ranking Member Pelosi, and Members of the Committees:

I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the New York Field Office. I appreciate your invitation to appear before your Committees today in connection with your Joint Inquiry into the tragic events of September 11, 2001. I fully understand the responsibility with which you have been charged. I intend to cooperate with you and answer your questions to the best of my ability.

I am speaking to you today as an individual agent. The views I express, therefore, are my own, not necessarily those of the FBI, although I believe that my concerns are shared by many fellow agents. I hope by appearing here today I might help in a small way to assure that the men and women of the FBI and others in the Intelligence Community, have access to the information necessary to carry out their sworn duty to protect the people of the United States.

I have no wish in the remarks that follow to be critical of any person. Whether they are at (FBI) Headquarters or in the field, FBI personnel work their hearts out to perform our mission. I am before you today to address practices that frustrate us all. Much has been written about how the FBI does not share information with local law enforcement agencies, but the American people must realize that the FBI does not always have access to the information itself, nor is all information the FBI possesses available to all of its agents. It is my belief that the former problem is due to fear that the Bureau may "run ahead" or "mess up" a current or future operation of one of our sister agencies -

and the latter primarily due to decisions that have snowballed out of the Foreign Intelligence Surveillance Act (FISA) Court. A concept known as "The Wall" has been created within the Law Enforcement and Intelligence Communities. From my perspective, and in its broadest sense - "The Wall" is an information barrier placed between elements of an intelligence investigation and those of a criminal investigation. In theory - again same perspective - it is there to ensure that we, the FBI, play by the rules in our attempts to gather evidence in a criminal case and Federal prosecution.

I have tried to write this statement knowing full well that its contents and my testimony will be studied by the enemy. Along those lines - much detail has been left out and if I may, humbly remind everyone that questions regarding sources, other possible operations, and investigative methods in this forum should be approached with extreme caution.

As an aside, may I say I firmly believe prevention is best served by allowing the Law Enforcement Community- Federal and local - to conduct sound, sometimes exigent investigations, with access to all information that the US Government and Liaison Governments possesses. These investigations build sources, evidence, connections and information - and are not simply reactive. I would like to assure the American people that in my almost seven (7) years in the Bureau, the FBI has always been in the Prevention - if I may - "Game".

Before going further, I would like to offer a few words of introduction so that you aware of the background that I bring to the questions before the Committees. Between 1985 and 1993, I served in the military. After a brief stint in the private sector, I joined the FBI in December 1995, and was assigned to the New York Field Office's Joint Terrorism Task Force in July 1996. From July 1996 through October 1997, I worked on the TWA Flight 800 investigation. In October 1997, I was assigned to the squad that had responsibilities for Taliban and Pakistan matters. Following the East Africa Embassy bombings in August 1998, I was part of the first team on the ground, spending a cumulative total of over 30 weeks abroad investigating the bombings.

In early 1999, I joined the New York Field Office's Usama Bin Laden (UBL) case squad, which is responsible for the overall investigation of UBL and Al-Qaeda. Immediately after the attack on the USS Cole in Aden, Yemen on October 12, 2000, I was assigned as one of the case agents and worked on that case - Adenbom - until the attacks of September 11, 2001. Since then I have also worked on general UBL matters and have been deployed 12 weeks overseas, working along side other Intelligence Community components. I mention this fact because, although there are issues about the sharing of information with FBI investigators by the CIA -- my experience is the FBI and the Intelligence Community have worked successfully together. The people of the United States should take great pride in the service and sacrifice of the men and women of all the US Agencies and DOD deployed overseas - many of whom I have had the privilege of working with overseas.

Briefly, "The Wall," and implied, interpreted, created or assumed restrictions regarding it, prevented myself and other FBI Agents working a criminal case out of the New York Field Office

from obtaining information from the Intelligence Community, regarding Khalid Al-Mihdhar and Nawaf Al-Hazmi in a meeting on June 11,2001. At the time, there was reason to believe that Al-Mihdhar and Al-Hazmi had met with a suspect connected to the attack against the USS Cole. The situation came to a head during the fourth week of August 2001, when, after it was learned that Al-Mihdhar was in the country, FBI HQ representatives said that FBI New York was compelled to open an "intelligencecase" and that I nor any of the other "criminal case" investigators assigned to track Al-Qaeda could attempt to locate him. This resulted in a series of e-mails between myself and the FBI HQ analyst working the matter.

In my e-mails, I asked where this "The New Wall" was defined. I wrote on August 29, 2001: "Whatever has happened to this – someday someone will die – and wall or not – the public will not understand why we were not more effective and throwing every resource we had at certain 'problems'. Let's hope the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most 'protection.'" I was told in response that "we [at Headquarters] are all frustrated with this issue," but "These are the rules. NSLU does not make them up."

I hope, Messrs. Chairmen, these proceedings are the time to break down the barriers and change the system which makes it difficult for all of us, whether we work at FBI HQ or in the field, at the FBI or elsewhere, to have and be able to act on the information that we need to do our jobs.

Personally, I do not hold any US Government affiliated individual or group of individuals responsible for the attacks on September 11, 2001. I truly believe that if given a chance, anyone of them would give or sacrifice anything to have prevented what occurred. Then, and now, I hold the system responsible. Information is power in this system of Intelligence and Law Enforcement. This will never change - nor could or should it. In addition to "The Wall", the system as it currently exists, however, seduces some managers, agents, analysts, and officers into protecting turf and being the first to know and brief those above. Often these sadly mistaken individuals, use "The Wall" described here in, and others - real and imagined - to control that information.

I, myself, still have two key questions today that I believe are important for this committee to answer. The detailed answers to them will deserve, and be afforded, the scrutiny of a nation, and must stand the test of time and exhaustive investigation. First, if the CIA passed information regarding Al-Mihdhar and Al-Hazmi to the FBI prior to the June 11, 2001 meeting - in either January 2000 or January 2001 - then why was that information not passed, either by CIA or FBI Headquarters personnel, immediately to the New York case agents, criminal or "Intel", investigating the murder of 17 sailors in Yemen when more information was requested? A simple answer of "The Wall" is unacceptable. Second, how and when did we, the CIA and the FBI, learn that Al-Mihdhar came into the country on either or both occasions, in January 2000 and/or in July 2001 and what did we do with the information?

On September 11, 2001, I spent the morning on the streets with other agents and Joint Terrorism Task Force (JTTF) personnel around the World Trade Center, providing whatever help we could. I and several of my co-workers were within blocks when both towers came down. Within minutes of the second strike on the Southern Tower, we asked a senior fireman heading towards the South Tower what we could do. At the time, he was getting out of his fire truck and looking at the towers. By the Grace of God he turned to us and replied that he did not know what we could do - but that we were not going anywhere close to the buildings without a respirator. I do not know who he was but I truly believed he saved our lives. I also believe that based on the direction that he was looking, towards the Southern Tower, that moments later he entered that tower and perished in the attack. It's taken a while for his response, but I believe that the task before this committee, and in some small way - me being here today - is what that brave fireman is telling us, all of us , "what we can do".

If we do not change the system - if I may say again -"someday someone will die - and wall or not - the public will not understand why we were not more effective and throwing every resource we had at certain 'problems'."

Thank you for this opportunity and privilege of appearing before you today. I would, of course, welcome your questions.

STATEMENT OF A SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

FBI AGENT. Mr. Chairmen, Vice Chairman Shelby, Ranking Member Pelosi, and members of the Committees, I am a Special Agent of the Federal Bureau of Investigation assigned to the New York field office. I appreciate your invitation to appear before your committees today in connection with your Joint Inquiry into the tragic events of September 11, 2001. I fully understand the responsibility with which you have been charged. I intend to cooperate with you and answer your questions to the best of my ability.

I am speaking to you today as an individual agent. The views I express, therefore, are my own, not necessarily those of the FBI, though I believe that my concerns are shared by many fellow agents. I hope by appearing here today that I might in some small way assure that the men and women of the FBI and others in the Intelligence Community have access to the information necessary to carry out their sworn duty to protect the people of the United States.

I have no wish in the remarks that follow to be critical of any person. Whether they are at FBI headquarters or in the field, FBI personnel work their hearts out to perform their mission. I am before you today to address practices that frustrate us all.

Much has been written about how the FBI does not share information with local law enforcement agencies, but the American people must realize that the FBI does not always have access to the information itself, nor is all the information the FBI possesses available to all of its agents. It is my belief that the former problem is due to fear that the Bureau may run ahead or mess up current or future operations of one of our sister agencies, and the latter is primarily due to decisions that have snowballed out of the Foreign Intelligence Surveillance Act Court.

A concept known as "the wall" has been created within the law enforcement and intelligence communities. From my perspective, in the broadest sense the wall is an information barrier placed between elements of an intelligence investigation and those of a criminal investigation. In theory—again same perspective—it is there to ensure that we, the FBI, play by the rules in our attempts to gather evidence in a criminal case and federal prosecution. I have tried to write this statement knowing full well that its contents and my testimony will be studied by the enemy. Along those lines, much detail has been left out and, if I may humbly remind everyone, questions regarding sources, other possible operations, investigative methods in this forum should be approached with extreme caution.

As an aside, may I say I firmly believe prevention is best served by allowing the law enforcement community, federal and local, to conduct sound, sometimes exigent investigations, with access to all information that the U.S. government and liaison governments possess. These investigations build sources, evidence, connections and information and are not simply reactive. I would like to assure the American people that in my almost seven years in the Bureau the FBI has always been in the prevention, if I may, game.

Before going further, I would like to offer a few words of introduction so you are aware of the background that I bring to the

questions before the committee. Between 1985 and 1993 I served in the military. After a brief stint in the private sector, I joined the FBI in December 1995 and was assigned to the New York field office's joint terrorism task force in July 1996. From July 1996 through October 1997 I served on the TWA Flight 800 investigation. In October 1997 I was assigned to the squad that had responsibilities for Taliban and Pakistan matters. Following the East Africa embassy bombings in August 1998 I was part of the first team on the ground, spending a cumulative total of over 30 weeks abroad investigating those bombings. In early 1999 I joined the New York field office's overall Usama bin Ladin case squad, which is responsible for the overall investigation of UBL and al-Qa'ida.

Immediately after the attack on the USS *Cole* in Aden, Yemen, on October 12, 2000, I was assigned as one of the case agents who worked on that case, ADENBOM, until the attack on September 11, 2001. Since then I have also worked on general UBL matters and have been deployed 12 weeks overseas, working alongside other Intelligence Community components. I mention this fact because although there are issues about the sharing of information with FBI investigators by the CIA, my experience between the FBI and the Intelligence Community is that we have worked successfully together.

The people of the United States should take great pride in the service and sacrifice of the men and women of all the U.S. agencies that are deployed overseas, many of whom I've had the privilege of working with overseas.

Briefly, the wall and implied, interpreted, created or assumed restrictions regarding it, prevented myself and other FBI agents working a criminal case out of the New York field office from obtaining information from the Intelligence Community regarding Khalid al-Mihdhar and Nawaf al-Hazmi in a meeting on June 11, 2001. At the time there was reason to believe that al-Mihdhar and al-Hazmi had met with a suspect connected to the attack against the USS *Cole*. The situation came to a head during the fourth week of August 2001 when, after it was learned al-Mihdhar was in the country, FBI HQ representatives said that FBI New York was compelled to open an intelligence case and that neither I nor any of the other criminal case investigators assigned to track al-Qa'ida could attempt to locate him.

This resulted in a series of e-mails between myself and the FBI HQ analyst working the matter. In my e-mails I asked where this new wall was defined. I wrote, on August 29, 2001, "whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems. Let's hope the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most protection." I was told in response that we at headquarters are all frustrated with this issue. These are the rules. NSLU does not make them up.

I hope, Messrs. Chairmen, that these proceedings are time to break down the barriers and change the system which makes it difficult for all of us, whether we work at FBI HQ or in the field at the FBI or elsewhere, to have and be able to act on information

that we need to do our jobs. Personally, I do not hold any U.S. government-affiliated individual or group of individuals responsible for the attacks on September 11, 2001. I truly believe that, given a chance, any one of them would give or sacrifice anything to have prevented what occurred. Then and now I hold the system responsible. Information is power in the system of intelligence and law enforcement. This will never change, nor could or should it.

In addition to the wall, the system as it currently exists, however, seduces some managers, agents, analysts and officers into protecting turf and being the first to know and brief those above. Often these sadly-mistaken individuals use the wall described herein and others, real or imagined, to control that information.

I myself still have two key questions today that I believe are important for this Committee to answer. The detailed answers to them will deserve and be afforded the scrutiny of a nation and must stand the test of time and exhaustive investigation. First, if the CIA passed information regarding al-Mihdhar and al-Hazmi to the FBI prior to that June 11, 2001, meeting, in either January 2000 or January 2001, then why was that information not passed, either by CIA or FBI headquarters personnel immediately to the New York case agents, criminal or intel investigating the murder of 17 sailors in Yemen when more information was requested? A simple answer of "the wall" is unacceptable.

Second, how and when did we, the CIA and the FBI, learn that al-Mihdhar came into the country on either or both occasions in January 2000 and/or in July 2001 and what did we do with that information?

On September 11, 2001, I spent the morning on the streets with other agents and the joint terrorism task forces personnel around the World Trade Center providing whatever help we could. I and several of my coworkers were within blocks when both towers came down. Within minutes of the second strike on the southern tower, we asked a senior fireman heading towards the south tower what we could do. At the time he was getting out of his fire truck, looking at the towers. By the grace of God, he turned to us and replied that he did not know what we could do, but that we were not going anywhere close to the buildings without a respirator.

I do not know who he was, but I truly believe he saved our lives. I also believe, based on the direction that he was looking, towards the southern tower, that moments later he entered that tower and perished in the attack.

It's taken a while for a response, but I believe that the task before this Committee and in some small way my being here today is what the brave fireman is telling us, all of us, what we can do. If we do not change the system, if I may say again, some day someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain "problems."

Thank you for this opportunity and privilege of appearing before you today. I would, of course, welcome your questions.

Chairman GRAHAM. Thank you, sir.

Mr. Kojm, have I come close to correctly pronouncing your name?

[The prepared statement of Mr. Kojm follows:]

UNCLASSIFIED

TESTIMONY BEFORE THE JOINT INTELLIGENCE COMMITTEE INQUIRY
ON THE TIPOFF PROGRAM
SEPTEMBER 19, 2002
CHRISTOPHER A. KOJM
DEPUTY FOR INTELLIGENCE POLICY AND COORDINATION
BUREAU OF INTELLIGENCE AND RESEARCH
DEPARTMENT OF STATE

Mr. Chairmen, Mr. Vice-Chairman, and Madame Ranking Member -- The Department of State is pleased to testify this morning about the Intelligence and Research Bureau's TIPOFF program.

Let me begin, if I may, by discussing the development and mission of the TIPOFF program.

The United States welcomes millions of foreign visitors each year, but entry into this country is a privilege for which foreigners must qualify when they apply for a visa or arrive at a U.S. port of entry. This screening is necessary to keep out undesirable foreigners, certainly including those with terrorist affiliations. This screening relies largely on visa and border lookout systems maintained by the Department of State, INS and Customs.

TIPOFF was created in 1987 for the express purpose of using biographic information drawn from intelligence products for watch listing purposes. In 1987, TIPOFF began keeping track of suspected terrorists with a shoebox and 3x5 cards. Since then, the program has evolved into a sophisticated, inter-agency counter terrorism tool specifically designed to enhance the security of our nation's borders.

TIPOFF's mission today is to protect the United States by drawing upon diplomatic, intelligence, law enforcement and public source information to watch list, detect and prevent known or suspected terrorists and others from obtaining visas or from entering our country. Because TIPOFF is part of the Intelligence Community, it does not maintain records on U.S. citizens and permanent resident aliens. When it is discovered that the subject of a TIPOFF record is a U.S. citizen or Legal Permanent Resident, the

information is sent to the FBI, which has jurisdiction over investigating such persons, and the record is expunged from the TIPOFF system.

How the TIPOFF watch list works. TIPOFF provides operational support to the Bureau of Consular Affairs at the Department of State and to U.S. Immigration and Customs officers at Ports of Entry. It accomplishes this by making available declassified biographic information (name, date and place of birth, nationality, and passport number) drawn from highly classified intelligence products or sensitive law enforcement or diplomatic reports.

This unclassified information allows officers in the field to determine whether information about an alien is available that should be considered before a visa is issued or the alien is admitted to the United States. In the case of visas, once the consular officer sees, from a "hit" matching the visa applicant with the unclassified TIPOFF entry in the visa lookout system, that information is available in Washington, the officer refers the case to the Department of State. The TIPOFF staff then makes the highly classified information underlying the lookout entry available to authorized consular and legal experts in the Department so that they can make a reasoned determination as to whether the U.S. government has sufficient information available to deny a suspected terrorist's visa request. We follow a similar process to assist INS in deciding if an alien should be prevented from entering this country through border inspection points.

Consular officers abroad have on-line access to the Consular Lookout and Support System (CLASS), which contains the unclassified names and other biographic data supplied by TIPOFF, among other items. These officials are required by law to check CLASS to determine if a visa applicant has been watch listed. If that check produces a "hit" against the applicant's name, the consular officer may not issue the visa until the Department has responded to the officer's electronic message requesting guidance as to whether or not the applicant may be ineligible for a visa.

The TIPOFF staff coordinates all "hits" on names it has placed in CLASS with the FBI and other agencies, alerting them that a suspected terrorist has applied for a visa. In some cases, this process has enabled the exploitation of operational opportunities obtained through

foreknowledge of pending terrorist travel and has resulted in the surveillance or arrest of suspects upon their entry into the country. Most often, however, there is inter-agency agreement that the applicant's visa should be denied on terrorism grounds. The consular officer has ultimate authority in determining an applicant's admissibility. But the consular officer will in these cases rely heavily on the security advisory opinion, rendered by the Department's Bureau of Consular Affairs, which is often a product of interagency consultation. In some cases, the entry may indicate past terrorist activity but no current threat and a waiver of ineligibility may be requested from the Attorney General, e.g., to admit someone for important U.S.G. interests such as to facilitate peace negotiations.

From its inception in 1987 to September 2002, information shared by the Intelligence and Law Enforcement Communities with the TIPOFF program has enabled the Department of State to detect and to deny visas to nearly 800 hijackers, hostage holders, assassins, bombers and other terrorists, or to facilitate law enforcement action upon their arrival in the U.S.

Since the TIPOFF interface with INS and Customs began during the Gulf War in 1991, INS has been able to intercept and deny entry to, or arrest, about 290 terrorists from 82 countries at 84 different ports of entry. The cooperation exhibited in the TIPOFF program has thus been a joint success story for the diplomatic, law enforcement and intelligence communities in enhancing the security of our nation's borders.

The watch listing on TIPOFF of two of the September 11 hijackers -- Khalid Al Mihdhar and Nawaf Al Hazmi.

Late on August 23, 2001 (after normal closing), the State Department received a request to watchlist four Bin Ladin-related individuals in TIPOFF, two of whom later were identified as hijackers -- Khalid Al Mihdhar and Nawaf Al Hazmi. The communication suggested that both Al Mihdhar and Al Hazmi were in the U.S. on that date (August 23).

The communication included the information that Al Mihdhar and Al Hazmi had arrived in the U.S. on January 15, 2000, at Los Angeles Airport, and that Al Mihdhar had departed the U.S. on June 10, 2000 but returned to the US

at JFK airport in New York on July 4, 2001. There was no record that either Al Mihdhar or Al Hazmi had thereafter departed the U.S. There was no record of the arrival or departure of the other two individuals.

On the morning of Friday, August 24, the TIPOFF staff saw the report for the first time and created records on all four of the suspected terrorists, watchlisted them in CLASS and tagged the records for review by an INS officer later that day. That afternoon, a TIPOFF staff member hand carried the report to the Bureau of Consular Affairs with a request that they consider revoking the visas of Al Mihdhar and Al Hazmi. The Visa Office, in turn, confirmed that both had, in fact, received visas as reported and that another of the four individuals cited in the communication had been denied visas several times at different posts because consular officers believed him to be an intending immigrant. (The multiple denials were not based upon any information that he was a terrorist.) There was no consular record that the fourth person had ever applied for a visa.

No action could be taken on Al Hazmi's visa because records indicated that it had expired. The Visa Office revoked Al Mihdhar's visa on Monday, August 27.

It is important to note that the important derogatory information in this communication was simultaneously provided to other federal agencies.

Effectiveness of the TIPOFF Program. TIPOFF was originally designed to help prevent precisely what occurred on 9/11. TIPOFF has consistently demonstrated that, if it obtains information upon which it can take action to watch-list suspected terrorists, it has the mechanisms in place to ensure those suspects can be detected as they apply for visas or arrive at ports of entry. To that end, since 9/11 TIPOFF has been receiving information on terrorists from all sources at a rate far greater than before the attacks.

The tremendous increase in TIPOFF's workload is, largely, a function of the intelligence community's "war footing" that has produced ever-increasing amounts of terrorist reporting, much of which has been derived from documents retrieved in Afghanistan and from the numerous Al Qaida suspects captured by U.S. and other forces.

The CIA in particular is bringing information to TIPOFF's attention through use of the Visas Viper program and reporting channel, an adjunct of the TIPOFF program. The Visas Viper program was started after the 1993 bombing of the World Trade Center as a means of assuring the proper flow of information concerning individuals linked to terrorist activities. About 34,000 of TIPOFF's nearly 80,000 records are now comprised wholly or in part of Viper data.

TIPOFF is now the primary focal point for entering Intelligence Community information on known or suspected terrorists into CLASS. However, TIPOFF is not adequately staffed to handle the increased workload. The current, small, dedicated staff of TIPOFF come in frequently after hours -- nights and weekends -- in response to operational requirements, particularly when we receive urgent inquiries from Ports of Entry where aliens are arriving on a continuous basis. Senior levels of the Department and the Intelligence Community are in discussions about how to expand TIPOFF to become a national lookout center. This would enable TIPOFF to do all of the things it has successfully done in the past, but also to interface with more agencies, to do more, to do it better, and to do it faster.

I appreciate this opportunity to explain the TIPOFF program, and I look forward to your questions. Thank you.

STATEMENT OF CHRISTOPHER A. KOJM, DEPUTY FOR INTELLIGENCE POLICY AND COORDINATION, BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE

Mr. KOJM. Mr. Chairman, you have hit it exactly correctly. Thank you.

Mr. Chairmen, Mr. Vice Chairman and Madam Ranking Member, the Department of State is pleased to testify this morning about the Intelligence and Research Bureau's TIPOFF program.

Chairman GRAHAM. Mr. Kojm, could you bring your mike a little bit closer?

Mr. KOJM. Let me begin, if I may, by discussing the development and mission of the TIPOFF program. Each year the United States welcomes millions of foreign visitors, but entry into this country is a privilege for which foreigners must qualify when they apply for a visa or arrive at a U.S. port of entry. This screening is necessary to keep out undesirable foreigners, certainly including those with terrorist affiliations. This screening relies largely on visa and border lookout systems maintained by the Department of State, INS, and Customs.

TIPOFF was created in 1987 for the express purpose of using biographic information drawn from intelligence products for watchlisting purposes. In 1987 TIPOFF began keeping track of suspected terrorists literally with a shoebox and 3 by 5 cards. Since then the program has evolved into a sophisticated interagency counterterrorism tool specifically designed to enhance the security of our nation's borders.

TIPOFF's mission today is to protect the United States by drawing upon diplomatic, intelligence, law enforcement and public source information to watchlist, detect and prevent known or suspected terrorists and others from obtaining visas or from entering our country. Because TIPOFF is part of the Intelligence Community, it does not maintain records on U.S. citizens and permanent resident aliens. When it is discovered that the subject of a TIPOFF record is a U.S. citizen or a legal permanent resident, the information is sent to the FBI, which has jurisdiction over investigating such persons, and that record is expunged from the TIPOFF system.

Now, the TIPOFF watchlist system works in the manner of providing operational support to the Bureau of Consular Affairs at the Department of State and to the U.S. Immigration and Customs officers at ports of entry. TIPOFF accomplishes this by making available declassified biographic information—name, date and place of birth, nationality and passport number—drawn from highly classified intelligence products or sensitive law enforcement or diplomatic reports.

Consular officers abroad have online access to the Consular Lookout and Support System or CLASS, as it's known, which contains the unclassified names and other biographic data supplied by TIPOFF, among other items. These officials are required by law to check CLASS to determine if a visa applicant has been watchlisted. If that check of a name produces a hit against the applicant's name, the consular officer may not issue the visa until the Department has responded to the officer's electronic message requesting

guidance as to whether or not the applicant may be ineligible for a visa.

Back in Washington, the TIPOFF staff then makes the highly classified information underlying the lookout entry available to authorized consular and legal experts in the Department so that they can make a reasoned determination as to whether the U.S. Government has sufficient information available to deny the suspected terrorist's visa request. TIPOFF follows a similar process to assist INS in deciding if an alien should be prevented from entering this country through border inspection points.

Now the TIPOFF staff coordinates all hits upon names it has placed in CLASS with the FBI and other agencies, alerting them that a suspected terrorist has applied for a visa. In some cases, this process has enabled the exploitation of operational opportunities obtained through foreknowledge of pending terrorist travel and has resulted in the surveillance or arrest of suspects upon their entry into the country.

Most often, however, there is interagency agreement that the applicant's visa should be denied on terrorism grounds. The consular officer has ultimate authority in determining an applicant's admissibility, but the consular officer will in these cases rely heavily on the security advisory opinion rendered by the Department's Bureau of Consular Affairs, which is often a product of interagency consultation.

In some cases, the entry may indicate past terrorist activity but no current threat, and a waiver of ineligibility may be requested from the Attorney General, for example to admit someone for important U.S. Government interests, such as to facilitate peace negotiations. But in point of fact, in most cases the person is denied.

From its inception in 1987 to September 2002 information shared by the intelligence and law enforcement communities with the TIPOFF program has enabled the Department of State to detect and to deny visas to nearly 800 hijackers, hostage-holders, assassins, bombers and other terrorists, or to facilitate law enforcement action upon their arrival in the United States.

Since the TIPOFF interface with INS and Customs began during the Gulf war in 1991, INS has been able to intercept and deny entry to or arrest an additional 290 terrorists from 82 countries at 84 different ports of entry.

The cooperation exhibited in the TIPOFF program has thus been a joint success story for the diplomatic, law enforcement and intelligence communities in enhancing the security of our nation's borders.

Now, turning to the hijackers under discussion today, late on August 23, 2001, after normal closing hours, the State Department did receive a request to watchlist four bin Ladin-related individuals in the TIPOFF data base, two of whom were later identified as hijackers—Khalid al-Mihdhar and Nawaf al-Hazmi. The communication suggested that both al-Mihdhar and al-Hazmi were in the United States on that date, August 23. The communication included the information that al-Mihdhar and al-Hazmi had arrived in the United States on January 15, 2000, at Los Angeles airport and that al-Mihdhar had departed the United States on June 10,

2000, but returned to the United States at JFK in New York City on July 4, 2001.

There was no record that either al-Mihdhar or al-Hazmi had thereafter departed the United States. There was no record of the arrival and departure of the other two individuals watchlisted.

On the morning of Friday, August 24, the TIPOFF staff saw the report for the first time and created records on all four of the suspected terrorists. TIPOFF watchlisted them in CLASS and tagged the records for review by an INS officer later that day. That afternoon, a TIPOFF staff member hand-carried the report to the Bureau of Consular Affairs with a request that they consider revoking the visas of al-Mihdhar and al-Hazmi.

The visa office in turn confirmed that both had in fact received visas, as reported, and that another of the four individuals cited in the communication had been denied visas several times at different posts because consular officers believed him to be an intending immigrant. The multiple denials were not based on any information that he was a terrorist. There was no consular record that the fourth person watchlisted had ever applied for a visa.

No actions could be taken on al-Hazmi's visa because records indicated that it had expired. The visa office revoked al-Mihdhar's visa on Monday, August 27. It is important to note and has already been stated here that the important derogatory information in this communication was simultaneously provided to other federal agencies.

TIPOFF was originally designed to help prevent precisely what occurred on September 11. TIPOFF has consistently demonstrated that, if it obtains information on which it can take action to watchlist suspected terrorists, it has the mechanisms in place to ensure those suspects can be detected as they apply for visas or arrive at ports of entry. To that end, since September 11, TIPOFF has been receiving information on terrorists from all sources at a rate far greater than before the attacks.

The tremendous increase in TIPOFF's workload is largely a function of the Intelligence Community's war footing that has produced ever-increasing amounts of terrorist reporting, much of which has been derived from documents retrieved in Afghanistan, from numerous al-Qa'ida suspects captured by the U.S. and other forces.

The CIA in particular is bringing information to TIPOFF's attention, through use of the Visas Viper program reporting channel, an adjunct of the TIPOFF program. The Visas Viper program was started after the 1993 bombing of the World Trade Center as a means of assuring the proper flow of information concerning individuals linked to terrorist activities. About 34,000 of TIPOFF's nearly 80,000 records are now comprised wholly or in part of data from the Visas Viper program.

TIPOFF is now the primary focal point for entering Intelligence Community information on known or suspected terrorists into CLASS, the consular lookout system. However, TIPOFF is not adequately staffed to handle the increased workload. The current small dedicated staff of TIPOFF come in frequently after hours, nights, weekends, wee hours, in response to operational requirements, particularly when TIPOFF receives urgent inquiries from ports of entry where aliens are arriving on a continuous basis.

Senior levels of the Department of State and the Intelligence Community are in discussions about how to expand TIPOFF to become a national lookout center. This would enable TIPOFF to do all of the things it has successfully done to date but, more importantly, also to interface with more agencies, to do more, to do it better, and to do it faster.

I appreciate this opportunity to explain the TIPOFF program and I look forward to your questions. Thank you.

Chairman GRAHAM. Thank you, sir.

At the hearings of the Joint Inquiry we use a procedure in which four lead questioners are identified, two from each Committee. Each of the questioners will have 20 minutes to present their questions and receive responses. The designated lead questioners for today's hearing are Senator Levin, Representative Burr, Senator Kyl, and Representative Peterson, and they will question in that order.

After they have completed their questioning, we will proceed to other Members of the Committees, five minutes each, with additional rounds as necessary.

Senator FEINSTEIN. Mr. Chairman, may I ask is there going to be a lunch break. Some of us have——

Chairman GRAHAM. It was our intention to break at 1:00 and reconvene at 2:00.

Senator FEINSTEIN. Thank you.

Chairman GRAHAM. Senator Levin.

(Prepared by Senator Carl Levin)

Chronology

Jan. 1996: **CIA creates a special unit to focus on bin Laden**

Feb. 1998: **bin Laden issues public *fatwa* authorizing and promoting attacks on U.S. civilians and military personnel anywhere in the world**

May 1998: **In a press conference, bin Laden discusses "bringing the war home to America"**

June 1998: **Intelligence Community obtains information from several sources that bin Laden is considering attacks in the U.S., including Washington D.C. and New York**

Aug. 1998: **Intelligence Community obtains information that an unidentified group from the Middle East to fly an explosive-laden plane from a foreign country into the World Trade Center**

Aug. 1998: **Two U.S. embassies in Africa are bombed prompting U.S. cruise missile attacks against Afghanistan and Sudan**

Sep. 1998: **Intelligence Community obtains information that bin Laden's next operation could possibly involve flying an aircraft loaded with explosives into a U.S. airport and detonating it**

Oct. 1998: **Intelligence Community obtains information that al-Qaeda was trying to establish an operative cell within the U.S.**

Fall 1998: **Intelligence Community obtains information concerning a bin Laden plot involving aircraft in the New York and Washington, D.C. areas**

FBI establishes the Usama bin Laden (UBL) Unit out of the FBI's Radical Fundamentalist Unit, which was created in 1994

Nov. 1998: Intelligence Community obtains information that an al Qaeda cell was attempting to recruit 5-7 men from U.S. to travel to the Middle East for training in conjunction with plans to strike U.S. domestic targets

Nov. 1998: Intelligence Community obtains information that bin Laden has agreed to allocate reward money for the assassinations of four top intelligence agency officials

Dec. 1998: DCI Tenet written guidance declaring that U.S. is at "war" with bin Laden and al-Qaeda

Spring 1999: Intelligence Community obtains information about a planned al-Qaeda attack on a U.S. government facility in Washington, D.C.

Aug. 1999: Intelligence Community obtains information that bin Laden has decided to target for assassination the Secretary of State, Secretary of Defense, and DCI

Late 1999: Intelligence Community obtains information about possible al-Qaeda plans to attack targets in Washington, D.C. and New York City during the New Year's Millennium celebrations

Dec. 1999: Ahmed Ressam is arrested as he attempts to enter the U.S. from Canada with chemicals and detonator material. Ressam's intended target is Los Angeles International Airport

Dec. 1999: DCI communication to CIA employees warning of mounting threat of al-Qaeda attack against U.S. interests abroad and in the U.S., urging them "*to do what ever is necessary... to disrupt UBL's plans.*"

Jan. 5-8 2000: CIA monitors Jan. 5-8 meeting in Malaysia of al-Qaeda members, including eventual 9/11 hijackers al-Mihdhar and al-Hazmi.

CIA knows al-Mihdhar's full name, passport information and that he possesses a multiple-entry U.S. visa but does not place him on watchlist to deny him entry to U.S. CIA communicates information to FBI about Malaysia meeting, but makes no mention of al-Mihdhar's visa information and possible travel to U.S.

Mar2000: CIA receives cable information that al-Hazmi had entered the U.S. at Los Angeles International Airport on January 15, 2000. No further information on al-Mihdhar in the CIA cable, which carries the marking "*Action Required: None, FYI.*" In fact, al-Mihdhar traveled with al-Hazmi to the U.S. on January 15, 2000.

This cable information is not shared with FBI or local law enforcement. CIA does not act to place al-Mihdhar and al-Hazmi on watchlist.

Mar 2000: al-Mihdhar and al-Hazmi reside in San Diego and during their residence there use their true names on a rental agreement, as al-Mihdhar also did in obtaining a California motor vehicle photo identification card.

May 2000: al-Mihdhar and al-Hazmi take flight lessons in San Diego

Jun. 2000: al-Mihdhar leaves the U.S. on a Lufhansa flight from Los Angeles to Frankfurt, Germany

July 2000: al-Hazmi applies to the INS for an extension of his visa a week before its expiration using the address he shared with al-Mihdhar. INS approves a visa extension to January 2001.

Oct. 2000: al-Qaeda terrorists attack the *U.S.S. Cole* in Yemen

Dec. 2000: al-Hazmi moves to Mesa, Arizona with Hani Hanjour, who had just returned to the U.S. and would later be the most likely hijacker to have piloted American Airlines Flight #77. Hanjour

receives additional flight training in the U.S. from Feb.-May, 2001.

Jan. 2001: CIA acquires information that a key planner of the *Cole* attack was at the January 2000 Malaysia meeting with al-Mihdhar and al-Hazmi. CIA does not act to place the two to the watchlist. At the time, al-Mihdhar is abroad; al-Hazmi is still in the U.S.

May 2001: CIA shows FBI photos taken of Malaysia meeting, including one of al-Mihdhar, but does not alert FBI of al-Mihdhar's visa allowing travel to the U.S. No action taken to watchlist al-Mihdhar or al-Hazmi.

June 11, 2001: CIA officials meet in New York with FBI officials handling the *Cole* investigation. FBI agents are told that they could not be given information on why the CIA was following al-Mihdhar and others in Malaysia. CIA analyst at New York meeting states that he did not share information on al-Mihdhar's U.S. visa and al-Hazmi's travel to the U.S. with the FBI because he did not have the authority to do so.

June 15, 2001: al-Mihdhar obtains a new U.S. visa in Jeddah, Saudi Arabia

July 4, 2001: al-Mihdhar re-enters the U.S.

Aug. 21, 2001: FBI analyst at the CTC works with INS representative and determines that al-Hazmi and al-Mihdhar had entered the U.S. in January 2000, and that al-Mihdhar's June 13, 2001 re-entry visa allows him to stay in the U.S. until August 22, 2001.

Aug. 23, 2001: CIA sends a cable to the State Department, INS, Customs Service, and FBI requesting that al-Mihdhar, al-Hazmi, and two

other individuals at the Malaysia meeting be watchlisted immediately.

Late Aug. 2001: **FBI headquarters recommends to FBI New York that it open an intelligence investigation to determine if al-Mihdhar is still in the U.S. FBI New York agents try to convince FBI headquarters to open a criminal investigation, rather than an intelligence investigation, on al-Mihdhar, given the importance of the search. FBI headquarters declines to do so because, in their view, there is no way to connect al-Mihdhar to the ongoing *Cole* investigation without using some intelligence information.**

Aug. 29 - Sep. 10, 2001: **FBI agents search New York and Los Angeles metropolitan areas for al-Mihdhar but are unsuccessful.**

Senator LEVIN. Mr. Chairman, thank you.

I'm going to focus on the 18-month period starting in January of 2000, but I want to spend a few minutes describing the environment leading up to that date. Ms. Hill began her very, very thorough and very thoroughly discouraging presentation with the statement that the story begins in December 1999 with the Intelligence Community on heightened alert. I've prepared a chronology which I'll share with all of the Members which is to summarize and go back before her beginning of the story—in January of 1996 when the CIA created a special unit to focus on bin Ladin; in February of 1998 when bin Ladin issued a public fatwa authorizing and promoting attacks on U.S. civilians anywhere in the world; May 1998 at a press conference when bin Ladin says he's going to bring war to America; in June 1998 when the Intelligence Community obtains information from several sources that bin Ladin is considering attacks in the U.S., including Washington and New York; August 1998 when the Intelligence Community obtains information that an unidentified group from the Middle East are going to fly an explosive-laden plane from a foreign country into the World Trade Center; September 1998 when the Intelligence Community obtains information that bin Ladin's next operation could possibly involve flying an aircraft loaded with explosives into a U.S. airport; October 1998, when the Intelligence Community obtains information that al-Qa'ida was trying to establish an operative cell within the United States; the fall of 1998, when the Intelligence Community obtains information concerning a bin Ladin plot involving aircraft in the New York and Washington areas; and then, in December 1998, when, as we heard yesterday or the day before, when DCI Tenet provided some written guidance to presumably everybody in the CIA declaring that the United States is at war with bin Ladin and al-Qa'ida. That's December 1998, before the story begins.

In the spring of 1999, when the Intelligence Community obtains information about a planned al-Qa'ida attack on a United States government facility in Washington; August 1999, when the Intelligence Community obtains information that bin Ladin has decided to target for assassination the Secretary of State and Secretary of Defense and the DCI; December 1999, when Ahmed Ressam is arrested as he attempts to enter the United States in the State of Washington from Canada with chemical and detonator material and his intended target is Los Angeles airport; December 1999, when the DCI communication to CIA employees warns of a mounting threat of al-Qa'ida attack to U.S. interests abroad and in the United States, urging them to do whatever is necessary to disrupt bin Ladin's plans.

That's the background. That's what happens when in December of 1999 the CIA gets information from its own sources that two men—the men we're following, al-Mihdhar and al-Hazmi—are coming to Malaysia. That is not rumors. That is confirmed by the CIA's own people.

And then they come to Malaysia in January of 2000, and the CIA, we know, monitored the al-Qa'ida members there, including the two people at issue. They knew that these two people had, at least in one case, already had a visa to go to the United States. That information was not put into the watchlist. It was not shared

with the FBI. It knew that al-Mihdhar had a multiple-entry visa, as a matter of fact, and knew of his ties to al-Qa'ida. Two failures there—not placed on the watchlist, not shared with the FBI.

Then, in March of 2000, the CIA found out that al-Hazmi had entered the United States at Los Angeles International Airport on January 15, not shared with the FBI, even though they knew he entered the United States, not shared with the watchlist.

Then another event occurs in October of 2000. This is a watershed event. This is the *Cole* being blown up. And by January of 2001 the CIA knows that the *Cole* planner was at that January 2000 meeting in Malaysia. They knew that a man named Khallad had been the center of that attack and the planner and that Khallad was at the January 2000 Malaysia meeting with the two people we're talking about, al-Mihdhar and al-Hazmi.

CIA still did not place either individual on the watchlist, still no notice of known visas—and I emphasize that—known visas to the FBI. They may or may not have shared with the FBI earlier that one of them had a passport, but in terms of visas to enter the United States, and the fact that at least one had entered the United States still CIA doesn't place names on watchlists, still no notice to the FBI.

And now we have a direct link to the killers of Americans on the USS *Cole*, a direct link between these two men—al-Mihdhar and al-Hazmi—to the planner, Khallad, of the al-Qa'ida attack on the USS *Cole*.

Now I want to proceed to the June 11, 2001, meeting, because that's what I really want to focus on, and the events after that. But that's a bit of the background and if I'm wrong on any of that I would assume that our witnesses would correct me.

On page nine, at the bottom, of Ms. Hill's report, it stated the following: "On June 11, 2001, FBI headquarters representatives and CIA representatives met with the New York FBI agents handling the *Cole* investigation. The New York agents were shown but not given copies of the photographs and told that they were taken in Malaysia. They weren't told that. Still, information being withheld. This is after the *Cole*, information withheld from the FBI.

One of the New York agents recalled that al-Mihdhar's name was being mentioned. He also recalled asking for more information on why the people in the photographs were being followed. So we've got the FBI now asking the CIA why are you following these folks? He recalled asking for more information on why they were being followed and for access to that information. The New York agents were advised they could not be told why al-Mihdhar and the others were being followed.

This is truly unbelievable, I've got to tell you all. This is extraordinary. This has got nothing to do with information which can't cross a wall. This has to do with leads which are not shared with the FBI—just simple leads, information which is so critical.

Now an FBI headquarters representative told us in her interview that the FBI was never given specific information until it was provided after September 11, 2001, and here's where I want to pick up with our witnesses. The CIA analyst who attended the New York meeting acknowledged to the Joint Inquiry staff that he had seen the information regarding al-Mihdhar's U.S. visa and al-

Hazmi's travel to the U.S. but he stated that he would not share information outside of the CIA unless he had authority to do so and unless that was the purpose of the meeting.

Now, June 11, New York. Now we've got the FBI asking the CIA would you tell us why you're following these two guys. And, according to the CIA analyst to our staff, that information was denied because no authority to do so unless that's the purpose of the meeting.

So I'll ask our CIA officer, so far as you know, is our staff report correct?

CIA OFFICER. The whole staff report?

Senator LEVIN. No, what I read to you.

CIA OFFICER. Could I just limit my comment to the June 11 meeting for right now?

Senator LEVIN. Just on that. Is that correct, what I just read?

CIA OFFICER. First of all, I would distinguish between one CIA officer saying I don't feel comfortable with sharing this information with a particular FBI individual from the entire corporate body of the CIA and its policy.

The second thing I would say is that the CIA officer——

Senator LEVIN. I just asked you if this happened.

CIA OFFICER. Not exactly that way.

Senator LEVIN. Then tell us how it happened.

CIA OFFICER. I wasn't there, but what I will say is that when the CIA officer said I'm not going to give you, Mr. FBI Agent, this information, he was in the company of an FBI headquarters agent or analyst who had the information. The information was in the hands of the FBI. It was a question—my interpretation of this event, and I wasn't there, is that the analyst was being conservative, and basically all I could do is go into dangerous area of speculating what's in his head.

Senator LEVIN. I'd rather you not speculate. You weren't there.

CIA OFFICER. I wasn't there, but this is important, because he is there with FBI people and this was not CIA withholding information from the FBI. There was something else at work here that I'm not quite sure of, because we were in support of the *Cole* investigation. That's why this exercise was called.

Senator LEVIN. I just want to move to the FBI agent, who I believe was there.

FBI AGENT. Yes, sir.

Senator LEVIN. Before you begin, I just want to say something. You will never receive the public recognition that you deserve for what you tried to do, for your e-mails, for your efforts to break down the wall, real and imaginary, for your efforts to break through bureaucracy. And if I have time I want to ask you about what happened on 9/11.

But, in any event, I just want you to know that you deserve that recognition. And I'm sorry it can't be public recognition. Having said that and not knowing how you're going to answer, you were at this meeting?

FBI AGENT. Yes, sir. First off, I'd like to accept that, but on behalf of all the agents that I work with.

Senator LEVIN. I knew you would do that. I expected no less from you. You were at the meeting. Was that accurate, the staff report?

FBI AGENT. As best as I can recall, sir, I wouldn't be able to add anything to your comments. From what I remember, that's exactly how it occurred, and there's still some disagreement. However, my belief of how events happened, to this day, are that the analyst herself did not know all the information that the CIA had at that time, and I know there are different versions of that, so I don't want to speculate about that.

But my understanding of events today is that the analyst did not have access to that information either, because we had intelligence agents from the Bureau that were in the room at the time and the rest of us criminal agents, even though we were frustrated, could have walked out of the room and then received that information.

Senator LEVIN. Did someone at the meeting say he could not share information outside of the CIA unless he had authority to do so or unless that was the purpose of the meeting? Do you remember that?

FBI AGENT. Not those exact words, but I was told that he could not share that information with me and my agents at the time and that that information would be attempted to be passed in the following days, weeks or months.

Senator LEVIN. Do you know whether it was passed in the succeeding days?

FBI AGENT. No. In fact, I had several conversations with the analyst after that because we would talk on other matters, and almost every time I would ask her, what's the story with the Mihdhar information and when is it going to get passed. Do we have anything yet? When's it going to get passed? And each time I was told that the information had not been passed yet.

And the sense I got from her, based on our conversations, was that she was trying as hard as she could to get the information passed, or at least the ability to tell us about the information.

Senator LEVIN. Mr. Rolince, do you know whether or not the FBI agents were told by the CIA officials at that meeting that they could not know why the CIA was following al-Mihdhar and the others that met in Malaysia? Do you know if that information was passed at that time and, if not, why not?

Mr. ROLINCE. No, sir. I was not at the meeting. I have talked extensively with our analyst that was there and, as my colleague noted, she is of the position—I know your staff has talked with her—that she in fact gave our New York agents everything that she had.

Senator LEVIN. She said that she did give——

Mr. ROLINCE. In other words, what was passed at that meeting——

Senator LEVIN. According to our staff report, he stated he could not share information outside of the CIA unless he had authority to do so. Do you know if that's accurate or not?

Mr. ROLINCE. No, sir, I don't know if that's accurate.

Senator LEVIN. Okay. When you said "she," that was an FBI analyst. You don't know what the CIA analyst said at that meeting.

Mr. ROLINCE. That's correct.

Senator LEVIN. Now we will move—and I have to rely on the staff report as being accurate, that there was a denial of information at that time—on to August 22. An FBI analyst assigned to the

Counterterrorist Center determined that al-Hazmi and al-Mihdhar had entered the U.S. in January 2000 and al-Mihdhar's reentry visa allowed him to stay until August 22, 2001. At that point they were watchlisted; is that correct, as far as you know?

Mr. ROLINCE. Yes, sir, that's correct.

Senator LEVIN. That was when it happened.

I think we have to know precisely, and perhaps we have to talk to the people other than the FBI agent who is here, who confirms what our staff report says, to the best of his knowledge. I think this is such an important question that if there is any difference on this from the staff report we should hear from the CIA. I would ask our CIA officer who is here to take that request back and, if there is a difference that that officer had recollection-wise as to what happened at that meeting, whether or not she did in fact refuse to let the FBI know in June of 2001 why the CIA was tracking these two men, why they didn't say at that time that we knew that these two men had visas to the United States. The FBI still didn't know that. That still wasn't on the watchlist, as of June 2001.

Now this is 16 months after the CIA knew that these men had visas to come to the United States, had entered the United States. Still, according to our staff report, there is this refusal on the part of the CIA to share this information. And this is critically important information.

I think that we've got to have accountability in the system, and that failure is massive. And if that information should have been shared and should have been shared a lot earlier and if watchlists should have been entered, if the FBI should have been notified—which it seems to me it's clear all that should have happened—then we've got to know who is responsible for those failures. If we're really going to break down walls, real and imaginary, we've got to have accountability.

If I have one minute left, I'd like to ask our FBI agent to tell us what happened on 9/11 as to what he tried to do and as to a passenger list, I understand—if this is okay and unclassified——

FBI AGENT. No. We had come back from the buildings all in a state of shock, and there was a briefing at that time by the analysts at headquarters over who was actually on the manifest. And when we heard the name Khalid al-Mihdhar, obviously I was upset, made no bones about saying the fact that I was upset. And I know the analyst was very upset also, so it wasn't just necessarily on one side. But it was in the afternoon during our conference call.

And I remember exclaiming that this is the same Khalid al-Mihdhar that we had talked about for three months, and I remember a supervisor at the time saying, and rightly so, that they had done everything by the book with regards to at least what the FBI could do based on current understanding of what the laws were, but at the same point in time realizing how ludicrous that statement sounded to me. It just didn't sit well.

Senator LEVIN. I know of the information being sought, there was no barrier to that information being shared, that these persons were suspected of being terrorists, that could have been shared with the FBI, and the fact that they were suspected of being in the

United States, that could have been shared with the FBI. I don't know of any prohibition in law in terms of messing up criminal investigations for that information, just that information, not to have been shared.

The reason that June meeting is so critical—there are many reasons why it's critical—but one of them is, Mr. Chairman, that al-Mihdhar was out of the United States in June of 2001 and he came back in, as I understand it, in July of 2001. If he'd been put on the watchlist then, at that June meeting, he could not presumably have come back into the United States, and I think that—you know, it's one thing to say that the dots weren't connected, and they weren't, even when there was an effort made to connect them at the June meeting. The effort to connect the dots was frustrated.

It's another thing when the dots aren't even put into the file, when the dots aren't put into the watchlist, and the information isn't even shared. That's even preliminary to connecting the dots, is simply to get the dots in place where someone can connect them. We didn't even see that. So we've got failure piled upon failure here, I believe. I hope there's going to be some accountability and some answers where there so far are none, but again I want to thank our witnesses, all of them, and I want to thank Ms. Hill and her staff for an extremely thorough report, which I hope will shake up some things.

Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator Levin.

Congressman Burr.

Mr. BURR. I thank the Chair. Let me take the opportunity to thank Senator Levin for a very thorough chronology. I think it's safe to say that all of us will deal in the same time frame, though we will choose specific areas hopefully to highlight and to detail. The work of the inquiry staff is in fact very detailed, but it's very helpful on many of these issues if in fact we can get as succinct answers from you on specific questions.

I'd like to personally start with the period December 1999, when al-Mihdhar and al-Hazmi are connected for the first time with individuals suspected in the 1998 East Africa bombings. It's this connection that suggests or exposes a plan to meet in Malaysia with a group of unknown individuals. On January 5 and 6 of 2000, as we know, these individuals did meet in Malaysia, photos were taken, numerous photos of the participants.

On January 8 al-Mihdhar and al-Hazmi departed Malaysia. After several days and additional stops, on around the 15th of January their direction was the United States, both with valid passports, both with approved visas.

Let me ask our CIA officer, were officials notified of al-Mihdhar and al-Hazmi's plans to enter the United States?

CIA OFFICER. As I noted in my statement, the answer to that is no. It's very difficult to understand what happened with that cable when it came in. I don't know exactly why it was missed. It would appear that it was missed.

Mr. BURR. The cable arrived what date?

CIA OFFICER. March 5.

Mr. BURR. What transpired between January and the transmission of that cable in March, that 60–day period?

CIA OFFICER. Maybe I misunderstood your question, I'm sorry.

Mr. BURR. You answered the question. This is a follow-up.

CIA OFFICER. Okay. In January they were the focus of the operational activity until they left the country for another country. I think it was the 8th when the sort of crowd broke up, the 8th of January. And then there was more effort to find out what they were doing next and to understand that. But I can't deal too much in the detail between what happened between that point and further on. We had the basic visa information on Mihdhar and that wasn't passed. And the focus is still on trying to find out what they were up to. When they arrived at the next destination we were unable to mobilize what we needed to mobilize.

Mr. BURR. At this time there was no attempt to put these individuals on the watchlist, correct?

CIA OFFICER. That's right.

Mr. BURR. No discussion. To the best of your knowledge, was the FBI ever notified?

CIA OFFICER. To the best of my knowledge, the intent was to notify the FBI, and I believe the people involved in the operation thought the FBI had been notified. Something apparently was dropped somewhere and we don't know where that was.

Mr. BURR. Was there any confusion over the connection of al-Mihdhar and al-Hazmi with individuals tied to the 1998 East Africa bombing?

CIA OFFICER. The reason that we were curious about them was that we were trying to understand their connection to the East Africa bombing structure. We didn't know what it was.

Mr. BURR. Well, we knew there was a connection?

CIA OFFICER. We knew there was a connection, an impersonal connection to the bombing structure, but—what you have is a hypothesis. You have them connected to part of it, so we have two first names and then we go off and we try and find out more about them.

Mr. BURR. I realize that from the chronology that Senator Levin had put together.

Let me ask this, though. Was there not an active investigation still under way into the East Africa bombing?

CIA OFFICER. Yes.

Mr. BURR. So the fact that these individuals were connected could have been and probably was pertinent to the current investigation that was triggered in 1998 with the East Africa bombing.

CIA OFFICER. Certainly. And I would submit that's why that information was documented saying it had been passed to the FBI, and I can't explain why it was not. But the intent was to pass it.

Mr. BURR. Okay. So in March 2000 we have two individuals, al-Mihdhar and al-Hazmi, with known connections to suspects of the East Africa bombings that have now entered the United States. They have been here for over two months. The FBI doesn't know that they are in the country. These individuals have not been added to the watchlist. Let me ask you, Mr. Rolince, whose responsibility is it to track and/or find these two?

Mr. ROLINCE. If we don't know that they are in the country, sir?

Mr. BURR. Correct.

Mr. ROLINCE. If I understand your question——

Mr. BURR. It's an easy one.

Mr. ROLINCE. We would have liked to have had that information. I accept the fact that someone thought that it was passed. It would appear, based on what we know now, that perhaps it wasn't. But essentially our counterparts at the CIA, any number of different services, both law enforcement and intelligence around the world with whom we work on a regular basis, if given the opportunity, would track those people.

Mr. BURR. In the absence of the verification of transfer of this information, the answer is nobody's in charge; is that correct? If the FBI does not know, if that information is not verified that it was transmitted to you, in fact you can't be in charge of tracking these folks.

Mr. ROLINCE. I agree with that, Senator, but I would also point out that on a regular sustained basis, because of my interaction with the Agency over the years and having a deputy from the Agency in my section, I don't want to discount the effort that they make on a daily or regular routine basis to track people that we, the FBI, are interested in.

Mr. BURR. And I realize that our focus here is on this one instance and I think we all know that there are success stories.

In June of 2000, al-Mihdhar departs the United States. He applies for a new passport. He applies for a new visa into the United States and he simply checks one box—I haven't had a visa. Mr. Kojm, is it that simple to create new paperwork, new documents, new official documents and to receive official entry into the United States, just by checking that little box, I haven't done this before?

Mr. KOJM. Congressman, that's a consular affairs question and I would like to ask a colleague of mine from the Consular Affairs Bureau to step up to the mike, if he can.

Mr. BURR. Very quickly, if we could.

Chairman GRAHAM. Under our rules, I would like to ask if the individual on whom you are now calling would please raise his right hand. Do you solemnly swear the testimony you will give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEER. Yes, I do.

Mr. BURR. Would you step up to the microphone as quickly as you can?

Mr. BEER. The question, sir?

Mr. BURR. The question was if this individual, in this case al-Mihdhar, simply checks the box that says I've never applied for a visa, yet he had, do we have a process to search and is it likely that that search took place in this case?

STATEMENT OF RICHARD BEER, DIRECTOR, COORDINATION DIVISION, VISA OFFICE, OFFICE OF CONSULAR AFFAIRS DEPARTMENT OF STATE

Mr. BEER. Well, we have an automated process to search to see if he had been denied a visa previously.

Mr. BURR. But if he had had a visa yet he checked, in this particular case, in his application that he had never applied for a visa, do we check for that?

Mr. BEER. At that time, no, there was no way to instantaneously verify that.

Mr. BURR. So he created, with the same name, ultimately the same birth date, a identical application. The only difference was he checked—I have never had a visa—and a passport and a new visa was processed for al-Mihdhar.

Mr. BEER. That's correct.

Mr. BURR. And in fact he came back into the country, correct?

Mr. BEER. Yes.

Mr. BURR. If he'd been on the watchlist, what would have happened?

Mr. BEER. When we ran the automatic name check at the time we processed the application the officer would have been advised by the results of that name check to defer all action and refer the case to Washington.

Mr. BURR. How about when he left the United States? If he was on the watchlist, would we have caught him leaving the United States?

Mr. BEER. I don't believe so because the INS normally does not check individuals upon departure from the United States.

Mr. BURR. To make things worse, in July of 2000 al-Hazmi files an application for a visa extension. That extension is for six months. He lists his real name. He lists his Lemon Grove, California, address. And that extension is granted. Am I correct?

Mr. BEER. I believe that would be the process. Of course extensions of stay for individuals already in the United States are the purview of the Immigration and Naturalization Service.

Mr. BURR. Would that extension have been approved if al-Hazmi had been on the watchlist?

Mr. BEER. Certainly if INS had access to such information at the time he adjudicated his request for an extension they wouldn't have.

Mr. BURR. Did INS have access at that time to watchlist information?

Mr. BEER. I don't believe so, but I can't say for sure. I don't believe so, no.

Mr. BURR. The INS at this point in time did not have access to check the watchlist individuals in determining visa extensions?

Mr. BEER. Well, they had access to it at the ports of entry when they are inspecting the individual for admission, but this is a different process, not at the port of entry.

Mr. BURR. So an individual in the United States that's on the watchlist could file for a visa extension and that extension be granted. Is that what you're telling me?

Mr. BEER. Well, again the INS would have to provide the definitive answer because they are the agency that handles extensions of stay for individuals already in the United States.

Mr. BURR. Let me just point out to the Committee and to the Joint Inquiry staff that this is something that we need a more thorough understanding. I hope that's not the case today. If it was the case then, then we had a tremendous flaw in our system.

Let me accelerate ahead, if I could, to the *Cole* bombing in October of 2000. Is it safe to say—to our FBI agent—this begins an exhaustive investigation?

FBI AGENT. Yes, sir.

Mr. BURR. In January 2001 the photographs from the January 2000 Malaysia meeting were shown to an individual who was frequented by the CIA and also by the FBI for their help. This individual identified one of the people in the photograph as in fact Khallad bin Attash, an individual that is now tied to playing a large orchestrating role in the *Cole* bombing to the FBI agent; is that correct?

FBI AGENT. Sir, I don't know about those photographs. We had two photographs of Khallad. One was a photograph that we had derived from investigation, and I understand your concerns and I can hear your voice trying to protect certain things about this with regards to source information. But that photograph, which was an identification photograph, was shown to the source and he identified the individual as Khallad. But the two photographs, the other two photographs were the photographs taken from prior meetings——

Mr. BURR. You are in fact correct.

FBI AGENT. I'm unaware of those photographs.

Mr. BURR. Let me ask our CIA officer if in fact that identification was made.

CIA OFFICER. I don't believe this has been declassified, sir, and I have a hard time talking about this in public. I'd be happy to talk about it in closed session in detail.

Mr. BURR. I will trust that you are accurate on that.

CIA OFFICER. As I said in my statement—maybe I can help with the answer a bit—as I said in my statement, we had intelligence that supported the hypothesis. It was not a confirmation; it supported the hypothesis. And in fact I would prefer to answer the rest of it——

Mr. BURR. Is it factual that we now have a photograph, a photograph that we know one of the individuals is Attash or an individual who orchestrated, we think, the *Cole* bombings?

CIA OFFICER. That was a different photograph.

Mr. BURR. I realize that. We have photographs that show Khallad bin Attash, as well as al-Mihdhar and al-Hazmi. Am I correct that there's a photograph with all three?

CIA OFFICER. Yes.

Mr. BURR. Did any of these three go on the watchlist at that time? Connections to the East Africa bombing by two of them and connections to the *Cole* bombing by a third, did any of the three go on the watchlist?

FBI AGENT. From what occurred, there were actually—it turns out, and I know my CIA colleague doesn't want to get into it too much—there's a little bit of confusion. There were four photographs that were taken out of a certain operation.

CIA OFFICER. Sir, this shouldn't be talked about in public. I'm sorry, it should not be. We can't go there.

Mr. BURR. I will move on.

CIA OFFICER. I apologize, but we just can't.

Chairman GRAHAM. Congressman, if need be we will arrange to have further exploration of this in a closed session.

Mr. BURR. I thank the Chairman. I will move forward. I think there is some confusion about specific photographs and I'm cer-

tainly not trying to go to any that aren't already known and part of in fact the Joint Inquiry investigation, but because there is confusion, let me move forward for the purposes of all the Members.

The fact is that at this period, though, we still have three individuals that are targets of investigations or connected to investigations that are not on a watchlist.

CIA OFFICER. That's correct.

Mr. BURR. Let me go to Mr. Kojm again. At this period, between the bombing of the USS *Cole* but prior to September 11, do you have any idea how many people went on the watchlist?

Mr. KOJM. I believe that information is in Ms. Hill's statement and if it were passed to me I can provide that to you.

Mr. BURR. While he's looking for that, let me move forward to May 2001. I am told that the May 2001 meeting between the CIA and the FBI where they shared photographs is in fact an area we can go to. Would the CIA agent agree?

CIA OFFICER. Yes.

Mr. BURR. Thank you. Was there any discussion or questions relating to al-Mihdhar or al-Hazmi at this meeting in May 2001 when these photographs were discussed? Let me ask Mr. Rolince that.

Mr. ROLINCE. I don't have the substance of exactly what was discussed in that meeting, so I don't know if al-Mihdhar and al-Hazmi were in fact topics of that meeting or not.

Mr. BURR. Do we have anybody here that was a participant in that meeting?

FBI AGENT. To the best of my recollection I believe I probably helped to organize the meeting. I don't remember if I was there or not. But the purpose was to start going over the—the FBI had some leads that they were interested in checking in the course of the *Cole* investigation, and so the Mihdhar and Hazmi thing resurfaced. And this was the beginning of the discussion between the FBI and the CIA that led to sort of the work between them to resurrect the file, which had been dormant.

Mr. BURR. On June 11, 2001, the CIA went to the New York office of the FBI and in fact passed on to New York agents, who led the *Cole* investigation—am I correct?

FBI AGENT. Yes, sir.

Mr. BURR. Again, these photographs were shown and discussed. The records shows that Mihdhar's name did come up, yet we are unclear in the context that it came up. Can you help to clarify that?

FBI AGENT. Yes, sir. When these photos were shown to us we had information at the time that one of our suspects had actually traveled to the same region of the world that this might have taken place, so we pressed the individuals there for more information regarding the meeting. Usually what I've found is coincidences don't occur too much in this job. Usually a lot of time when things are the way they are, it's because that's pretty much the way they are.

So we pressed them for information. Now the other agents in the meeting recall—one agent does not recall the name being given up in the big meeting—there were numerous sidebars that happened. Regardless of that, at the end of that meeting—some of them say it was just because I was able to get the name out of the analyst,

but at the end of that day we knew the name Khalid al-Mihdhar but nothing else. The context of that meeting was we continued to press them two or three times on information regarding why were you looking at this guy. You couldn't have been following everybody around the millennium. What was the reason behind this?

And we were told that that information—as I recall, we were told that that information could not be passed and that they would try to do it in the days and weeks to come. That meeting—I wouldn't say it was very contentious, but we certainly were not very happy, the New York agents at the time were not very happy that certain information couldn't be shared with us.

Mr. BURR. Let me, in an effort to acknowledge to the Chair that I see that my time has expired, with the indulgence of the Chair if I could use the opportunity to cover several more points without asking questions, it would be a very brief thing.

On July 13 I think it was an important day because in fact our CIA officer began to put some of the pieces together that had bugged him, and that led to finding some of the lost cables or the misfiled cables. That led to decisions, decisions that did put people on watchlists, decisions that did begin the ball rolling towards an all-out press by the Bureau to look for individuals that for numerous reasons we had not been able to raise to this profile at that time.

But yet in this period, even with the efforts, we overlooked simple things like the fact that on the application extension al-Hazmi had put his real California address, a starting point that might have led us to his movement somewhere else in the United States and potentially where he was in that two-week period.

It's important that we remember that our CIA officer said, in his testimony, that this had to do with the threshold for entering names on the watchlist, and I think it's incredibly important that everybody within the community, everybody who has the ability to enter a name on the watchlist understand what that threshold is. And if it's so damn high that what we've looked at in this investigation doesn't trigger getting over that wall and putting the name on it, then that may have been the first mistake in this overall process.

Mr. Chairman, you have been very generous with your time. I thank the witnesses for their willingness and I hope that the other Members can get into more detail of the last several months.

Chairman GRAHAM. Thank you, Congressman Burr, for excellent questions.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

The first thing I'd like to do is to thank the four gentlemen, five now, who are at the dais, both for their work on behalf of the American people and as representatives of the three entities now for which they work. I'd like for them to know how much we appreciate their work. I'd like to have them pass it on to the agents and officers in the field. It is very easy for people to be brilliant Monday morning quarterbacks after the fact, when we've gone back and tried to piece everything together, but when you are in the middle of a battle it's not always easy.

Everyone agrees that mistakes were made, that things weren't done that could have been done, and in fact some of you have indicated that was a great frustration to you. I suggest that, especially during the last decade, one of the reasons—and it's our job really to ask the reasons why—there are at least three or four reasons that our Committee has begun to come up with.

Obviously everybody can make mistakes. I make about 400 a day myself, and we will never change human nature. We will always make mistakes. But are there systemic things that resulted in more mistakes than should have ordinarily been made.

And a couple of things that we've heard from these witnesses here today point us in the right direction—one, a lack of resources—I'll get into that in a moment—and, two, risk aversion due to the creation of walls and misunderstandings about authorities. And, Mr. Chairman, to a large extent policymakers, including members of the United States Congress and the Executive branch, are responsible for both of those, and I'm going to get into that in a little bit too. So I just want to put that in perspective.

But there are two preliminary things I'd like to comment on. First, I want to note that I share Senator Shelby's concerns about sensitive information being revealed in these open hearings. Two of the witnesses have made the same point, one saying that our testimony will be studied by our enemies. And that's absolutely true. We are revealing in open session today a lot of information about how we operate which will be very useful to our enemies. That's not good and it's not necessary.

Specifically with respect to the witnesses before us today, they've all been interviewed by our staff and we've had conversations with some of them as Members. The story has been written. It was presented very nicely by the head of our staff here today. So this hearing is for show. This isn't to obtain information. Now there's a point at which it's important for us to present the information that we've derived to the American people, but it should be when we're all done. And it shouldn't be in a setting in which the witnesses are having to be very careful about what they say because they may say something that's classified.

The second thing I'd like to say is that there's been an implication that this Committee would be a lot more effective if only the FBI and the Department of Justice and CIA and others would just cooperate with us. Mr. Chairman, to some extent there may be some validity in some of that, but the other side of the story is that, as far as I know, they've been very cooperative and to some extent I think we're overreaching. Let me give you an example.

Reading through the clips of the Arizona Republic, my home paper today, "FBI Agent is Asked to Testify Publicly on Phoenix Memo," and I quote the story in part. "A joint House-Senate Intelligence panel"—that's us—"is calling Phoenix-based FBI agent Kenneth Williams to testify next Thursday for the first time publicly about his July 2001 memorandum warning that potential terrorists were attending U.S. flight schools. Senate Intelligence Committee Chairman Bob Graham also says the joint committee is intending to release its findings on exactly what happened to that memo after it was sent to headquarters in Washington. 'The report is done,' said Graham in an interview on Thursday." Going on down the

story, "Williams has already testified behind closed doors to the Senate Judiciary Committee."

We already have all the information that we can possibly get from Agent Williams. It is absolutely unnecessary to have him testify publicly. And yet this Committee is making a show out of it and the Department of Justice naturally is pushing back against that. Here's a letter dated September 17 from a representative of the Department of Justice to Chairmen Graham and Goss, and I just read in part from the letter. "Yesterday the FBI learned that the Middle East television network al-Jazeera recently broadcast the name and face of at least one FBI employee, Kenneth Williams, whom the Committee seeks to present as a witness at an open hearing next week. As you know, Agent Williams has been interviewed by the JIC staff and has provided a closed briefing to Members"—two of them, as a matter of fact. "Agent Williams recently asked that his concerns be brought to the attention of the Committee. His comments include concerns about the handling of his closed-door appearance before the committees' joint inquiry." And here's what he said: "Reporters showed up at the front door of my residence and my picture and personal information appeared in the national news. I can only imagine that a public session will result in even greater exposure. If the reporters could locate my residence, so could al-Qa'ida or any other terrorist organization."

Then the letter proceeds. "He also expressed concern for the safety of himself and his family, saying, 'I sincerely believe that my appearance in a public session would be detrimental to my personal safety and the safety of my family.' Nonetheless, Agent Williams concludes by noting his willingness to appear again before the Committees' Joint Inquiry in closed session to cover any issues left unresolved or that are newly developed since his last appearance." And he notes that and says he'd love to return and answer any questions we might have in closed hearing.

Part of this, in other words, is theater, and, Mr. Chairman, I just can't express strongly enough that we're asking these people to put their lives on the line and I think we ought to be a little bit careful about throwing around accusations that people are not cooperating with us when part of the reason is for their own safety.

Moreover, any disputes we're having about what's in the material that he produced, the so-called Phoenix memo, we know everything we have to know about that memo—and when I say "we," the public. The stuff that hasn't been declassified yet nobody needs to know. It's names, dates, places that have no bearing on the ultimate issue but are very important in the intelligence context. So I want to make that point to make it clear that there is a difference of opinion here about just what this Committee ought to be doing publicly.

Now let me get to the questions. As I said, it seems to me that there are two themes that derive from both our report and the witnesses who have been here, namely that we didn't have the resources to do what needed to be done and, secondly, there was a lot of confusion about what our legal authority was. I just now want to quote briefly from the testimony here, first with respect to the resource issue.

This is the testimony of our CIA witness. "What I will say here is that new procedures and training aside, they are also the kinds of misses"—the mistakes, in other words—"that happen when people who are very competent, dedicated people, such as CIA officers and FBI agents and analysts involved in aspects of the story, are simply overwhelmed. The counterterrorism business often does not feature a large team going after a single target but, rather, one or two officers juggling multiple activities against many people simultaneously, trying to make sense of what it means—which target deserves priority attention and balancing the interests of multiple stations, liaison services and other agencies."

Mr. Kojm said, just to quote one statement, "TIPOFF is now the focal point for entering Intelligence Community information on known or suspected terrorists into CLASS. However, TIPOFF is not adequately staffed to deal with the increased workload." He talks about the small dedicated staff frequently coming in after hours and nights and on weekends and so on.

In the testimony that was presented by our staff—and I'll just mention a couple of these—there are numerous references to the lack of resources. For example, "there were not enough people to handle CTC's workload at the time. As a result, informational cables such as the March 2000 message"—which was much the subject of our discussion here—"received less attention than action items. Several other employees told us that they typically did not even have time to read information cables."

Another: "We were told that the matter was dropped because the agent had to move on to other things." "New York FBI agents told us they tried to convince FBI headquarters to open a criminal investigation on al-Mihdhar given the importance of the search and the limited resources that were available to all intelligence investigations." We're going to get into that more in a little bit. I could go on and on.

Let me just ask the first question here because of a comment that the CIA agent here made during his testimony. We know that while we had some contact with these people while they were in Malaysia that thereafter there was less contact. I believe you testified, sir, that we were unable to mobilize what we needed to mobilize to remain—that was your direct quotation and I'll paraphrase—to remain in the kind of contact that would have been useful with those people. Is that an accurate statement of what you said?

CIA OFFICER. Yes.

Senator KYL. Is that an example of having resources stretched too thin to do the job that you would have liked to have been able to do?

CIA OFFICER. Unfortunately, not that particular instance. There was a separate reason for that. A larger part of the community wasn't able—they were busy doing other things related to terrorism. But I think——

Senator KYL. Well, excuse me. When you're too busy to attend to this because you're busy focused on other things it suggests that you are prioritizing.

CIA OFFICER. I guess what I'm saying is it wasn't necessarily the CIA's choice. It was not a U.S. choice.

Senator KYL. Okay. I know where you're going with that. But go ahead with the rest of what you wanted to say.

CIA OFFICER. That was it.

Senator KYL. Okay. Well, let me just ask you a general question, then, whether you found occasions in which the lack of resources inhibited you from doing your job. Start with the CIA agent.

CIA OFFICER. Yes. Thank you. I'm not going to make a speech, I promise. The lack of resources is critical, and if I could shift the context just a tiny bit, I made mention in my testimony of ten months of pounding in Afghanistan and yet we still regard al-Qa'ida as a threat. Before 11 September what the United States Government basically had overseas offensively were the resources of CIA, alongside the FBI in many cases, as though al-Qa'ida were only an intelligence problem.

It's fairly clear that the Director's discussion about declaring war on al-Qa'ida is not something that he's empowered to do officially by the Constitution. That choice remains elsewhere. Al-Qa'ida in fact had declared war on the United States and nearly sank a billion dollar warship in the process of doing that. What you had facing a vastly more effective al-Qa'ida, in other words, were a few civilians who were, as I've heard recently described, a platoon in a brigade-sized field and doing the best they can. So yes, there was a lack of resources.

Senator KYL. Just to any of the other witnesses, I quoted Mr. Kojm, who talked about his people being stretched pretty thin. Do any of you want to comment on this issue of resources?

Mr. ROLINCE. Senator, I couldn't possibly let that pass. I think, as my Agency colleague would attest, I spend a fair amount of time at CTC and he spends a fair amount of time in our headquarters. For a lot of different reasons, part of which are competing priorities but a big part of which is in the year 2000 and 2001 the FBI was not allowed to hire to attrition. We had more agents and manhours walking out the door than we had coming in. And you don't have to do the math to figure out that at some point in time that's going to have a deleterious effect on all your criminal investigations as well as your counterintelligence and counterterrorism investigations.

The support people in particular who have worked these attacks, and I think it's important to put into context not just the past three and a half years, but we talked about the Africa embassy bombings. If you start there, the same people responsible for investigating the Africa embassy bombings and then on to the deployment in Kosovo and the downing of Egypt Air, neither of which were terrorism but got handed to us, you work on up through the fall and the buildup to the millennium, you have people who literally are, as someone told me, just learned to work tired, and I saw it every single day.

I cannot pass up the opportunity to commend them and to state for the record for us, the American people, how much credit they deserve for this fight. They go months at a time without time off, long nights, long weekends, holidays, et cetera, without a single complaint by any of them.

You roll that on into the millennium event and it's another month without time off, and this is pertinent to the discussion

today because there is a tremendous effort under way to try to figure out whether or not Ahmed Ressam is tied to some other network or is this the kind of problem we're going to have to deal with in the future. And there's a hand-in-hand effort between the Bureau and the Agency and others around the world to try to figure that out.

We now know that that was going to coincide with a series of attacks in Jordan and the attack on the USS *The Sullivans* within a very short time frame, which would have stretched our resources incredibly. But they are patient. This is what they do for a living. But ten months later 17 sailors die when they find the opportunity to attack the USS *Cole.*

So you have all of those investigations, then leading on up into 9/11 being worked by an increasingly depleted supply of analysts, officers, agents, and managers. There are fewer FBI agents assigned on 9/11 worldwide to the terrorism problem than there were the week of the Africa embassy bombings. The Director has noted that. He's corrected that and we're going in the right direction. But I just think it's important to put that in context.

And if I could say one more thing, we talk about bin Ladin and we move forward from the embassy bombings. Don't forget about the people who died in ones and twos. Don't forget about our soldiers, our airmen who died at Khobar Towers, the Marines in the barracks bombing, Zack Hernandez, who died in Panama because he was an American soldier. Don't forget about the victims of 17 November that has gone on for decades with no resolution until recently, or the Americans kidnapped by Abu Sayyef and killed, and the Americans kidnapped by the FARC and killed. In addition to all that, five of your seven state sponsors counterintelligence responsibilities fall to that same international terrorism operations section.

They're working tired, and they're doing a heck of a job.

Senator KYL. I appreciate that very much. Very briefly, if others on the panel would like to comment, because I do want to go to the next subject. Go ahead.

FBI AGENT. Yes, sir. From a field agent's perspective I could probably talk for an hour on resources. The comment in there is mainly due to the fact that criminal resources and criminal agents, it's so manpower intensive, and with the possibility of somebody being let go because you missed something with regard to one of the trials, unfortunately our managers, I can only try to comprehend their job. They try to leverage our assets as best as they can. So most of the manpower ends up falling on criminal agents as opposed to intelligence.

Pragmatically, when I stressed that to headquarters, it was just as a matter of being pragmatic. This is how I know it's going to work just because of the fact that our intelligence investigators were absolutely overworked—less weekends off than I myself probably had in the last few years.

Senator KYL. And this is one of the reasons some people were trying to move the investigation into the criminal area from the New York office on Mihdhar, because of the greater resources in the criminal area than in the investigative area; is that correct?

FBI AGENT. Yes, sir. I would say a couple weeks later, after everything happened and we had ramped up where thousands of FBI agents all over the world were trying to find somebody, I thought to myself—and I don't necessarily know how to do it, but we've got to be able to get there—when we find out a Khalid al-Mihdhar is in the country, intelligence, criminal or whatever, we've got to be able to get to the level we were at September 12, the afternoon of September 11. We've got to be able to get there before September 11, not September 12.

Senator KYL. Let me go right to this. I'm obviously not going to be able to get into the second area that I wanted to, but this is important. Mr. Rolince, I think this question is for you because in your opening statement you talked about the desire to go to a criminal investigation, but you said we did not have specific credible evidence of criminal activity to do so, and that's FBI information. But what about the CIA?

If the CIA had been able to convey to you the information that they had, would that perhaps have sufficed to enable you to begin a criminal investigation?

Mr. ROLINCE. I'm not necessarily sure that it would, sir, only because in order to open that criminal investigation, that, just as a counterintelligence investigation, is regulated by Attorney General guidelines. And what we have, to the best of my knowledge, is an individual, two individuals of great interest to us at a meeting with another individual that you tie to the *Cole*. Can you make the inference that they are tied to it as well? Given what these people do for a living, you can probably suppose that, but I'm not sure that suffices to be specific and credible enough.

With that said, and in somewhat a disagreement with my colleague, resources in the New York office are larger than the resources anywhere else in the country, to include counterintelligence resources, so it's a matter of——

Senator KYL. Excuse me. But that was the headquarters for the terrorist investigation, wasn't it?

Mr. ROLINCE. It's a matter of management, allotting resources in accordance with the importance of the case. It's as simple as that.

Senator KYL. Believe me I'm not criticizing anybody for the management of what they have, but, as my colleagues here on the dais will attest, every time we go someplace and ask is there anything else we can do for you, inevitably one of the things is, well, we could at least use more help.

But was part of the problem here the fact that the CIA information could not be given to the FBI because of the wall. Your testimony is that these restrictions limited the free flow of information. You couldn't even for lead purposes get that information transferred over to you.

FBI AGENT. Sir, if I could comment on that real quick, because I was part of the conversation trying to get this information downgraded, what we will do is—FBI agents wear both hats, intel and criminal. Depending on what's given to us, we try to do whatever we can, even when we're on the criminal side, and we can go into more detail on that in a closed committee hearing. But, with regard to that, what our attempt would have been—and it might have been struck down, but even if it had all gone through we might not

have ever found Mihdhar beforehand—was to go to the CIA, have this information downgraded, take what we knew criminally from the *Cole* and go to a judge and say, this is what we have, judge, can you help us out here. We'll swear out what we know.

Senator KYL. At least try, in other words.

FBI AGENT. At least try to do it. And that was the main impetus behind going to them or at least bringing up the conversation of having certain information downgraded, realizing that we were in an exigent circumstance and this individual had come into the country.

Senator KYL. Well, I'll just conclude by saying that we need to get into this whole question of the risk aversion due to the either real or imagined walls—I shouldn't say imagined, but either proper understandings or misunderstandings about the application of the laws under which both FBI and CIA operated and the confusion and misunderstanding that resulted from that, and perhaps in some cases the inability to pursue things that might have been productive had they been pursued.

CIA OFFICER. Could I request a minute just to address this one issue, because it's come up about four times just as the light has gone red, and I'd really like to just address it for a second for the process part of it.

The New York meeting—as I think it's become clear through the Joint Inquiry staff, every place that something could have gone wrong in this over a year and a half, it went wrong. All the processes that had been put in place, all the safeguards, everything else, they failed at every possible opportunity. Nothing went right.

In this particular case—and that's one of the reasons why they have an exchange program at the management level between the FBI and CIA—is when there's an issue like this there are usually procedures for getting the information cleared rapidly. And as part of what was going on in the *Cole* investigation at that time, there were some other information not pertaining to photos, not pertaining specifically to Mihdhar and Hazmi, but pertaining to Malaysia that the FBI was attempting to get cleared to use in their interviews of various persons who could help them with the *Cole* investigation.

And what the Agency was trying to do was to get that stuff cleared, was to get it in a position where it could be used. What we were also, I believe, trying to do through that summer that culminated in kind of the rediscovery of the thing in July was to stimulate the dialogue between the FBI and CIA on this issue. Normally—and again nothing normal happened—but normally what happens is, if it runs into a conversation block where you have to stop, then you take steps to get it cleared and then it moves on. So the reluctance to pass the information was not a deliberate thing. It was, A, we didn't know if we knew at the time. So all of the information that could have been passed wasn't because we hadn't done it.

But also there was a movement the get it cleared to pass. It just didn't complete.

Senator KYL. Thank you.

CIA OFFICER. Thank you very much.

Chairman GRAHAM. Our next questioner will be Congressman Peterson, but, if I could, first, as a clock indicates we are working through lunch and we will continue until we complete the questioning. After Congressman Peterson has completed his 20 minutes as elite questioner, the question order will be Senator DeWine, Mr. Reyes, Senator Rockefeller, Senator Inhofe, Senator Wyden, Mr. Roemer, Mr. Bishop, Senator Feinstein, Senator Mikulski, Mr. Bereuter, and Senator Hatch.

I would like to make a couple of comments in reference to the comments Senator Kyl has just made, first about the open hearings. We have held ten closed sessions of the joint committee. Our first open hearing was held on Wednesday of this week and we have had now, with this hearing, three open hearings. It is a matter of judgment as to whether it was wise or not to have open hearings.

I believe that it is important and that it is a right of the American people to know what their government is doing, and those American people also include our colleagues, who have a right to know and to assess the severity of the problems to justify the reforms that I anticipate we are going to be recommending. So in terms of achieving one of our primary objectives, which is to reform the agencies where we have found that such reform is called for, the greater degree of public awareness and colleague understanding will enhance the prospects of accomplishing that objective.

I also believe that democracy is a public enterprise. It is not just gratuitously for theatrical purposes that most of the things we do are in the public. We believe as a society that the right to know of the public what their government is doing is a fundamental right. There are clearly areas in which there are other interests, including national security interests, that will require some modification of that broad principle. We are very sensitive to that. The statement that Ms. Hill presented today was the product of several weeks of close scrutiny by the agencies who had responsibility for classifying the information that appeared in the original report, and so the information that was presented today by Ms. Hill is information that the agencies believe no longer justifies being classified.

I will note that we have concurred with the final judgments of the classifying agencies. Where we have disagreed we have done so by respectfully noting those areas of disagreement but still complying with the declassifying agencies' judgments.

As to the security of agents, we are following a practice that has been used for many years in the United States Senate where there are important witnesses who also have a variety of security concerns, to do so in the manner that we are doing today with our agent from the FBI and officer from the CIA, and again this was done in consultation with the agencies and with the two individuals involved.

I recognize that all of those points did not come down from Moses with the tablets; they are matters of judgment, but we are trying to be as sensitive as we can to the concerns and are fully cognizant of the importance of all of our responsibilities.

Senator KYL. Mr. Chairman, might I just make one quick response, since you referred to my comments? No one disputes the

public's right to know. Our difference is merely one of how and when. There will be a final report. It will be made public. It will be as open as possible. We all agree with that. I hope my comments about the how and the when were not misinterpreted.

Chairman GRAHAM. Congressman Peterson.

Mr. PETERSON. Thank you, Mr. Chairman, and thank you, gentlemen, for your testimony and responses, and thank you for what you are doing for the country. We appreciate the job you're doing.

I'd like to first of all flesh out this watchlist issue a little bit. As I understand it, being put in the watchlist once you're in the United States really doesn't have much effect. Am I correct?

Mr. KOJM. That is correct. The TIPOFF watchlist is for visas and ports of entry. It's a border function.

Mr. PETERSON. And even if you leave the country there probably isn't any process to check at that point where it would have picked up these folks?

Mr. KOJM. Not upon departure, no.

Mr. PETERSON. And that hasn't changed. It's still the same today as it was September 11?

Mr. KOJM. Well, I believe there are some revisions that are in the works through the Immigration and Naturalization Service for certain individuals who will be required to check in with the INS on departure from the United States.

Mr. PETERSON. I don't know if any of you would know this. If somebody was put on the watchlist obviously at that time it wasn't made available to the airlines, local police, because some of these guys got stopped for speeding. Has any of that changed? Has this watchlist information, is it now being made available to the airlines, to local law enforcement so that they are alerted if somebody tries to—somebody is in the United States and they are traveling around and we know they are bad guys, there is some way within the country that we can pick them up and they don't either have to be coming in or going out?

FBI AGENT. To the best of my knowledge, just from an investigative standpoint, without going too much into detail to give away, there are some watchlists that are out there that are being used to try to do what you're talking about. I don't know how macro in concept it is or how interoperative it is with other watchlists, but there are things like that that are being utilized. And I would defer to my colleague from the FBI that might know more about such things.

Mr. PETERSON. Mr. Kojm apparently wants to say something.

Mr. KOJM. Two points to make. We do provide the unclassified data elements from TIPOFF to the Foreign Terrorism Tracking Task Force. That's an interagency group. INS and FBI are playing key leadership roles in that task force. We do provide that information to them.

In addition, we have provided now on a realtime basis, through INTELINK, a top secret SCI connection, to five sister Intelligence Community elements realtime information on everything that is in our data base, and that does include the FBI.

Mr. PETERSON. Well, I want to get a little bit into this whole issue of assembling this data and maybe focusing on what we're doing with data bases and technology, but finally in the summer

of 2001 our witnesses from the CIA and FBI took action to kind of pull all this stuff together. And once all the available intelligence was gathered together, the reaction is interesting and important.

When they see all the data together they realize that these two guys are connected to the embassy bombings through a UBL facility in Yemen, organized and attend a terrorist meeting in Malaysia, are connected with the planner of the *Cole* bombings, and have extended visas to the United States and entered the United States after the Malaysia meeting. They realize at this point that these two guys are dangerous and must be found.

It's at this point that the two suspects are placed on a watchlist and the FBI is asked to search for them in the United States. The obvious point is that a CIA officer and an FBI analyst pre-9/11 see the threat of the situation exactly as we do today, post-9/11. Their actions prove that. If only the CIA's data management system had permitted everyone to see all the data available, analysts and managers probably could have perceived the need for action on Mihdhar and Hazmi long before 9/11.

So our focus today on this matter is not—my focus is not a case of hindsight so much as trying to look at where we're going and whether we're making some progress. To kind of set the stage, I'd like to ask the CIA officer how hard it is or was to find and assemble intelligence data on Mihdhar and Hazmi. Was that an easy process?

CIA OFFICER. To reconstruct the file is not that difficult an issue if one has the time and the people to do it. The question—this is a difficult one to say just the right way but I'm going to give it a shot because it's important. There was a miss in January, there was a miss in March. We've acknowledged that. What happened after that was, I think in part, a function—stuff like that should normally emerge during the course of a file review, if something provokes the file review.

Once that file review is provoked, the information is readily recoverable. That's how I found what I found when I found it kind of thing, but the story kind of emerged in dribs and drabs because there was no one person who reconstructed the whole file.

Mr. PETERSON. And there were different people that saw this stuff at different times——

CIA OFFICER. Right.

Mr. PETERSON [continuing]. But it took quite a while before anybody pulled this together.

CIA OFFICER. Right.

Mr. PETERSON. So your current system, it seems to me that you've got a system that sounds like it's antiquated. It's still filed on a flat basis and it's not necessarily collated together. There is now technology where you can build a data file where anybody that looks at it all of this stuff is going to come up. And if you would have had something like that, somebody that wasn't even experienced, that if all of a sudden something went off in their mind to trigger this would see this because everything would pop up.

Are we moving in that direction? Is there going to be better technology put in place both in the CIA and the FBI to try to make sure something like this doesn't happen again in the future?

CIA OFFICER. I'm not actually qualified to answer the technology question. I'm sorry. I think others——

Mr. PETERSON. But you work with it now. Has anything changed from 9/11?

CIA OFFICER. I actually have no complaints about CTC's data system right now.

Mr. PETERSON. But you have to know how to go in there and what to look for and you have to actually be looking for something in order to——

CIA OFFICER. And you have to have a little bit of time to do it, and you have to have a reason to do that instead of something else. But the information is there. It's recoverable.

Mr. PETERSON. And it was there for 18 months prior to 9/11.

CIA OFFICER. Right.

Mr. PETERSON. And it took somebody who happened to remember something, who just finally put this together on August 23 that it seems to me didn't give us enough time by 9/11 to track these guys down. If this would have all come together earlier, we might have been able to track them down.

I guess my question is, why don't we have a system where this guy's name is in there and everything that comes in on this guy gets put into that file, so whoever accesses that name it pops up and it shows all this stuff in one place so you don't have to be a rocket scientist or you don't have to have been following this stuff to understand that when you see all this that this is a big problem?

CIA OFFICER. As I said, someone else will need to answer that question.

Mr. PETERSON. How about the FBI?

Mr. ROLINCE. I'm in total agreement with what you're saying and where you're trying to go. It dawned on me over the years, as we went from no relationship with the CIA to what I consider to be one that I would brag about and do brag about, anywhere, any time, but the exchange of personnel, which has done as much as it has, only gets us so far. The information exchange I think is the next piece.

The Bureau's technological woes are there. Our efforts to correct that are certainly well known to all. What I would personally like to see is an ability for analysts to exchange information and get able to get on that system within the operations center within the bin Ladin unit at headquarters, and access information that's available to their agency analytical counterparts.

I'd like to be able to e-mail my counterpart at the Department of Justice. There are a lot of things I'd like to be able to do. I think all of them are technologically practical. It's a matter of, I think, putting the time and the energy and the money and the smart people in the right direction. And I believe we're doing that.

Mr. PETERSON. Is that going on now?

Mr. ROLINCE. It's moving in that direction. I don't know how long it's going to take us to get there.

Mr. PETERSON. But as of today it's not too far from where it was on 9/11, apparently. As somebody who uses the system, it's not much different, is that what you're saying?

Mr. ROLINCE. As someone who uses the system, I would agree, but in terms of the progress being made——

Mr. PETERSON. There are probably some people working on this trying to improve it.

Mr. ROLINCE. Yes, sir.

FBI AGENT. Sir, if I may, in my experience just since September 11 there's a technological barrier but there is also still gatekeepers with regard to certain information. I'm not naive enough to think that the FBI should be privy to every ounce of information that is out there, but I try to think of it in simplest forms. The first day at Quantico or second day CIA handles world intelligence, the U.S. handles domestic intelligence. In today's, for lack of a better term, global village community, we've got to make sure that that domestic intelligence and world intelligence is transparent, both physically, technologically, and also in the mindsets of certain individuals.

So I don't think it's just a technological solution.

Mr. PETERSON. I understand what you are saying, and there probably would be some resistance. But I know enough about these data bases and computers to know that this system could be put together and could be shared by all of you. You know, we've been doing this for years, and you're not the only folks in government that have this problem. The USDA has this problem and all kinds of other people. I don't know how we fix it.

CIA AGENT. If I could, just one more thing, Director Mueller—I'm speaking now in my FBI hat, not in my CIA hat—has said several times, has basically described the objectives that he's taking the FBI toward, and I think it's critical to note that part of that objective is to transform the way the FBI handles its information, that part of its information that other agencies would define as intelligence. Intelligence is often collected as a by-product of investigations. And unless it's bottled and capped and distributed it may not be used.

So the challenge this Director has taken on and is moving the FBI toward is doing that with the FBI's own intelligence, and that's a critical piece of the bilateral flow because there's no reluctance, wall issues aside, there's no real reluctance on the part of counterterrorism professionals on either side to talk to each other about issues of common concern.

Oftentimes what you have, though, is this giant anvil of information going through the Cheerio of one person, and we've got to change that part of it in the computer system. You're absolutely right.

Mr. PETERSON. That's something that computers could be a huge help to get you sorted through.

I don't know if anybody can answer, but are you or are you considering making some of this information available to airlines, Mr. Rolince. This stuff on these bad guys, is that somehow or another transmitted to the airlines so they have some kind of a system that they pop up when they try to buy a ticket?

Mr. ROLINCE. I'm aware that that possibility has been discussed. How do you run the names of tens or hundreds of thousands of travelers, be they international or domestic, against the available data bases—be it a watchlist or your files on whom you have information that might be of interest to them in making the determination as to whether a person does or doesn't get on. I know it's being

talked about, sir. I'm not sure exactly where it is in terms of actually happening.

CIA OFFICER. I shouldn't speak for homeland security, but I know that that process is going on and that there are review and coordination processes that do go on so the airlines do get critical information, and they are improving that as they go.

Mr. PETERSON. As I talked about before, we had all this information out there and until somebody kind of remembered something that pulled all this stuff together, we didn't really realize what these guys—how bad these guys were and the threat they were. My question is, how many other people like Mihdhar and Hazmi are in the system? That's what concerns a lot of us.

Maybe you can't answer that, but are there other folks in there and is there any way that we can get them?

CIA OFFICER. That's an issue that does preoccupy us quite a lot and, as I said, we're doing the best we can to do that, through a variety of different means.

I think the thing that also bothers us a great deal is that other 16 were completely invisible, completely invisible. So there's a dual challenge there as well.

Mr. ROLINCE. Congressman, if I could jump in for a second, I was passed some information that goes to the heart of your question. Apparently the TSA, the newly-formed agency, maintains two lists—a no-fly list, which would be analogous to our armed and dangerous warning, as well as a selectee list of people that we have an interest in and we may wish to detain for questioning—and we do have the ability to contribute both names and information to both of those lists.

Mr. PETERSON. Mr. Kojm, you were acting like you wanted to say something.

Mr. KOJM. Yes, Congressman. You had asked about how many names there are in the system. We have 80,000. We're adding approximately 2,000 names each month.

In answer to Congressman Burr's question earlier, between the *Cole* bombing and September 11 we added about 4,000 names. And, as the staff report identifies, since September 11 our work is up about 450 percent. So there are a lot of names out there. We add them as best we can. We try to add them every day. We don't meet the standard of same-day data entry, but we aim to.

In relationship to the FAA, we do work with them and they provide data that we put in our data base, and we do respond to their telephone requests for name checks through Diplomatic Security. So we're in contact with them, but we would certainly concur with your observation that we need to have closer, better electronic contacts with FAA and other domestic agencies, and we are working with the homeland security people.

Thank you.

Mr. PETERSON. Thank you. Mr. Rolince, could you clarify for me how these cases are designated either criminal investigation or criminal investigation? Mihdhar and Hazmi in 2001 are known to be connected with people involved in the COLE and embassy bombings, which would appear to make them proper objects of a criminal investigation as potential material witnesses, but the headquarters was adamant that a criminal investigation was not war-

ranted. Can you explain why? Was it simply because all the data we had on Mihdhar and Hazmi at the time was from intelligence sources or what was going on there?

Mr. ROLINCE. That is the core element of the decisionmaking process, that the relevant information that came forward was in fact all in an intelligence channel, and the meeting that these individuals attended we did not have reporting on in terms of exactly what was said or transcripts of what was said, so although we certainly suspect, and rightfully so, that they were probably engaged in past and future acts, criminal acts, the information brought to us came essentially in total in the intelligence channel, so an intelligence investigation was opened.

You don't always have to have a parallel criminal investigation. And both criminal and intel are monitored, are regulated by the Attorney General guidelines. I think what's important is, do you have the ability to check every record, every source, DMV, local police, NCIC, past warrants, banks, neighborhoods, et cetera, within an intelligence investigation which mirrors what you can do in a criminal investigation, and the answer is yes, you do.

Mr. PETERSON. So I get a better sense, does that have a big part of the decision about how this gets structured where this comes from? Is that what you are saying? If it comes out of intelligence, then that's likely to push it to an intelligence investigation.

Mr. ROLINCE. It's likely, but if there is a logical reason or specific articulable facts out there that would also indicate participation in a criminal enterprise, then you go for the parallel criminal investigation.

FBI AGENT. If I may, sir, one point on that, because I was part of the conversation that took place with regards to opening a criminal or intelligence matter, not only did these things restrict us on what we can do today, but the possibilities of what might happen in the future also restrict us. The example that was given to me that day on the telephone was if we try to go criminally and we do not find this individual, if in the future we try to go with intel a FISA Court judge will say, hey, you struck out criminally; that's why you're coming to me intel-wise. So not only do we have to take a snapshot of what we look at now when we make these decisions but management is trying to project ahead.

Let's say we subpoena everything and nothing is in there. We can't find this individual. But we find him one day and we want to open an intel investigation, we're prevented from doing it because then the judge is going to say, you stuck out criminally; that's why you're coming back intel-wise. So that's just another thing that was used.

Mr. PETERSON. Well, unfortunately I've heard that story before in some other situations.

For you again, you wrote an e-mail that predicted that people would die and the public would not understand why every resource was not thrown at certain problems. What decisions would the National Security Law Division make today, given the same circumstances? In other words, have things changed over there?

FBI AGENT. I can't speculate. I know the walls have come down with regards to FISA information and the snowball effect that occurred after that. Where the wall used to be between criminal in-

vestigators and intel investigators, it's back where I personally believe it should be, which is between prosecutors and the FBI. In addition to that, with regards to the FISA information and direction of those FISAS with criminal investigators. So I have seen firsthand that that wall has come down and it's been a big help. That happened immediately following.

My recommendations from an agent's perspective, field agent's perspective, would be make sure those walls never go up again with regards to sharing information between at least different elements of an intel investigation and a criminal investigation.

Mr. PETERSON. Thank you. I thank the witnesses and I thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Congressman Peterson.

Senator DEWINE. Senator, before you start, I'm going to announce that as soon as Senate DeWine has finished his questions, the next questioner will be Congressman Reyes, but we are going to take a short break which will necessitate clearing the room so that the screened witnesses can have some mobility. So those of you who are going to have to leave, if you might get prepared because we'd like to make this break as short as possible.

Senator DEWINE. Thank you, Mr. Chairman.

Let me just first say how much we admire all of you and appreciate what you do for our country every day.

We've talked about a wall and, to our FBI agent, I hope you're right. I hope that wall stays down, and I think we in Congress have an obligation to monitor this and just make sure that wall does in fact stay down. I believe that part of the problem has been we really have two kinds of walls. One is a wall that's there to protect foreign intelligence sources and methods, and we all understand that. That has to be dealt with on a practical basis by those of you who are the professionals in the field. But other is a Congress-created law with the FISA wall.

I will say quite candidly that for many, many years we did not do our job in monitoring how that law was being interpreted by the court and how that law was then being interpreted down into the field. I think that's our responsibility. Mr. Chairman, I think that we began to change it and improve it with the PATRIOT Act. We came a long way with that. We now have had a FISA Court opinion which I don't particularly agree with, but at least it is a public opinion. And at least we can see where the Court is going. And, of course, there has been an appeal. I assume that the appellate decision will be public.

It will give us some guidance then to see where that court is going so that we can make whatever changes we think need to be made. So I think we have to follow what the Court is doing, see how it's being interpreted and also see how it's being implemented down into the field. And that's our obligation to do. I think, Mr. Chairman, we can do that consistent with national security concerns. It's our Committee's job; we ought to do it.

Let me just ask a question to our CIA officer. You've had, as all our witnesses have, great, great experience and great background. It's clear that you are a real expert in intelligence. You've had experience in the Counterterrorism Center. You now have testified

that you're a detailee to the FBI, so you've seen it in a sense from both sides.

Again I know you don't want to get into this in great detail in a public session, but do you have any guidance for us in regard to the Counterterrorist Center? How are we doing? What else do you need there? How is the interface between the FBI and the CIA coming? Does that need any more improvement? Just kind of give us, in the little time I have, a quick snapshot, if you could.

CIA OFFICER. It's going to be quick because I've been away from the Counterterrorist Center for quite some time now and they've evolved revolutionary, in a revolutionary way since I've left and certainly since September 11.

It's very difficult to talk about today's CTC in terms that are relevant to before September 11, because it is so changed. I don't know the details of all the changes. I think in terms of any recommendations that might be made, it might be better coming from somebody who is attached to it right now rather than myself.

As far as the relationship between CIA and FBI, there is a move afoot to exchange personnel between the two. That's critical that that continue and expand.

Senator DEWINE. Anybody else on counterterrorism? Any thoughts? Want to jump in?

FBI AGENT. I would say, just from my perspective, and stories that I hear is that we have come a long way. I think we need to go that much further, not only exchanging management but also exchanging the field agents at some level and guard against the fact that once an individual goes to the FBI or vice versa that individual becomes beholden just to that institution that they're going to, that they continue to be able to flow the information back and forth inside a system of checks and balances that allows that information to be shared between both organizations.

The first step might have been management. Maybe the next step is actual agents and officers from both sides being exchanged.

Senator DEWINE. Mr. Rolince.

Mr. ROLINCE. In other to do that, Senator—I totally agree with my colleagues—it becomes a resource issue. I know in talking to past chiefs of station, to include my friend Cofer, who is here, we have to be where they are in terms of going after the enemy. I know we'd like to all have officers and agents in everyone else's field offices and stations. That's not practical. But to begin to go down that road—I don't want to speak for my colleagues but I certainly think I can—we need more people.

Senator DEWINE. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you very much, Senator.

As previously indicated, we are now going to take a very short break. I'd like to ask if those who were asked to leave the room earlier, would they please exit again, and would Mr. Wolfe tell me when the room is clear.

[Whereupon, a brief recess was taken.]

Chairman GRAHAM. I call the meeting to order.

Congressman Reyes.

Mr. REYES. Thank you very much, Mr. Chairman. I appreciate the opportunity and also would like to echo the sentiments of my colleagues in appreciation of the work that you do for our nation.

I'd also like to comment, Mr. Chairman, that I wholeheartedly support open hearings. As I travel back to my district, I know there's been great anticipation about at least some component—two questions regarding 9/11. One is that we do open hearings so the rest of the public knows the work that we're doing, and the second thing is that there be a commission, an independent commission, that would look at this simultaneously or subsequently. So, for whatever it's worth, Mr. Chairman, I appreciate the opportunity to do open hearings.

I've got a couple of venues that I'd like to pursue. First of all, Mr. Rolince, do you agree with the FBI agent's statement that you could not pursue a FISA order after you have begun a criminal investigation? And the second part of that is, couldn't the FBI just disclose the criminal investigation to the FISA court and still ask for an order under FISA?

Mr. ROLINCE. The answer to your first question is I don't agree that you could never do it. I agree entirely that historically that has been a significant concern of the Department of Justice and of FISA Court judges in particular, and you've heard it said that there was a concern they were circumventing the judicial process or going around the Fourth Amendment. For the record, sir, I've been doing this 28 years, and I can't cite a single example of an agent trying to circumvent the process in order to get a FISA just so he or she could get criminal information, and I would hope that that would never happen.

To answer your second point, yes, you can do that. What they want to know in total is the extent to which you had conducted any prior criminal investigation, and those were some of the errors cited that you heard referred to recently, whether either through omission or a poor record check or whatever there had been a prior criminal investigation or perhaps a concurrent and that wasn't reported. And it needs to be. It has to be so that the judge can make a decision based on the totality of the facts that we bring forward.

But yes, if we had a criminal investigation of someone, let's say for something totally unattached to a subsequent intelligence investigation, we would make a strong argument, especially if you had the probable cause for that FISA, essentially that that was then and this is now. You would have to make the argument that that criminal activity has nothing to do with the intelligence information available to us and our belief that we have probable cause to in fact obtain a FISA.

Mr. REYES. Any comment?

FBI AGENT. No, sir.

Mr. REYES. Thank you. The other question I have is, why couldn't the investigation of Mihdhar been folded under the *Cole* criminal investigation? You know, one of the things that to me makes sense is that it was suspected that he was an associate of the lead planner of the *Cole* attack. Weren't associates of Khallad investigated in the *Cole* investigation as well?

FBI AGENT. Sir, I believe with regard to—and I confuse this all the time and it's taken me years—there's Khalid al-Mihdhar and Khallad. Khallad is actually one of the individuals that was the mastermind behind the *Cole*. Khalid al-Mihdhar is one of the individuals that he was going in fact to meet, unbeknownst to us at

the time. So we didn't know that Khalid al-Mihdhar was a mastermind behind the *Cole*. The only information we had is that he might have been meeting with one of the suspects of the *Cole* in a far east country, and opening a criminal case against him we had to show that criminally.

There's two separate things I've learned, unfortunately, as an agent, you might know something to be true but being able to show it criminally, to open a criminal case and intel are two separate matters. So I hope I answered your question with regards to that.

Mr. REYES. Yes. And only because my time is brief I want to leave that and go to Mr. Kojm.

Can you tell us how the TIPOFF program is funded?

Mr. KOJM. Yes, Congressman. It's funded entirely by the Bureau of Consular Affairs. In essence it's a service that INR provides to the Consular Affairs Bureau and it's funded by machine-readable visa fees.

Mr. REYES. So the obvious question is, if it's an integral part of this nation's ability to identify terrorist, why isn't it part of the regular budget process so it can be done adequately and successfully?

Mr. KOJM. Well, this is a question that we are wrestling with, and the senior leadership in our building has addressed this question as well. We are seeking to identify other sources of funds for what we believe is becoming a national program.

Mr. REYES. And where would the national data base be located? In particular, I have advocated, and the Chairman knows, advocated to consider the Intelligence Center, who already does a lot of this and is well known nationally and internationally for that capability.

Mr. KOJM. We have approached the Director of Central Intelligence. We believe funds that he controls would be very helpful in support of this intelligence function. We do believe that it is proper to maintain TIPOFF's strong and close connection in support of consular affairs even as it needs to take on additional purposes for a national mission.

Chairman GRAHAM. Thank you, Congressman.

Mr. REYES. Thank you, Mr. Chairman.

Chairman GRAHAM. Congressman Roemer. And then the next questioner will be Senator Feinstein.

Mr. ROEMER. Mr. Chairman, I want to begin by thanking you too for your expert sense of fairness and balance in conducting these hearings. I just want to say that I think it is critical from a perspective of the jurisdiction of this committee for us to do our work. Much of it will take place in private, but some of it should take place in public, and you have held off on the public settings to get the right balance, to make sure that delicate information is protected, and that sources and methods are protected, and I think you have done an expert job on that front. I hope we continue to have that balance and to have public hearings so that the American people can get the information so that they can feel more comfortable with access. So thank you again for your balance in this.

Mr. Kojm, I come back to one of the most disturbing things that I've heard today, and there have been a litany of disturbing things. But one of the most disturbing for me is the fact that a couple

years ago you could be in America, you could be on a watchlist, you could apply for a visa extension, and get it. Is that true?

Mr. KOJM. Congressman, I'm going to ask my colleague, Richard Beer, from Consular Affairs, to help you with that question.

Mr. BEER. Again, to make the distinction, this application from someone already in the United States to extend their stay is——

Mr. ROEMER. Is it true? I only have about four minutes. Is it true that you could do that prior to September 11?

Mr. BEER. Yes.

Mr. ROEMER. So you could be on a terrorist watchlist, you could simply apply for extension, receive the extension and stay in the United States for whatever your visa extension was permitted.

Mr. BEER. Yes.

Mr. ROEMER. Has that been corrected?

Mr. BEER. That I'm not prepared to answer. I don't know what the Immigration Service is doing now in terms of checking the watchlists.

Mr. ROEMER. So a year and a few weeks after September 11 we still cannot answer the question of whether or not that deficiency has been addressed?

Mr. BEER. I can't answer that. The Immigration Service can answer that.

Mr. ROEMER. Can anyone in this room answer that? Well, I would hope we would get an answer to that question very quickly, and more so than an answer to that question, a way to solve the problem so that one of the places for a terrorist to be safe is not in the United States of America.

I want to ask our dedicated people here from th FBI and the CIA—thank you again for coming today—to the CIA officer, I want to ask, I've had concerns about not enough emphasis on analysts. You and your good work at the CIA put some clues together, I understand, in May of 2001, after the situation had been missed for a while. You started a ball rolling.

It's my understanding that with the clues finally put together in May of 2001 that was turned over to an analyst, who then put it together by August of 2001. Is that correct?

CIA OFFICER. Not entirely. There was a small team probably working this of separate people. There is an analyst. There is also an FBI analyst detailed to CTC who is working on this.

Mr. ROEMER. So there was an analyst from CIA and an analyst from FBI?

CIA OFFICER. Within CTC, and then they were working with their colleagues at the FBI.

Mr. ROEMER. My question would be, sir, how many analysts did we have working this in CIA, all together—the total number of analysts in CTC in May of 2001?

CIA OFFICER. I don't have an answer for that. I was at the FBI at the time. I would say roughly—again, as I said before in my statement, what you don't have is a large team working a single problem. Here you have people who are working multiple problems coming together periodically to look at this.

Mr. ROEMER. I understand. My question, though, is how many analysts are working UBL in CIA and how many analysts are working UBL at FBI? It is my understanding from a previous hear-

ing that there was one analyst at FBI working UBL full-time; is that correct?

Mr. ROLINCE. If I can take that, Senator, that is not correct.

Mr. ROEMER. How many were there?

Mr. ROLINCE. Going back to the fall of 1999, when the decision was made to create the Counterterrorism Division separate from the old National Security Division, there was also a decision taken to create an information resources division. It was not necessarily popular, but the theory held that if you wanted to do strategic intelligence we need to have the majority, if not all, of the analysts in the FBI in one division.

I understand that an analyst within that division was working strategic intelligence. In the immediate aftermath of the Africa bombings we created a bin Ladin unit, and it is within that unit, the only unit at headquarters that is responsible for one group and one group only, that initially four, in addition to several investigational operational specialists, work with the agent supervisors and the unit chief in the UBL.

Could we use more? I think I made that case, and we certainly could, and we would certainly hope for your support on that.

Mr. ROEMER. I know my time has expired and the Senator from California has waited patiently for her turn, but, Mr. Chairman, I would hope, since we've had a host of different answers to this question over the last several days, that for the record we could get with certainty how many full-time analysts were working the UBL situation for the FBI, how many for the CTC within CIA, and how that had changed over this critical three-year period.

I thank the Chairman.

CIA OFFICER. I would just like to add to that that it's also critical that we understand what we mean by an analyst, because there are a lot of different functions these people perform, depending on where they work. So some people are analysts working in an operational capacity, some people are analysts who write memos for the President, some people are supporting operations. They are performing an analytic function, but it's different. It is a very difficult question to answer in general, and there are a lot of other people working in the bin Ladin issue that are not analysts, who perform a similar function in terms of operational guidance and targeting and that kind of thing.

So it is a hard question to answer directly.

Mr. KOJM. Excuse me, Mr. Chairman. I did want to respond to Congressman Roemer's previous question. I have at least a partial answer. Every name in the TIPOFF data base and every new name that is put into the data base is run against records of visa holders, both current and expired. If any name is a match, we initiate a revocation process. So if it's in our data base and they are a visa holder and we believe they are here, we provide that information to domestic law enforcement.

Chairman GRAHAM. In reference to the question about personnel, on June 18 of this year Senator Shelby asked Director Tenet to provide numbers relative to the personnel within the CIA committed to various functions, including the Usama bin Ladin account. On August 28 the Joint Inquiry staff reiterated that request for a detailed breakdown of personnel who were focused full time on bin

Ladin, those whose responsibilities involved work on al-Qa'ida on a less than full-time basis.

We have not yet received a response from the CIA on either of those two requests, and I would particularly reference that to the representatives of the CIA.

I have asked Ms. Hill if we could make the same request of the FBI so that we will have comparable data from the two agencies.

Mr. ROEMER. Thank you, Mr. Chairman.

Chairman GRAHAM. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I think Congressman Roemer raised a good issue, and because some of us worked on the Border Security and Visa Entry Reform Act, we just pulled the law. As you know, there wasn't an interoperable data base. The law provides that now there should be one. Whether all the security data bases provided for in this law are now operable is a question I'd like to ask.

Mr. KOJM. Senator, is that addressed to the Department?

Senator FEINSTEIN. If you don't mind.

Mr. KOJM. I can answer that in part, and that is that we do provide data to the Foreign Terrorism Tracking Task Force. We began providing data on all of the unclassified elements of every individual in the TIPOFF data base, so that is provided to domestic law enforcement.

Moreover, we do provide——

Senator FEINSTEIN. Is it provided to INS so that if an individual asks for an extension on their visa and they are in the watchlist that INS has that data at their fingertips now?

Mr. KOJM. INS would have access to that information through the Foreign Terrorism Tracking Task Force in which INS is an integral member. That is my understanding, Senator.

Senator FEINSTEIN. I think we ought to check that one out.

Mr. Chairman, I just wanted to state publicly—and then I wanted to ask the two agents a quick question—the one thing that comes through to me very strongly from the staff report is how easy it is for those who would do us harm to use our system falsely, to game it to get into the country, and how much they knew about our system.

You know, it's amazing to me that when the expedited access program went into play in May of 2001 the very next month five of the hijackers avoided a personal interview by using that speedy access system in Saudi Arabia, which has been since, as I understand it from the staff report, done away with.

They knew how to get multiple-entry visas. They knew how to get a new passport to avoid saying where they traveled and how often they traveled. Six of them knew they could go to a bank and actually make up a social security number and that the bank wouldn't check that number, which they did do and an FBI agent came in, as a matter of fact, my subcommittee in Judiciary, came in and testified to that.

So I think what we really need to know is that we've really got to keep going over our systems and making recommendations of how they can be strengthened to avoid just this kind of thing.

I wanted to talk for just a moment with the two agents, if I could, about the wall, because this is something that many of us

on Judiciary have been interested in. As you well know, it involves FISA. In the PATRIOT Act we made a couple of amendments. We changed "primary purpose" having to be from an intelligence point of view to a "significant purpose" being from an intelligence point of view. And we also enacted a section which is called the New Coordination Provision that provides for coordination in the law with law enforcement.

I want to just read to you a couple of the points and see if you believe it covers what we need to cover. In other words, the FISA Act is amended by adding federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title "may consult with federal law enforcement officers to coordinate efforts to investigate or protect against actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, sabotage or international terrorism by a foreign power or an agent, clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent, and coordination authorized under other sections."

So clearly there is a very clear consultation that is permissible now under FISA between the Intelligence Community and the so-called Title III law enforcement community.

My question to you—and I'm sure you've probably reviewed this—is, do the agents for the most part that you come into contact with believe that this is a significant improvement and that that wall—you mentioned something about the wall being broken down—is down sufficiently so that you're not hampered when you have to perform one of these investigations?

FBI AGENT. Yes, Senator. With regards to some walls, that wall, it definitely has helped. I will submit to you that since the enacting of the PATRIOT Act, which I requested a copy so I had it in writing, I have read on more than one occasion to some individual that was attempting to withhold information from me, just what you just read right there. So old habits die hard, I think, with regards to certain things. It has certainly helped to this point.

With regard to the other wall that Senator DeWine had mentioned earlier, I believe there are so many different types of walls with regard to intelligence and criminal, but with regards to the FISA specifically that one seems to have helped. With regards to what Senator DeWine talked about, the other wall, we still have to deal with that on pretty much a daily basis.

Senator FEINSTEIN. Because we just had a hearing in Judiciary and the Justice Department, as you know, the FISA Court, I think only for the second time in its history, had just produced an opinion saying to the Justice Department, where they tried to sort of entirely break down the wall in terms of the application for a FISA process, that the significant purpose test remains. And the Justice Department apparently did not want it to remain. The FISA Court had an unanimous opinion. That opinion is now on appeal.

Do you have a view on that subject?

FBI AGENT. No, ma'am. I think there is some document that I was handed within the last week that talks about that specifically, and it's going to be circulated to the field, but I don't have any knowledge of that.

Senator FEINSTEIN. Thank you. Does the other agent have any knowledge of that?

CIA OFFICER. I'm from the CIA and most of this is Greek. Sorry, with all respect, I don't.

Senator FEINSTEIN. Well, it still is, to some extent, with me.

Mr. Rolince, do you have a view on that?

Mr. ROLINCE. Senator, let me start at the beginning and move forward. I'm not a legal expert. As you know, Spike Bowman, the Deputy General Counsel, will be with you next week to walk through this. But unquestionably the concerns that my colleague raised about the issue of opening criminal or intel goes by the wayside with the PATRIOT Act, and it's probably one of the most substantial positive changes that you could have put into place to allow us to move information as quickly as we possibly can in situations like that.

In addition to that, the change from a two-pronged test to just relevancy in order for us to get national security letters, pen registers, information like that, is also a help, as are the expanded time frames for which the FISAS on both United States persons and non-persons are in effect.

There is one area that we're still in debate on, and that's our ability to use the roving. We're trying to work through that. We would like in counterintelligence and counterterrorism the exact same capabilities we have if we're working public corruption or organized crime cases. I think there's still an issue to be worked out there.

Finally, as regards the last piece, my understanding of it is the degree to which criminal prosecutors will be able to guide, direct, and manage the FISA process, and I think that is part of what is still being adjudicated, if I have it right.

Senator FEINSTEIN. Thank you very much. Thanks, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Senator Shelby.

Vice Chairman SHELBY. Mr. Chairman, I'll try to be brief. The witnesses have endured a lot with us today and we appreciate that.

I want to add the fact that the FBI agent and the CIA officer, we appreciate what you are doing, and we want you to continue to do that, but we should give you the tools and the resources to complete the job. I think we understand that.

This is directed to the Bureau. As I understand it, al-Mihdhar and al-Hazmi did not use aliases when they were in the U.S. They lived in San Diego under their real names, signed rental agreements, and one even obtained a California motor vehicle photo ID card. According to your testimony, the CIA told the FBI that it was interested in these two terrorists as early as January 2000. In March the CIA apparently learned that the terrorists had entered the United States.

If the FBI had known that these suspected terrorists were in the U.S., would it have been difficult to track them down, given that they were living entirely at that point in the open? You recounted that after the CIA told you in August of 2001 that these two should be watchlisted, that the FBI tried to locate them in New York and Los Angeles by searching for them under their real names.

Did anyone at the Bureau think to use the Internet to conduct a national search for them in local phone books and other public records or commercial data bases? Further, if the CIA had watchlisted these two terrorists in early 2000 and they had been identified at the border or if the FBI had managed to find them living openly as they were in San Diego, might you have been able to conduct some surveillance or something of them?

You know, I know a lot of this is hindsight, but as we look back I think it's worth bringing up, especially to where they lived in the open. They were living under their own names.

FBI AGENT. Yes, Senator. I will say as part of that conversation I talked to Congressman Reyes about, I was told that my name specifically could not be on any paper regarding al-Mihdhar or in the future we would lose that. But the night of September 11, I submitted a request at that time to our information center, technology center, and they came back within hours with at least one address with regards to Khalid al-Mihdhar in San Diego through public resources.

Now I will caution, saying that the names are unbelievable dealing with sometimes, with just a name that it's difficult to just take a name and run it back. But it turns out that what came back with regards to that address was an accurate address for him in San Diego. That was part of my concern voicing with regards to intelligence agents and their case assigned, was that it was probably going to be assigned, at least initially, to not enough people. The guys that were trying to track them down were busy with all the advance techniques at the time to try to get a hold of them.

Vice Chairman SHELBY. It goes to resources too, doesn't it?

FBI AGENT. Yes, sir.

Mr. ROLINCE. It is speculative as to exactly what would have been done had we found him. Let me just put it in a context. As of September——

Vice Chairman SHELBY. Well, I put it in that context, because I think it's fair to do that.

Mr. ROLINCE. I was interested to know just how many people are out there that we are looking for, and I asked. Ironically, as of September 1 there are 7,295 FBI fugitives, most of them probably in this country, on whom we have process. Sort of a sobering thought that there are in excess of 830,000 local, state and federal subjects who are being looked for for various number of crimes.

With that said, had we been able to find them, there would have followed, I think, a pretty serious debate on exactly how far do you take this. The reason that we put people into the watchlists and data bases is, quite frankly, to keep them out. So if now you find yourself in a position where a serious terrorist is in the country, I'm speculating but I don't believe we would have followed, monitored, covered, ad infinitum. A point in time would have had to come where probably seventh floor decision makers would have said, like we did in recent cases of people who we have arrested coming into this country, stop him, pick him up, question him.

Vice Chairman SHELBY. Well, that's a judgment call and we understand that. Sometimes it's the right thing to do. Sometimes we find that you stop them and arrest them too fast.

One last comment, Mr. Chairman, if you will indulge me. Yesterday we had two former national security advisors, Mr. Sandy Berger and Mr. Brent Scowcroft. M. Scowcroft is no stranger to security knowledge of the world, but his statement that concerned me but didn't shock me said—and I'll try and paraphrase him; I hope it's verbatim—that basically the safest place for a terrorist anywhere in the world is in the United States of America, and that concerns us all, and it should concern the CIA and the FBI and all the local people and the citizens.

We know we have a challenge ahead of us, and we know we've got to have you to meet that challenge. Thank you, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I think these have been very, very useful and serve, I think, a variety of purposes, and I think that the two co-chairmen of this committee have been extremely careful in making sure that everything was cleared, that everybody was secure. I think it's been quite flawless that way.

I think all Americans, all government officials, all people who do public service and others who just might be well known are at risk. When I was first confronted with this I wasn't enthused about the idea of public hearings, but I have changed a bit because I think that's one way one educates not only the American people but, frankly, the Intelligence Community as a whole, as well, as Chairman Graham said, our colleagues.

And the end process here is really to make it better and more efficient for all of us so that there is less frustration and so that we develop an ability to dialogue with each other, that you are more confident the system is working which protects and helps you and propels you forward in your work rather than the walls and all the rest of it. So I'm glad of these hearings and I congratulate Chairman Graham and Chairman Goss.

My two questions are very simple. One is to you, Mr. Kojm. You talked about, I think, a 455 percent increase in the TIPOFF data base and the committee added some money for this program for fiscal year 2003 in, I think, the intelligence authorization bill. That doesn't mean it's happened yet.

In view of what you told us this morning, does that in fact give you what you need? If you say 455 percent, people say wow. It needs, however, in view of what you, Mr. Rolince, just said in terms of 7,000 or 8,000 people at loose in this country, not necessarily all terrorists but people that have committed serious crimes, to be within a context. I need to have a sense of satisfaction that if this money is forthcoming it will be sufficient to your purposes.

Mr. KOJM. Senator, thank you very much for the question. I hope it's not any misimpression that I left, but the nature of the 455 percent really is the increase in our workload since September 11. Our funding would be as follows. Prior to September 11 the program was funded at roughly a little over $1 million a year. Obviously——

Senator ROCKEFELLER. I've rather reversed the tasks, have I not?

Mr. KOJM. The funds have increased some, but not proportionate to the work. With the support of——

Senator ROCKEFELLER. Well, let's talk about that, because that makes my question much more important.

Mr. KOJM. Funding since 9/11 increased to slightly over $3 million, so it's a significant increase in a tiny program. But it is not sufficient to the workload. At the worker level, we would believe that funding ought to increase several-fold to accomplish this task. Within the State Department, the source of funding for TIPOFF heretofore has been machine-readable visa fees. What has happened since September 11 is those fees are going south and have decreased and the requirements for those funds, because State is a player in homeland security, particularly with Mexico and Canada, the funding requirements are going north.

So this is why our senior leadership has been in contact with the Director of Central Intelligence about a significant increase in resources for what is a national intelligence mission.

Senator ROCKEFELLER. Any response?

Mr. KOJM. Yes. I think we can say there is considerable interest and a favorable disposition, but to speak beyond that I really can't, Senator.

Senator ROCKEFELLER. Understood.

There was some discussion not only in Ms. Hill's excellent report this morning but also among the five witnesses that are before us, or at least four of them, about walls, lack of communication. This is the essence of everything. It's the whole concept of how so many of our national security agencies have their own campuses. Senator Graham and I were talking and we were talking about going abroad somewhere. Going abroad could be visiting within a six-mile radius of the United States Capitol, visiting sort of different cultures, different people that speak different languages or don't speak to each other or have bad histories or whatever.

A lot has been written about the NSA. The NSA is not famous for sharing information. I just am interested in terms of whether—I might ask that of our two gentlemen that I'm looking at now. Have you had any problems with that from them, the sharing of critical information?

FBI AGENT. Before September 11, thrown into this whole FISA question was the question of whether or not we could read SIGINT. What happened was criminal investigators were prevented, before 9/11—and again the only way I can describe it in this short time period is a snowball event—that they could not read any SIGINT because of the fact that some of the information that was being fed to them and that they were utilizing was FISA-derived information. The NSA had decided that all information then, and since it's possible that some criminal investigators might read FISA information, that all criminal investigators cannot read any SIGINT whatsoever.

So prior to September 11, besides not being able to talk about the information that we've already talked about here today, no criminal investigator was able to read any SIGINT information. And that was, in my personal opinion, way too high of a wall with regards to that, because that was something that we relied on from a perspective just to kind of point us in the right direction, if you will, realizing at the same time we knew, any criminal investigator six months out of Quantico realizes you can never use that information

in an affidavit or a subpoena or anything like that at all. And that wall has come down, but there is rumors that it might go back up with regards to SIGINT information since a lot of it is derived or could be derived from FISA.

So that is a part of the problem, too, and I think it is a good thing, Senator, that you brought that up, because criminal investigators need to be able to look at that information.

Senator ROCKEFELLER. Since I'm not looking at the lights, I don't know whether or not the red light is on.

Chairman GRAHAM. It is, Senator, and it has been.

Senator ROCKEFELLER. But I had such a good short question, quite extraordinary.

Chairman GRAHAM. Because we are compassionate, go ahead.

Senator ROCKEFELLER. It really is short and it's to both of you gentlemen. Is there a general sense in each of you that what happened on 9/11, and whether or not this open hearing was a happy or unhappy event, the fact that so much attention has been focused, the fact that people are talking about communication, walls and all kinds of things is important? You know, NSA was No Such Agency for years and maybe some people are beginning to learn about it.

Is there a sense that there's a brighter future out there, or the "overwhelming" factor that one of you used, does that predominate? Are you looking, do you think, at an improving situation? Do you feel that the Congress and your superiors and those that you work with are going to be able to do their work better because of the attention post-9/11?

CIA OFFICER. I will basically just say that the comment that I hear most often, without having a personal opinion about resources at this point, but the comment I hear most often from working level people on both sides of CIA and FBI involved directly in the bin Ladin business is when, with a panic-stricken look in their eyes, saying we're going to miss stuff. We are missing stuff; we can't keep up.

So I believe the—I know that resources are being shifted to meet this and they continue to be shifted. I know that technology continues to be modified. And sort of the nightmare scenario is that the modifications and the resources won't get there in time. We also understand that we can't do this in five minutes. We can't fix it in five minutes. But I will tell you right now from the front lines that the feeling is one that there is just too much information still to handle and not enough people to do it.

Senator ROCKEFELLER. So foreboding?

CIA OFFICER. Yes.

FBI AGENT. I would say most field agents are still frustrated. They realize we've come, with regards to FISA issues that we've discussed, with the wall being re-set down, that we've come a long way. But we also realize with the magnitude of what happened September 11 and trying to prevent that in the future we need to go further. We need to make sure that all the walls that we talked about here today continue to come down and that when information is compartmentalized that somebody's accountable for that, why that reason is, to all agencies, not just the FBI or CIA or anything.

So we have some sense that we have made some progress but, Senator, in my estimation, just from being where I am, is that we need to continue that and go a lot further.

Senator ROCKEFELLER. I thank you and I thank both Chairmen very much.

Chairman GRAHAM. Thank you, Senator Rockefeller.

I am going to have to leave. I am turning the chair over to my colleague, Congressman Goss. I would like to express, as so many of my colleagues have, our appreciation of your participation but more so the long service that each of you have given to the American people. We are deeply in your debt.

FBI AGENT. Thank you.

CIA OFFICER. Thank you.

Mr. ROLINCE. Thank you, Senator.

Chairman GRAHAM. Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman.

Gentlemen, I was able to add an amendment to the intelligence authorization and I think you're aware of it, those of you at State, to create a terrorist tracking system, a terrorist tracking system. Particularly given what we heard from Ms. Hill today, it seems to me just stupefying to hear today that a year after 9/11 discussions are essentially only under way. That's how it's constantly described—discussions are under way. But here Ms. Hill today has outlined all of the problems that were associated with some of the past failures.

In the intelligence authorization the leadership in this Committee worked very closely with me so that we're trying to do it in legislation. I think the question I would ask, Mr. Kojm, is what is it going to take to actually get this done? I mean, we've got the documented failures. We've got a bipartisan effort in this Committee to be supportive of your agency and others. I think I'd like to begin by having you all just give me a sense of what it is going to take to actually get this done?

Mr. KOJM. Senator, thank you for your question.

I think the short answer, with all due respect, Senator, is funds. And the Department does not have them. Consular Affairs has funded this program almost in its totality from the outset. It does not have the funds to provide for this purpose. For this reason, the senior leadership at the Department of State is seeking funds from elsewhere, from the DCI. And we believe that will be forthcoming. But beyond that I really can't speak in detail.

Senator WYDEN. I think that is a legitimate concern, but when I heard Eleanor Hill this morning and I discussed it in the past, I've not had cited as a primary reason for this a lack of funds. I mean, what we heard this morning is that it just seems like somehow the left hand is reluctant to share with the right hand or they simply don't know about it. I'll be very supportive of the request for additional funds, but I will tell you the more I learn about this the more convinced I am that there are a set of forces operating in the various agencies that have responsibilities here in the law enforcement and intelligence agencies.

And I'm just committed to getting to the bottom of this so it happens. You have a commitment on my part, and I know from others,

for the necessary financial support, but I didn't get the sense, listening to Ms. Hill, that the central problem was funds.

When you talk about a national lookout center, how would that work and what agencies and levels of government ought to have access to this information?

Mr. KOJM. Senator, thank you. I think to help in responding to your question it's useful to just enumerate how tiny the TIPOFF program is. We're talking about five federal employees, six full-time contractors, three part-time contractors, and some computer support people. It is a tiny program.

To fulfill the purpose that you have stated and which we believe it needs to fulfill as well it needs to become a much larger entity, and it needs to have representation from other agencies. As my colleagues have spoken about how it's so critically important for FBI and CIA to live and work with each other, we believe as well that for a national watchlist center to work effectively it would need representation from CIA, FBI, NSA, Transportation Security Administration, FAA, Immigration and Naturalization Service, Coast Guard, probably other agencies that I haven't named.

Senator WYDEN. How many more people do you think are needed to do this right?

Mr. KOJM. It is a planning figure. If our current number is eleven, it would be several times that number, probably less than 100, but it would be considerably more than are now present. I hope I've made clear in my testimony that this small number of people cannot do 24 by 7 work. And that is one of the initial requirements, that we need to have a 24 by 7 presence rather than calling in people, as we do now, at every odd hour to come in and handle a case.

Senator WYDEN. With the passage of the legislation—and, as you know, we consulted with a variety of agencies that you mentioned—how soon could we get this in place, particularly if the funds are forthcoming?

Mr. KOJM. Well, planning is under way. We do believe that within a year, certainly within two, we can have a center that we believe is equal to the task.

Senator WYDEN. I hope so, because I know that when I went home after we dealt with the authorization and people would ask what was going on, I said I had worked very closely with my colleagues on a terrorist tracking system, essentially something that very much is structured along the lines of TIPOFF. They say, good job, Ron. They say why do we need something like that? Why wasn't something like that in place by December 1, a few months after September. And it is very hard to give an answer to that question, particularly when you listen to some of the comments of Ms. Hill today, who basically took sort of step by step how somehow some of these people who could inflict such harm on this country somehow fell between the cracks.

And you are forced to conclude that we just can't make the wheels of government, with all of the inertia that seems to accompany it so often, work very well. I want it understood that I'm very much committed to your getting the resources that you need. I hope that you will continue to work with us to try to refine the legislation, because in effect our TIC system is on all fours with what is now considered the TIPOFF program, and I want to leave here

this session with a sense of how on a date certain we're going to have this expanded program in place.

Because to hear Ms. Hill, to hear what we heard today, Ms. Hill outlining all the problems, and then to juxtapose that alongside the testimony, well, discussions are under way, I just think we've got to work together and do better. And I'm committed to making sure that the Congress gets you the tools and you give us your sense of what it's going to take to get an expanded program in place quickly.

Thank you, Mr. Chairman.

Chairman GOSS [presiding]. I wanted very much to thank the United States Senate staff here and the joint staff who made this work, and particularly our witnesses today. It's been extremely helpful for several of our objectives. The staff has inevitably given me a couple of sweep-up questions, which I will try and get properly stated. Mr. Rolince, I think they are probably both for you.

The first, and it had occurred to me myself as you were talking: Is it ever possible to open a criminal investigation on an individual if the only information comes from intelligence?

Mr. ROLINCE. Yes, sir. If that intelligence information touches on criminal activity, then it becomes incumbent upon us to go back through the system to see—in fact, we do this with the British all the time, to give you a classic example—go back through the security services to see if they can't give that same information to Scotland Yard or to the police so that they can pass it to us in a criminal channel and we can open a criminal investigation.

So yes, that is possible.

Chairman GOSS. It is possible. It did appear from the way the statements appeared today that it's a bit of a hindrance, however, this whole problem that has been brought up before us. One of the things that occurred to me, if I were a defense attorney, I would be doing my darndest to try and predict that my client really shouldn't be here because much of this is coming from intelligence sources and it's not a criminal deal. I can understand your problem. It sounds to me like that's something we as a society and Congress perhaps as a lawmaking body is going to have to deal with. Do you disagree with that?

Mr. ROLINCE. I don't disagree with it. I would tell you from my past experience that, lawyer jokes aside, the competence and quality of people within our organizations and within many, many districts—and I would certainly highlight the Southern District of New York and Eastern District of Virginia—in past dealings are smart enough to get us through those problems.

Chairman GOSS. That is good. I think what we need to be reassured is that if there is some piece of legislation that's in the way or some regulation that's in the way that is causing people who are out in the field who are testifying here today, causing the frustrations we've heard expressed, that we need to take the appropriate action. It would be fixable, in my view, and should be fixed if it continues to be a problem.

Mr. ROLINCE. I appreciate that, Senator, and the legal counsel division representation here and I'm sure next week we will be happy to talk more on that subject.

Chairman GOSS. Thank you. I will not hold it against you that you called me a Senator. I am a mere Congressman.

Mr. ROLINCE. Sorry, Congressman. My apologies.

Chairman GOSS. The second question also occurred to me but it's a very good question. In the *Cole* investigation I think my colleague Mr. Reyes asked this question about Khallad bin Attash during the investigation. I think there may have been a mistake with Khalid al-Mihdhar, and I just want to make sure I understand this and understand the reasoning of it.

My guess is that it was known to the FBI in June 2001 that Khalid al-Mihdhar was an associate of Khallad's. Is that accurate?

FBI AGENT. No, sir. Based on our knowledge, no, that was not accurate. We had reason to believe that another suspect that was traveling to deliver money to Khallad had actually met with Khalid al-Mihdhar. We can go into that in detail in a closed session. But as of that time we did not. In fact, that's the type of thing that we were absolutely looking for in that meeting. That would have been a home run for us.

Chairman GOSS. That was my assumption, and my thought was that you actually had the association. Had you had the association, you would not have run into all these problems in that meeting; is that correct?

FBI AGENT. Well, I don't know. I don't want to speculate, but it would have kicked it up to the notch of certainly a higher level and maybe allowed other avenues for us to pursue.

Chairman GOSS. What I think our staff is trying to understand is, as you are pursuing a particular case and in the expansion of that case following it where it goes, are there hindrances that need not be there once you've got the green light to start down that case every time a new name comes in.

FBI AGENT. With regards to certain information, just from my standpoint as a case agent, yes, there are hindrances. Some of them are there for very good reasons. What we need help is just making sure that the criminal agents are aware of all U.S. Government information that is out there regarding the people that they're trying to pursue criminally and through intel investigations within the Bureau, if that answers your question.

CIA OFFICER. Could I contribute two cents from the CIA side?

Chairman GOSS. Of course.

CIA OFFICER. And having observed this from the FBI side as well. First, in the order of events I don't believe it was rediscovered because it had been lost in kind of the file that Khallad was suspected to have been at that meeting. I think that was not in anybody's head who was up at this meeting in New York. That didn't resurface again until later. Had it resurfaced, it would have immediately been passed to the Bureau.

And in general, speaking as somebody who has been doing this kind of work for a long time, working with the FBI on terrorism cases, I arguably should probably know better, but in general what happens is that when a CIA CTC person deals with the FBI on a terrorism issue, they don't distinguish between criminal and non. They just say you're my FBI counterpart; here's the information. Or they pass it formally.

So I would just again caution that there's a difference between—that there's not a CIA policy so much that I'm aware of to refrain from passing to certain parts of the FBI information in general unless it's specifically noted right there and there's a clearance process. But when you're doing operational coordination, I know in the *Cole* bombing nobody ever stopped to ask, excuse me, are you a criminal, we can't give this to you. It was very much, you know, this is the *Cole* bombing and how can we help.

So what happens at one meeting, maybe we should just be a little cautious about generalizing to practice I guess is what I'm trying to say. Thank you.

Chairman GOSS. Well, I think that's a very good observation. I think there may be a general observation that's more relevant, and that is there probably is a greater difference in the Washington area. In the headquarters area these distinctions are made with greater attention to detail than they are in the field, where you're really doing the urgent and necessary work in a very different climate, which we understand. I'm trying to make sure that not only is the cooperation in the field working but that we are not creating any impediments to that cooperation back home, because I think we all understand there is a healthy friction between the field and headquarters.

CIA OFFICER. And I do have to say this and I'm violating my own common sense by going too far, I think, but I will say it. The key area to look at here, having watched the amount of pain that my colleagues in the FBI go through on this subject, is the FISA process. Without being an expert in the detail, that is the key domestic pain issue that I see at FBI headquarters.

Chairman GOSS. Well, you've noticed Congress has taken a cut at that already and we didn't get it exactly right the first time, apparently. The courts are suggesting some things. So this is not a closed book by any means. But I think we share the frustration and agree with the observation.

I had a question for Mr. Kojm, and that is basically this. Even if we had watchlists that had the right criteria that stopped a lot of these people trying to come in legally, would we then have solved the problem of would-be terrorists or others coming into the country illegally?

Mr. KOJM. Mr. Chairman, the answer I think is clear. We would not. It clearly would be helpful to have comprehensive data bases with excellent information and low thresholds for inclusion of information, but if you enter the country illegally you would not be captured in any way, shape or form by such a process.

Chairman GOSS. And then you would have to break a law, presumably, to come to the attention of the law enforcement authorities.

Mr. KOJM. That's my impression.

Chairman GOSS. Since we don't have any intelligence activity in this country, that seems to be where we are, which is a very interesting question for us to ponder as we go forward.

The last question I had I wanted to state in a cultural way. We've heard a whole list of reasons why the system doesn't work up to the expectations we all had to prevent a 9/11, and there's quite a number of them. They're all justifiable in terms of what

things can go wrong, do go wrong. I think the most impressive to me is the continuous statement about how overwhelmed our people are, don't have time to do their job—it's not just resources; it's time as well—that the regulations sometimes, the death of common sense actually did happen—it died. The guy in New York who wrote that book was right that the regulations go haywire on us.

The culture is another area that I'm very concerned about. I know that there are many who feel that the culture of the Intelligence Community is compartmentation and need to know, and that in its own way seems to run directly counter to coordination and sharing information. On the other hand, I well understand in law enforcement prosecutions are a great way to get career advancement—successful prosecutions. So we've got a cultural problem to deal with too, and we don't want to take the esprit away from anybody on the one hand, but we've got to work better efficiencies on the other.

Assigning priorities to resources is an incomplete skill and science, it seems, and I know quite often that agencies don't get the same satisfaction out of OMB that they'd like to get, and we on the Hill have different points of view sometimes about both what the agencies and OMB think. The management decisions we find unevenness in management and in some cases brilliant management, in some cases not so brilliant, failing to recognize changed times and changed threats.

Communications requirements, which go beyond culture into technology, secure communications and personnel exchanges we've talked about. All of these things are fixable and all of these things need to be fixed for America, who it's our mission to provide the greatest amount of security for. And for you folks doing the work, I want to assure you the whole purpose of these 9/11 joint investigations for us is, to the greatest degree possible, find out what we can do better so we can fix it. That is not going to be done in one set of hearings. It is going to take continuous time. So do not feel that when we put the gavel down to close this hearing that that's the end of this. It is going to go forward, because until we finish the process of making the fixes we haven't done our job.

I want to thank you very much for your part in that today. If there's no further comment, we will call this session adjourned.

[Whereupon, at 2:55 p.m., the Joint Inquiry hearing adjourned.]

JOINT COMMITTEE HEARING ON THE FBI'S HANDLING OF THE PHOENIX ELECTRONIC COMMUNICATION AND OF THE INVESTIGATION OF ZACARIAS MOUSSAOUI PRIOR TO SEPTEMBER 11, 2001

TUESDAY, SEPTEMBER 24, 2002

U.S. HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE AND U.S. SENATE, SELECT COMMITTEE ON INTELLIGENCE,

Washington, DC.

The committees met, pursuant to notice, at 10:10 a.m., in Room 216, Hart Senate Office Building, the Honorable Porter Goss, Chairman of the House Permanent Select Committee on Intelligence, presiding.

Senate Select Committee on Intelligence members present: Senators Graham, Shelby, Levin, Rockefeller, Feinstein, Bayh, Edwards, Mikulski, Kyl, Inhofe, Hatch, Roberts, and DeWine.

House Permanent Select Committee on Intelligence members present: Representatives Goss, Bereuter, Castle, Boehlert, Gibbons, Hoekstra, Burr, Chambliss, Pelosi, Harman, Roemer, Boswell, Peterson, and Cramer.

Chairman GOSS. I call to order the joint inquiry of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

Good morning, ladies and gentlemen. This is the fourth open hearing by our committees as they conduct their joint inquiry into the Intelligence Community's performance regarding the September 11 attacks. The committee has also held 10 closed hearings.

Today's hearing will be in several parts. First, the committees will hear from Eleanor Hill, staff director of our joint inquiry, who will present a staff statement on this portion of our inquiry.

We will then ask the press and the public to leave the room while we prepare it for our next panel of witnesses. I will explain the purpose of doing so after the room is reopened for the testimony of that panel.

It is our intention to conduct as much as we can of today's hearing in open session so that the full Congress and the public will have the benefit of the testimony presented here.

In the event it is necessary to take up some other matters in closed session, the committees will act under the applicable House and Senate rules to complete the hearings in closed session.

Is Ms. Hill here? Thank you.

The Moussaoui investigation and the Phoenix communication, the subject of today's discussions, each raise significant questions in their own right. However, for several reasons we have decided to approach the two issues in one hearing.

Both the Moussaoui investigation and the Phoenix communication were handled by the same unit in the FBI headquarters. Both matters came to FBI headquarters attention in the summer of 2001, at a time when the Intelligence Community faced an increasing number of reports of imminent al-Qa'ida attacks against U.S. interests.

At this hearing, we want to explore whether the FBI's investigation of Mr. Moussaoui in the summer of 2001 was focused only on investigating a potential specific crime concerning him, or whether the FBI also worked to identify any linkages between or among separate investigations.

Finally, we are interested in whether anyone at FBI headquarters connected Mr. Moussaoui, the Phoenix communication, the possible presence of a Kahlid al-Mihdhar and Nawaf al-Hazmi in the United States, and the flood of warning about possible terrorist attacks during the summer of 2001. Members will recall we had an extensive discussion on Mr. Al-Mihdhar and Mr. Al-Hazmi last week in our public hearings.

I am now going to ask my colleagues for their opening remarks. I start with Chairman Graham of the Senate.

Chairman GRAHAM. Thank you, Chairman Goss.

I would like to say how pleased I am with the progress of our public hearings, how grateful I am for the outstanding work that has been done by the special investigation staff under the able leadership of Eleanor Hill. The staff's work has contributed to a significant expansion of knowledge of knowledge of the tragic events of September 11 by the public, by the Congress, and especially by the members of the House and Senate Intelligence Committees.

We are, without a doubt, better positioned as we look ahead to the third and what I consider to be the most important responsibility of this joint inquiry, recommending and advocating the reforms that will be necessary to allow our Intelligence Community to detect, deter and disrupt future terrorist plots against our citizens.

I would like to take a few moments at this fourth public hearing to address an issue about which there has been considerable public comment and some confusion. That is the question of the continued classification of the identities of recipients of key intelligence documents.

As Ms. Hill told us last week, there has been objection to the public identification of which documents were received by the President. I would like to make several points.

One, the joint inquiry committee has possession of these documents or the information upon which the documents were predicated. The committee also has knowledge of which documents were distributed to whom, including which were distributed to the President.

Two, the documents themselves have been declassified in whole or in part. What has not been declassified are the specifics of what

documents were shared with the person who held the office of the Presidency.

Three, this policy is being applied to all Presidential communications in all administrations. The policy is applicable, as an example, to the documents that were or were not presented to President Reagan, to President Bush, to President Clinton and to the current President Bush. In other words, the exception being claimed is not peculiar to this President but applied consistently to all occupants of the Oval Office.

Four, we are continuing to pursue this matter with the National Security Council and the Director of Central Intelligence. We are encouraging the National Security Council and the Director of Central Intelligence to either rescind this prohibition or to provide a written statement of policy and rationale which will be understood and accepted by the American people and Members of Congress as worthy of this restriction. To date, that written statement of rationale has not been provided.

It is my position that this material should be declassified. I believe that there should be a presumption that this information is important to the public's understanding of and confidence in the management of the Federal Government. All of us are privileged to serve in public office. We are accountable to the public. It is also essential to the accuracy and completeness of the historical records in this important chapter of our Nation's history.

So today, Mr. Chairman, I urge the National Security Council and the DCI to reconsider or to provide us with the rationale for a continuation of this policy of non-declassification.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Chairman Graham.

I now turn to the ranking member, Ms. Pelosi.

Ms. PELOSI. Thank you very much, Mr. Chairman.

I, too, want to join you and Chairman Graham in commending Eleanor Hill on the Senate side here, Eleanor Hill, for her excellent work and that of the staff.

I proceed very cautiously with my next statement because I take it very seriously, and I don't want it to be misunderstood. But I want to express strongly my opposition to the continued refusal of the administration to declassify which senior government officials received certain information referred to by Ms. Eleanor Hill in her public statement on September 18.

In my judgment, the information at issue meets none of the criteria for proper classification. The disclosure of the information would not affect national security. The DCI's apparent unwillingness to declassify this information is a grave mistake, which will undoubtedly further weaken public confidence in the entire classification system.

Far too much information is classified, even though it might meet classification standards. To classify for the wrong reasons when security is not at stake, when nothing of substance is really at stake, undermines the willingness of the American people to put their faith and trust in their government. Especially at this time in our history, that is not an outcome which anyone should want.

The committees have procedures to challenge this decision. I know that our distinguished chairman has asked the DCI and the

NSC to reconsider their decision. I am saying, Mr. Chairman, that it is time to consider seriously using the procedures these committees have to challenge the decision.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you very much, Ms. Pelosi.

I would just add that I expect a timely answer; and I will share the answer I get, of course, with the members of this joint panel.

The Vice Chairman, I now turn to Senator Shelby.

Vice Chairman SHELBY. Mr. Chairman, I will not have a written statement, but I would like to associate myself with the remarks of Senator Graham and Congresswoman Pelosi regarding this information. I think that we need it. I think there is no reason to keep it from the public and go from there.

You know, as Senator Graham said, we already have the substance of it in our possession. It is just a question of moving forward. Thank you.

Chairman GOSS. Thank you, Senator Shelby.

Today's interim statement of the joint inquiry staff will address the FBI investigations of Zacarias Moussaoui and the FBI's handling of the Phoenix electronic communication as it is called.

With respect to the Moussaoui investigation, because of the pending prosecution, Ms. Hill's statement and the testimony of the witnesses will be limited to the FBI's investigation of Mr. Moussaoui prior to September 11, 2001; and I believe Ms. Hill is going to have some recent information on the limits of how far we can go today in her opening statement.

Ms. Hill, before I ask you to proceed, I will ask unanimous consent that the full opening session staff statement for this portion of the inquiry be placed in the record, that a staff statement containing classified materials and any other matters not made public at this time be placed in a classified or otherwise nonpublic portion of the record, and that Chairman Graham and I, acting jointly after consultation with Ranking Member Pelosi and Vice Chairman Shelby, be authorized to place in an appropriate place in the record classified and unclassified exhibits that are designated for inclusion by the staff director of the joint inquiry or any member of the two committees.

Senator KYL. Mr. Chairman.

Chairman GOSS. Senator Kyl.

Senator KYL. Mr. Chairman, I have no objection, but I would like the record to note that the matter that the four of you just spoke to is not a matter that has been discussed by the full membership of the committee. Therefore, at least I, for one, am in no position to judge whether the requests that you have made are warranted or not; and I think the record should reflect the fact that that, therefore, is a request of the four Chairmen and Vice Chairman, not of the membership of the committee as a whole, at least if and until we are ever in a committee session where we can discuss that.

Chairman GOSS. Thank you, Senator Kyl. Point noted, and I will assure you that Senator Graham's remarks about getting something in writing is an effort so that we would have a base document that we could all share and deliberate over.

Mr. ROEMER. Mr. Chairman, parliamentary inquiry.

Mr. Chairman, based on the bipartisan remarks that we have heard from the so-called big four, who have all voiced concern about the administration's failure to declassify this, is it your intention on the House side, Mr. Chairman, to engage this process before the full committee, a debate and a vote on the declassification in the Intelligence Committee before it would proceed to the House under Rule 10?

Chairman GOSS. I believe that I have an understanding of the membership that there is a consensus at this point that we should see if there is a reasonable justification to keep this material from the public.

If there is not, I think we will understand that we are going to get the material to the public.

Mr. ROEMER. So it is my understanding then, with that answer, if the Administration responds to you in the negative, saying that they stand by their initial decision to keep this classified, then you would bring this before the full Intelligence Committee——

Chairman GOSS. Oh, yes.

Mr. ROEMER (continuing). For discussion and debate and possibly a vote?

Chairman GOSS. It will certainly come to the Committee, either in separate form of the House and Senate or jointly or both.

Mr. ROEMER. Thank you, Mr. Chairman. I strongly agree with that. Thank you.

Chairman GOSS. Thank you.

Any further parliamentary inquiries?

There being none, we will proceed.

Good morning, Ms. Hill. We welcome you.

Ms. HILL. Good morning.

Chairman GOSS. The floor is yours.

[The prepared staff statement follows:]

The FBI's Handling of the Phoenix Electronic Communication and Investigation of Zacarias Moussaoui Prior to September 11, 2001
Eleanor Hill, Staff Director, Joint Inquiry Staff
September 24, 2002

Introduction

Mr. Chairmen, members of this Joint Committee, good morning. I appreciate the opportunity to appear before the Committees once again. At our last hearing, we discussed information the Intelligence Community had available prior to September 11, 2001 regarding the September 11 hijackers. Today, I will discuss:

- The July 10, 2001 electronic communication (EC) from the FBI's Phoenix field office to FBI headquarters," also known as the "Phoenix memo"; and

- The investigation, prior to September 11, 2001, of Zacarias Moussaoui.

As I mentioned in discussing our work concerning the September 11 hijackers, I want to again emphasize the significance of these areas when viewed collectively. Three areas were available in the same section at the Federal Bureau of Investigation's (FBI) headquarters in late August 2001. Two of these areas were addressed in the Director of Central Intelligence's (DCI) Counterterrorist Center (CTC) at approximately the same time. No one apparently saw the potential collective significance of this information, despite the increasing concerns throughout the summer of 2001 of an impending terrorist attack.

The Phoenix Electronic Communication

The Joint Inquiry Staff's interim statement to the Committees on September 18, 2002 discussed the indications of an impending terrorist detected by the Intelligence Community in the summer of 2001 and the warnings that intelligence resulted in. In that same timeframe, an FBI special agent in the FBI's Phoenix field officer generated a document that has been subsequently described in media reports as the "Phoenix memo." It is known within the FBI as the Phoenix Electronic Communication, or "Phoenix EC." "EC" is an FBI term of art. ECs are the primary type of document used by the FBI for internal communications. In this statement, we use the terms "Phoenix memo" and "Phoenix EC" interchangeably.

The Joint Inquiry Staff reviewed the Phoenix EC and its handling by FBI headquarters with the following questions in mind:

- What did the EC say?
- Why did the special agent write it?
- Who handled it within FBI headquarters and what reaction did it elicit?

- Does FBI headquarters' handling of the document illuminate any broader, systemic problems within the FBI?

Introduction

On July 10, 2001, a Special Agent (SA) in the FBI's Phoenix Division sent an EC to individuals in the Usama Bin Ladin Unit (UBLU) and the Radical Fundamentalist Unit (RFU) within the Counterterrorism Division at FBI headquarters and to several SAs on an International Terrorism squad in the New York Field Office. In the EC, the SA outlined his concerns that there was a coordinated effort underway by Usama Bin Ladin to send students to the United States for civil aviation-related training. He noted that there were an "inordinate number of individuals of investigative interest" attending this type of training in Arizona and speculated that this was part of an effort to establish a cadre of individuals in civil aviation, who would be in position to conduct terrorist activity in the future.

The EC contained a number of recommendations that the agent asked FBI headquarters to consider implementing. Apparently, the communication did not raise any alarms at FBI headquarters or in the New York office. In fact, New York personnel who reviewed the EC found it to be speculative and not particularly significant. New York already knew that many Middle Eastern flight students, including several associated with Bin Ladin, trained in the United States. They believed that Bin Ladin needed pilots to transport goods and personnel in Afghanistan, and, at the time, viewed pilots connected to Bin Ladin in that light. About a week after its receipt, headquarters personnel determined that no follow-up action was warranted on the Phoenix EC recommendations. No managers at FBI headquarters took part in that decision or even saw the communication before September 11, 2001. No one apparently considered the significance of the Phoenix EC in light of what else confronted the FBI counterterrorist team during the summer of 2001: the unprecedented increase in terrorist threat reporting, the investigation and arrest of Zacarias Moussaoui in August 2001, and the possible presence of Bin Ladin associates al-Mihdhar and al-Hazmi in the United States.

Our review of the circumstances surrounding the Phoenix memo reveals a number of weaknesses at the FBI that, if left uncorrected, will continue to undercut counterterrorist efforts. The FBI handling of the Phoenix EC is symptomatic of a focus on short-term operational priorities, often at the expense of long-term, strategic analysis. Throughout this review, we have found that the FBI's ability to handle strategic analytic products, such as the Phoenix EC, was, at best, limited prior to September 11, 2001. Inadequate information sharing within the FBI, particularly between the operational and analytic units, is also highlighted by our review of the Phoenix EC. Several of the addressees on the EC, especially at the supervisory level, did not receive it prior to September 11 due to limitations in the electronic dissemination system. Those limitations are consistent with the complaints we have repeatedly heard throughout this inquiry about the FBI's technology problems. Finally, the case-driven, law enforcement approach, while important and extremely productive in terms of the FBI's traditional mission, does not generally "incentivize" attention to big-picture, preventive analysis and strategy. This

is particularly true where there is no direct and immediate impact on an ongoing criminal prosecution.

In that context, the Joint Inquiry Staff found that the Phoenix memo was not the first time the FBI had confronted concerns about Middle Eastern individuals studying aviation topics in the United States. In 1998, the FBI's chief pilot in Oklahoma City drafted a memo expressing concern about the number of Middle Eastern flight students there and his belief that they could be planning a terrorist attack. Also in 1998, the FBI had received reporting that a terrorist organization planned to bring students to the United States to study aviation and that a member of that organization had frequently expressed an intention to target civil aviation in the United States. Yet another terrorist organization, in 1999, allegedly wanted to do the same thing, triggering a request from FBI headquarters to 24 field offices to investigate and determine the level of the threat. To date, our review has found that the field offices conducted little to no investigation in response to that request.

Our inquiry found that, given the lack of information sharing across units in FBI headquarters, personnel who saw the Phoenix memo had no knowledge of any of these prior instances involving other terrorist groups. Since the prior reporting did not directly relate to al-Qa'ida, they were unable to evaluate the Phoenix EC in the context of what was known about likely terrorist strategies favored by other, similar groups. As terrorist groups increasingly associate with and support each other, information sharing and overarching strategic analysis is critical to success in counterterrorist efforts. This is particularly important to the FBI's efforts here in the United States, where the members of the various groups tend to associate with each other.

Finally, while the Phoenix EC does not include by name any of the hijackers involved in the September 11, 2001 attacks, our review confirmed that the FBI now believes that one of the individuals named in the EC was connected to Hani Hanjour, who is now believed to have piloted American Flight 77. The individual named in the EC has been connected both through witness statements and flight school records to Hanjour. This individual first came to the attention of the FBI in 1999, but when the FBI went to investigate him, they determined that he had left the United States, and an investigation was not opened. The FBI was apparently unaware that he had returned to the United States in the summer of 2001 and may have been associating with Hanjour and several other Islamic extremists. These issues will be discussed at greater length in subsequent sections.

Summary of the Phoenix EC

In an interview with the Joint Inquiry Staff, the special agent in Phoenix who wrote the EC said that he first became concerned about aviation-related terrorism in the early 1990s. He was working on two cases in which Libyans with suspected terrorist ties were working for U.S. aviation companies. One of these individuals had a Masters degree in a technical field, yet was working in menial jobs at the airport as a skycap and then a baggage handler. The other individual was working as a technical avionics officer

for a domestic airline and was charged with overseeing the complete overhaul of aircraft and with checking for structural integrity. In addition, several Bin Ladin operatives had lived and traveled to the Phoenix area in the past, one of whom was Wadih El-Hage, a Bin Ladin lieutenant convicted for his role in the 1998 embassy bombings. He had lived in the Tucson area for several years in the 1980s. The Phoenix SA believes that El-Hage established a Usama Bin Ladin support network in Arizona while he was living there and that this network is still in place.

The agent stated that the idea of possible terrorists having easy access to aircraft conjured up visions of Pan Am 103. The Phoenix agent told the Joint Inquiry Staff that, in authoring the EC, he never imagined terrorists using airplanes as was done on September 11. His primary concern was that Islamic extremists, studying everything from aviation security to flying, could be learning how to hijack or destroy aircraft and to evade airport security.

In April 2000, the agent interviewed the individual who was the subject of the Phoenix EC. When he interviews young foreign nationals they usually tend to be at least somewhat intimidated in their first contact with the FBI. By contrast, this individual told the agent directly that he considered the U.S. government and military legitimate targets of Islam. In looking around the individual's apartment, the agent noticed a poster of Bin Ladin and another poster of wounded Chechnyan mujaheddin fighters. He was also concerned by the fact that this individual was from a poor Middle Eastern country and had been studying a non-aviation related subject prior to his arrival in the United States.

The agent also described for us another incident that increased his suspicion about Middle Eastern flight students in the Phoenix area. During a physical surveillance of the subject of the Phoenix EC, the agent determined that he was using a vehicle registered to another individual. In 1999, the owner of the car and an associate of his were detained for trying to gain access to the cockpit of a commercial airliner on a domestic flight. They told the FBI that they thought the cockpit was the bathroom and they accused the FBI of racism. They were released after an investigation, the FBI closed the case, and the two were not prosecuted. A year later, the individual's name was added to the State Department's watchlist after intelligence information was received indicating that he may have gotten explosive and car bomb training in Afghanistan. In August 2001, the same individual applied for a visa to re-enter the United States and, as a result of the watchlisting, was denied entry.

In May 2001, after a brief time investigating a series of arsons, the Phoenix special agent was reassigned to work international terrorism matters. To get back up to speed, he reviewed case files of terrorism cases on his squad. In the course of the review, he became increasingly concerned by the number of individuals of potential investigative interest enrolled in aviation training. At that point, he began to draft the EC, which he completed by July 10, 2001.

The Phoenix EC focuses on 10 individuals who were the subjects of FBI investigations. These individuals were Sunni Muslim, and were from Kenya, Pakistan,

Algeria, the United Arab Emirates, India, and Saudi Arabia. Not all were in flight training; several were aeronautical engineering students, and one was studying international aviation security. One of the individuals under investigation was the primary focus of the Phoenix EC.

This individual had come to the Phoenix agent's attention when it was learned that he was a member of the al-Muhajiroun, whose spiritual leader was a strong supporter of Bin Ladin and who had issued a number of *fatwas* against the United States, one mentioning airports as a possible target. The subject of the Phoenix investigation was enrolled at Embry Riddle University and was taking aviation-related security courses. As a member of the al-Muhajiroun, he was organizing anti-U.S. and anti-Israeli rallies and calling for jihad. The investigation of this individual led to the opening of investigations on six of his associates, also involved in aviation training. The remaining three subjects in the Phoenix EC, although involved in aviation subjects, were not known to associate with the others.

We asked the Phoenix agent whether he had received any intelligence from FBI headquarters or from other Intelligence Community agencies that contributed to the suspicions he raised in the EC. According to him, the Phoenix office did not receive FBI, Intelligence Community, or foreign intelligence service products on a regular basis. He told us that he believes that prior to September 11, 2001 the FBI was not running counterterrorism as a national level program; he often has felt that he's "out on an island" in Phoenix. He said that, prior to headquarters downsizing, the FBI used to do a better job of disseminating intelligence products to the field. He does not believe that sufficient resources are devoted to counterterrorism even though it is officially a Tier I program. In his words, counterterrorism and counterintelligence have always been considered the "bastard stepchild" of the FBI because these programs do not generate the statistics that other programs do, such as Violent Crimes/Major Offenders or drugs.

The Phoenix EC makes four recommendations and requests that FBI headquarters consider implementing them:

- Headquarters should accumulate a list of civil aviation university/colleges around the country;
- FBI offices should establish liaison with the schools;
- Headquarters should discuss the Phoenix theories with the intelligence community;
- Headquarters should consider seeking authority to obtain visa information on individuals seeking to attend flight schools.

Phoenix Office's Actions Prior to Sending the EC

While he was developing the EC, the Phoenix agent attended a meeting in May/June 2000 of a local intelligence working group. At the meeting the agent told the attendees about the individual under investigation who was attending Embry Riddle University. He asked if anyone had information on Islamic extremists showing up at

aviation schools. No one offered any information. The agent told the Joint Inquiry Staff that he had also discussed his theories with other members of the Phoenix Joint Terrorism Task Force. The Joint Inquiry Staff's examination of records has determined that he also requested that routine intelligence community checks be run on the subjects of the EC. In March 2001, the agent's supervisor in Phoenix attended a meeting in Long Beach where he mentioned the Phoenix theories about civil aviation. The CIA was made aware of the FBI information, but had no relevant information to offer.

As he was drafting the EC, the Phoenix agent contacted an Intelligence Operations Specialist (IOS) at FBI headquarters whom he had known for a number of years to use as a sounding board. The IOS provided him with several names to include on the addressee list. Around the same time, another agent on the same Phoenix squad called the FAA's counterterrorism representative at FBI headquarters to inquire about the legality of the Middle Eastern students attending aviation schools. The FAA representative said that, as long as the students were in legal immigration status, their attendance was legal.

Headquarters' Response to the EC

When he sent the EC to the Counterterrorism Division at FBI headquarters the Phoenix agent requested in a "lead""[1] that both the RFU and UBLU consider implementing the suggested actions that he had set out. On July 30, 2001, an Intelligence Assistant (IA) in the RFU at FBI headquarters assigned the lead to an IOS. The IOS appears to have been picked, not because the assignment was within her programmatic area of responsibility, but because her name was the first non-supervisory name on the addressee list. At the time, this was typical of the way in which leads were assigned in the unit. The IOS recalls the lead arriving in her electronic folder on the system but did not receive a hard copy of the document from the IA. After reviewing the EC, the IOS determined that the project should be handled by someone in the UBLU.

The RFU IOS contacted a UBLU IOS to effect a transfer. The UBLU IOS did not want the lead transferred but agreed to take responsibility for her unit's response. The UBLU IOS also received a hard copy of the document. The UBLU IOS then consulted two other IOSs in her unit, mentioning specifically the paragraph in the EC about obtaining visa information. Their discussion centered on the legality of the proposal and whether it raised profiling issues. The IOS also decided to forward the EC to the Portland office because an individual named in the EC, with ties to suspected terrorists arrested in the Middle East in early 2001, was an employee of an airline and had previously lived and studied in the northwestern United States.

[1]This is an FBI system through which the office sending a communication can request that the receiving office(s) take some follow-up action or conduct additional investigation. In the "lead" section of the communication, the sending office can outline exactly what action or investigation that it is requesting that the receiving office conduct. Once the lead has been completed (or "covered" in FBI vernacular), the receiving office will inform the sending office as to the results of the investigation or as to the action taken.

On August 7, 2001, after receiving no objection from the Phoenix office, the EC was forwarded to an intelligence analyst in Portland via e-mail, stating that the document "basically puts forth a theory on individuals being directed to come here to study aviation and their ties to extremists. Nothing concrete or whatever, but some very interesting coincidences. I thought it would be interesting to you considering some of the stuff you were coming up with in PD [Portland]. Let me know if anything strikes you." The Portland analyst has told the Joint Inquiry Staff that she had spoken to the UBLU IOS on several occasions about the aviation-related ties of terrorist subjects in the Portland and Seattle areas. She did not take action on the communication or disseminate it any further, as it was only sent to her for informational purposes.

The UBLU IOS informed the Joint Inquiry Staff that she affixed a note to her copy of the EC, on which she jotted down several items to follow up on. She recalls that her first item was to review the intelligence investigations of another individual who was the only Usama Bin Ladin pilot she knew about.[2] She assumes she would have also written that she should call agents in two FBI field offices who were familiar with this individual. The note was on her copy of the EC that she provided to the Department of Justice Inspector General (IG). The IG has informed the Joint Inquiry Staff that they recall seeing the note during their interview of the IOS but cannot locate it.

On August 7, 2001, both IOSs decided that the lead should be closed. In the electronic system, the RFU IOS noted that the lead was "covered- consulted with UBLU, no action at this time, will reconvine [sic] on this issue." The UBLU IOS maintains that she fully intended to return to the project once she had time to do additional research, but that September 11 occurred, and she had not yet had an opportunity to return to the project.

Both IOSs also said they considered assigning the Phoenix project to a headquarters analytic unit but decided against it. In an interview with a supervisory agent in the UBLU, the Joint Inquiry Staff was told that the EC should have been assigned to an analytic unit because it was a long-term, labor-intensive suggestion, and the analytic units would have more time to devote to it then the operational units. There appear to be a number of factors bearing on why the project was not assigned to the analysts that will be discussed later in this statement.

Did FBI Headquarters Management Review the Phoenix EC Prior to September 11?

The chiefs of both the RFU and UBLU informed the Joint Inquiry Staff that they did not see the Phoenix communication prior to September 11. Moreover, neither remembers even hearing about the flight school issue until after September 11. At the Joint Inquiry Staff's the FBI audited their central records system; the audit supports their statements.

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[2] According to documents reviewed by the Joint Inquiry, this individual was not the only pilot with ties to Usama Bin Ladin known to the FBI at that time.

Both the IOSs are unsure, but think they might have mentioned the EC to their unit chiefs prior to September 11. The UBLU IOS said in an interview with the Joint Inquiry Staff that she told her supervisor that Phoenix had sent in a communication about Usama Bin Ladin sending pilots for training and that she planned to do some research before determining what to do about the recommendations in the EC. However, in her interview with the Department of Justice IG in November 2001, she stated that she had not discussed the EC with any supervisory personnel until after the EC was closed. The RFU IOS said she could not recall but might have mentioned the EC to her supervisor in passing.

FBI Headquarters Weaknesses Demonstrated by Handling of Phoenix EC

The manner in which FBI headquarters handled the Phoenix EC provides a valuable window into the FBI's operational environment prior to September 11 and illustrates several procedural weaknesses that have been recognized and are currently being corrected.

The manner in which the Phoenix EC was handled demonstrated how strategic analysis took a back seat to operational priorities prior to September 11. That many in the U.S. Government believed an attack of some type was imminent in the summer of 2001 apparently only served to further de-emphasize strategic analysis. For example, the IOS handling the Phoenix EC was primarily concerned with an individual in the EC who was connected to individuals arrested overseas; the IOS paid less attention to the flight school theories. For his part, the RFU Chief said he was seeing about 100 pieces of mail daily and could not keep up. His solution was to assign the review of intelligence reports to his IOS. Even the analytic unit responsible for strategic analysis was largely producing tactical products to satisfy the operational section. In fact there was no requirement to handle projects with nationwide impact, such as Phoenix, any different than any other project. This has now been changed. Any lead of the type such as Phoenix represented must now be raised to the section chief level.

The handling of the Phoenix EC also exposed information sharing problems between FBI headquarters elements. A number of analysts commented that the UBLU and RFU frequently do not share information with the International Terrorism analytic unit. The supervisor of the UBLU said that the Investigative Services Division, of which the analytic unit is a part, was not a major player and that often information was not shared with it.

Had the project been transferred to the analytic unit the capability to conduct strategic analysis on al-Qa'ida was limited because five of the unit's analysts had transferred into operational units. The Joint Inquiry Staff has been told that every time a competent new analyst arrived, the UBLU or RFU would either try to recruit them as IOSs or would refuse to share information. This allowed the UBLU and RFU to control the information flow. The end result, unfortunately, is that there is no one left whose role is to perform strategic analysis.

Even if the project had been assigned to the al-Qa'ida analyst in the analytic unit, there can be no guarantee that the various reports about using airplanes as weapons and terrorists sending students to flight school in the United States would have been pieced together. However, there was only one analytic unit at FBI headquarters responsible for counterterrorism, and there were five operational units. It is easier to share information within one unit than it is among five units.

The handling of the Phoenix EC also illustrates the extent to which technological limitations affect information flow at the FBI. A number of individuals who were addressees on the EC have stated that they did not see it prior to September 11. Audits of the system support their statements. The FBI's electronic system is not designed to ensure that all addressees on a communication actually receive it. Instead the electronic version of the document is sent to the unit and then forwarded electronically only to the individual to whom the lead is assigned. Furthermore, the system is capable of recognizing units only if they are precisely designated in the leads section; otherwise, a unit would not receive the communication. In the case of an inaccurate address the communication would be sent into either the Counterterrorism Division's main electronic folder or to the International Terrorism Operations Section's folder where it would sit until the secretaries checked their folders and forwarded it on to the appropriate unit for handling. In fact, the electronic system was considered so unreliable that many FBI personnel, both at the field offices and at FBI headquarters, use e-mail instead. In the case of important communications, they double-check to ensure it is not being neglected. Several FBI personnel interviewed conceded that it was possible that "routine" leads, on which there was no direct communication, were falling through the cracks. RFU and UBLU policies in effect at the time the Phoenix EC was sent gave the person to whom the lead was assigned the discretion to make the determination as to which people in the unit needed to see the report. One person said that he was not certain why the Phoenix agent put all the addressees on the EC but believes the IOS probably made the decision that this was more of an issue for the UBLU and did not need to be routed around to all of the people on the addressee list in the RFU.

The Joint Inquiry Staff has been informed that the FBI recently determined that there are 68,000 outstanding and unassigned leads assigned to the counterterrorism division dating back to 1995. Since many FBI personnel have not been using the electronic system for these purposes, it is difficult to know how many of these leads have actually been completed. The counterterrorism division's management is currently looking into this situation.3

Links from the Phoenix EC to September 11, 2001

FBI officials have noted, both in public statements and Congressional testimony that the September 11 hijackers did not associate with anyone of investigative interest. However, there is evidence that hijacker Hani Hanjour, who was unknown to the Intelligence

3 The Joint Inquiry Staff has asked the FBI for further details and explanation on the status of these outstanding leads, and what actions are being taken to address this situation.

Community and law enforcement agencies prior to September 11, 2001, was an associate of an individual mentioned in the Phoenix EC. This individual had been engaged in flight training in the United States, and the FBI believed that he was possibly a radical fundamentalist. The evidence connecting this individual to Hanjour is described below. There are several possible reasons, which will also be discussed below, why this individual's association with Hanjour did not bring Hanjour to the FBI's attention prior to September 11, 2001.

The FBI believes that, beginning in 1997, Hanjour and the individual named in the Phoenix EC trained together at a flight school in Arizona. Several instructors at the flight school say they were associates and one thinks they may have carpooled together. Through various record checks, the FBI has confirmed five occasions when the Phoenix subject and Hanjour were at the flight school on the same day. On one occasion in 1999, the flight school logs indicate that Hanjour and this individual used the same plane. According to the flight instructor, the individual mentioned in the Phoenix EC was there as an observer. The rules of the flight school were such that for this individual to observe, Hanjour would have had to approve of his presence in the aircraft. Another individual informed the FBI after September 11, 2001 that this individual and Hanjour knew each other, both from flight training and through a religious center in Arizona.

The FBI's evidence linking the two in the summer of 2001 is not as strong. The FBI has located records from a flight school in Phoenix indicating that on one day in June 2001, Hanjour and several other individuals signed up to use the Cessna simulator. The next day, the two individuals who signed up with Hanjour the previous day, came to the facility with the individual mentioned in the Phoenix EC. An employee of the flight school has informed the FBI that he recalls a fourth individual being there with him but cannot remember who. Another employee of the flight school has placed Hanjour and this individual together during that time frame, although she was not completely confident in her identification.

The FBI attempted to investigate this individual in May 2001, but discovered that he was out of the country. The FBI was apparently unaware that he returned to the United States soon after, and may have been associating with Hanjour and several other Islamic extremists. 4 A Phoenix agent told the JIS that had the individual been in the country in May 2001, they would have opened an investigation. However, the Phoenix office generally did not open investigations on individuals whom they believed had permanently left the United States. Although there were no legal bars to opening an investigation, FBIHQ discouraged this practice. The Phoenix office also did not notify the INS, State Department, or the CIA of their interest in this individual.

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4 The Joint Inquiry Staff is still attempting to determine whether the FBI's Phoenix office was aware of this individual's presence in the United States in the summer of 2001. The JIS has interviewed three agents in Phoenix about this issue, and received slightly contradictory answers. The JIS has asked the FBI for clarification on this issue.

No one can say whether the FBI would have developed an investigative interest in Hanjour had they opened an investigation on the individual mentioned in the Phoenix EC prior to September 11, 2001. The Joint Inquiry Staff is also not suggesting that if they had, it would have necessarily led to the discovery of the September 11 plot. However, this example provides additional evidence that at least some of the hijackers may have been less isolated and more integrated into their communities than was previously thought. If the hijackers were, in fact, associating with individuals of investigative interest, and were not keeping to themselves as has been portrayed, there are more significant questions as to whether or not they should have come to the FBI's attention prior to the attacks. These associations continue to raise questions about the FBI's knowledge and understanding of the radical fundamentalist network in the United States prior to September 11, 2001.

This case also raises questions about the FBI's policy and practice prior to September 11, 2001 regarding the initiation of investigations on individuals outside of the United States. The Phoenix FBI agent noted that this policy and practice have since been changed. It also provides a valuable illustration of how crucial it is for the FBI to coordinate its investigations internally and with other U.S. Government agencies, particularly when individuals are traveling into and out of the United States.

For this system to work effectively, and for the FBI to be aware when individuals of previous investigative interest return to the United States, they have to have close contact with INS and CIA. Unfortunately, it appears that prior to September 11, 2001, there was no system in place to ensure coordination. In this case, the FBI did not notify the INS, State Department, or the CIA of their interest in the Phoenix subject. Therefore, this individual was able to get into the United States without any notification to the FBI that he had returned. Supposedly coordination with INS and CIA is much better now, and the FBI does a better job of notification to those agencies.

Finally, the Phoenix subject's name was not provided to the TIPOFF watchlist at the State Department nor to the NAILS watchlist at INS. The individual's name and information regarding his terrorist associations and background were provided to the TIPOFF program by the FBI and the CIA after the September 11 attacks. It is only by identifying this individual to the TIPOFF and NAILS watchlist that the FBI could have been assured that he would be kept out of the United States.

Previous FBI Focus at U.S. Flight Schools

The Phoenix EC was not the first occasion that the FBI had been concerned about terrorist groups sending individuals to the United States for aviation study. The EC should be understood in this broader context. It is also important to note that the neither individuals involved in drafting the Phoenix EC nor the FBI personnel who worked on it at FBI headquarters were aware of this broader context.

In 1981, the U.S. military was involved in hostilities with the Libyan Air Force in the Gulf of Sidra. President Reagan made the decision to deport all Libyan students in

the United States involved in either aviation or nuclear studies. In March 1983, the INS published a rule in the Federal Register, terminating the nonimmigrant status of Libyan nationals or individuals acting on behalf of Libyan entities engaged in aviation- or nuclear-related education. The INS turned to the FBI for assistance in locating any such individuals. On May 6, 1983, FBI headquarters sent a "priority" communication to all field offices, asking the field offices for assistance in complying with the INS request. The Joint Inquiry Staff has not been able to locate all of the relevant records, so it is not clear how many students the FBI located and deported.

In 1998, the Chief Pilot of the FBI's Oklahoma City Field Office contacted an agent on the office's counterterrorism squad to inform him that he had observed a large numbers of Middle Eastern males at Oklahoma flight schools. An intra-office communication to the counterterrorism squad supervisor was drafted noting the Chief Pilot's concern that the aviation education might be related to planned terrorist activity, and his speculation that light planes would be an ideal means of spreading chemical or biological agents. The communication was sent to the office's "Weapons of Mass Destruction" control file. It appears to have been for informational purposes only. There is no indication that any follow-up action was either requested or conducted.

The FBI received reporting in 1998 that a terrorist organization might be planning to bring students to the United States for training at a flight school. The FBI was aware that individuals connected to the organization had performed surveillance and security tests at airports in the United States and made comments suggesting an intention to target civil aviation. There is no indication that this organization actually followed through on their plans.

In 1999, reporting was received that yet another terrorist organization was planning to send students to the United States for aviation training. The purpose of this training was unknown, but the terrorist organization leaders viewed the requirement as being "particularly important" and were reported to have approved an open-ended amount of funding to ensure its success. In response, an operational unit in the Counterterrorism Section at FBI headquarters sent a communication to 24 field offices, asking them to pay close attention to Islamic students in their area from the target country who were engaged in aviation training. This communication was sent to the Phoenix Office's International Terrorism squad, but the Phoenix SA does not recall this reporting. The Phoenix SSA was not assigned to the Phoenix Office at the time.

The communication requested that field offices "task sources, coordinate with the INS, and conduct other logical inquiries, in an effort to develop an intelligence baseline" regarding this terrorist group's use of students. To this point, there is no indication that the FBI field offices conducted any investigation after receiving the communication. The analyst who drafted the communication indicated that he did receive several calls from field offices, but that the calls were either to seek additional guidance or to raise concerns about the Buckley Amendment implications of investigating at schools. (The Buckley Amendment is part of the 1974 Family Educational Rights and Privacy Act, which bars

post secondary educational institutions which receive federal funding from releasing students' personal information without their written consent.)

In November 1999, to address these concerns, the FBI sent a letter to INS explaining the intelligence and requesting a database search for individuals studying in the United States from the target country. Any information provided by the INS would be sent to the field offices, which would conduct appropriate investigations in coordination with local INS agents. According to interviews, the INS never provided any information in response to the request.

The project was subsequently assigned to the International Terrorism Analytic Unit at FBI headquarters. The analyst assigned to the project determined that there were 75 academic institutions offering flight education in the United States. He also located, via the Internet, an additional 1000 flight schools. In November 2000, the analyst sent a communication to the FBI field offices, informing them that no information was uncovered concerning this terrorist group's recruitment of students studying aviation and stated that "further investigation by FBI field offices is deemed imprudent" by FBI headquarters.

The former unit chief of the operational unit involved in this project told the Joint Inquiry Staff that he was not surprised by the apparent lack of vigorous investigative action by the field offices. He believes that the field offices' calls requesting additional guidance or raising Buckley Amendment issues were just "excuses" and that the field offices should have known full well how to go about this effort. In his view, this type of project was like "drilling for oil," in that you drill in many different spots, almost all of which are unsuccessful but the reward from one successful "drilling" is worth the effort. In his opinion, the field offices did not like to undertake difficult labor-intensive projects like this with a high risk of failure. The FBI's culture often prevented headquarters from forcing field offices to take investigative action that they were unwilling to take. He told us that the FBI was so decentralized, and the Special Agents in Charge wielded such power, that when field agents complained to a supervisor about a request from headquarters, FBI headquarters management would generally back down.

Missed Opportunity to Connect Phoenix to Similar Investigations?

The personnel working on the Phoenix EC at FBI headquarters were not aware of the prior reporting on terrorist groups sending aviation students to the United States and did not know that FBI headquarters had undertaken a systematic effort in 1999 to identify Middle Eastern flight students in the United States. This is not surprising considering the lack of information sharing in the FBI. According to interviewees, this is a problem not only at FBI headquarters but at the field offices as well. Agents often will only be familiar with cases on their own squad and will not know about investigations on other squads.

Had the headquarters personnel working on the Phoenix EC known about the 1999 efforts by FBI headquarters to locate foreign nationals at flight schools, it might

have affected how they handled the EC. The IOSs handling the EC were concerned about the legal implications of following through on the recommendations but were unaware of similar efforts in the past whereby the INS and FBI had established an arrangement to provide the FBI with foreign nationals' student visas for investigative purposes. Unfortunately, instead of approaching FBI lawyers to determine whether there were legal obstacles to implementation, the IOSs decided among themselves that the EC raised profiling issues.

This lack of information sharing among personnel working different targets poses increasing problems for the FBI faced with a national security environment and the growth of the "International Jihad" movement, making it difficult to link individuals to specific foreign powers or terrorist groups. Some FBI personnel expressed concern that the FBI's labeling of individuals as associated with particular terrorist organizations is not always accurate. For example, an individual affiliated with al-Qa'ida may associate with Hamas members in the United States and be labeled Hamas based on these associations. If such an individual is being worked out of another unit, the traditional lack of information sharing makes it unlikely the al-Qa'ida unit will learn about the investigation. This affects the unit's ability to develop a comprehensive understanding of al-Qa'ida presence and operations in the United States. There may also be al- Qa'ida information directly relevant to the investigation about which personnel working Hamas are unaware.

New York FBI Office Actions in Connection with the Phoenix EC

The Phoenix EC was sent to two investigators in the FBI's New York field office who specialize in Usama Bin Ladin cases. They were asked to "read and clear" but were not asked to take any follow-up action. A Joint Inquiry Staff audit of electronic records shows that at least three people in New York saw the EC prior to September 11. It does not appear to have received much attention or elicited concern. Two of the three do not recall the communication prior to September 11, 2001. The third remembered reading it but said it did not resonate with him because he found it speculative.

The New York agents interviewed stated that they were well aware that Middle Eastern men frequently came to the United States for flight training. This was not surprising as it was considered the best and most reasonably priced place to train. According to them, many foreign nationals got their commercial flight training here.

A communication noting that Middle Eastern men with ties to Usama Bin Ladin were receiving flight training in the United States would not necessarily be considered particularly alarming because New York personnel knew that individuals connected to al-Qa'ida had previously received flight training in the United States. In fact, one of these individuals trained at the Airman Flight School in Norman, Oklahoma, the same place where Zacarias Moussaoui trained prior to his arrival in Minnesota. Mohammed Atta and another of the hijackers visited this same flight school but decided not to enroll there. The commonly held view at the FBI prior to September 11 was that Bin Ladin needed pilots to operate aircraft he had purchased in the United States to move men and material.

Also, several pilots with al-Qa'ida ties testified for the U.S. Government during the course of the Embassy bombing trial.

However, the FBI had also received reporting that was not entirely consistent with this view of Usama Bin Ladin's pilots. Two of the pilots had been through al Qa'ida training camps in Afghanistan where they were trained to conduct terrorist operations. One of them was trained in surveillance and intelligence, apparently being selected for the course due to his aviation skills.

The FBI also received reporting that, in 1994, individuals with terrorist connections had requested and received training in the technical aspects of aviation including instruction on takeoff and landing procedures, approach altitudes, and aircraft identification methods. They stated that they would be passing on the information to other individuals with terrorist connections, but did not mention any specific plan. The FBI disseminated the information to the FAA, the State Department, and the CIA.

The FBI Investigation of Zacarias Moussaoui, August 16 to September 11, 2001

Zacarias Moussaoui came to the attention of the FBI during a period of time when the Intelligence Community was detecting numerous indicators of an impending terrorist attack against U.S. interests somewhere in the world. Moussaoui was in the custody of the INS on September 11, 2001. Our review has, in part, focused on whether information resulting from the FBI's investigation of Moussaoui could have alerted the U.S. Government to the scope and nature of the attacks that occurred on September 11, 2001.

Moussaoui has been indicted and faces a criminal trial this fall. Among other things, Moussaoui has been charged with conspiracy to commit aircraft piracy "with the result that thousands of people died on September 11, 2001." In order to avoid affecting the course of that proceeding, the Joint Inquiry Staff has limited the amount of detail in this presentation while attempting to provide a general understanding of the facts of the investigation.

Our review of the FBI's investigation to date has identified three issues in particular, to which I would draw Members' attention:

- Differences in the way the FBI's field offices and headquarters components analyzed and perceived the danger posed by the facts uncovered during the FBI's investigation of Moussaoui prior to September 11, 2001;

- The tools available to the FBI under the Constitution and laws of the United States to investigate that danger, notably the Foreign Intelligence Surveillance Act (FISA), and whether FBI personnel were well organized and informed about the availability of those tools; and

- Whether the substance, clarity, and urgency of the threat warning provided by the FBI to other parts of the Intelligence Community corresponded to the danger that had been identified.

For purposes of this interim report, the American public should understand that, under FISA, the FBI can obtain a court order authorizing a physical search or electronic surveillance, such as a wiretap, if it can demonstrate that the subject: (1) is an agent of a foreign power, which can be a foreign country or an international terrorist group, and (2) is, among other things, engaged in international terrorism, or activities in preparation therefor, on behalf of that foreign power. Court orders issued under FISA are classified and are issued by the Foreign Intelligence Surveillance Court (FISC).

The FBI's focus at the time Moussaoui was taken into custody appears to the Joint Inquiry Staff to have been almost entirely on investigating specific crimes and not on identifying linkages between separate investigations or on sharing information with other U.S. Government agencies with counterterrorist responsibilities. No one at FBI headquarters apparently connected Moussaoui, the Phoenix memo, the possible presence of Khalid al-Mihdhar and Nawaf al-Hazmi in the United States, or the flood of warnings about possible terrorist attacks during the summer of 2001.

The Joint Inquiry Staff has determined that Moussaoui contacted the Airman Flight School in Norman, Oklahoma by e-mail on September 29, 2000 and expressed interest in taking lessons to fly a small Cessna aircraft. On February 23, 2001, he entered the United States at Chicago's O'Hare Airport. He was traveling on a French passport and this allowed him to stay in the United States without a visa for 90 days, until May 22, 2001. On February 26, 2001, he began flight lessons at Airman Flight School.

On August 11, 2001, Moussaoui and his roommate, Hussein al-Attas, arrived in Egan, Minnesota and checked into a hotel. Moussaoui began classes at Pan Am Flight School there on August 13, 2001.

While Airman Flight School provided flight lessons in piloting Cessnas and similar small aircraft, Pan Am Flight School provided ground training and access to a Boeing 747 flight simulator used by professional pilots. Most of Pan Am's students are either newly hired airline pilots who use the flight simulator for initial training or are active airline pilots who use the equipment for an update or refresher training. Although anyone can sign up for lessons at Pan Am, the typical student has a pilot's license, is employed by an airline, and has several thousand flight hours. Moussaoui had none of these qualifications.

Based on concerns expressed by a private citizen, the FBI's Minneapolis Field Office opened an international terrorism investigation of Moussaoui on August 15, 2001.

The FBI's Minneapolis Field Office hosts and is part of a Joint Terrorism Task Force, or JTTF. Agents of the INS share space and work closely with the FBI in Minneapolis and were able to immediately determine that Moussaoui had been

authorized to stay in the United States only until May 22, 2001. Thus, Moussaoui was "out of status" at the time – August – that the FBI began investigating him.

On the same day the Minneapolis field office learned about Moussaoui, it asked both the CIA and the FBI's legal attaché in Paris for any information they had or could get on Moussaoui. At the same time, they also informed FBI headquarters of the investigation. The supervisory agent in Minneapolis told the Joint Inquiry Staff that FBI headquarters had suggested that Moussaoui be put under surveillance, but that Minneapolis did not have enough agents to do that. Furthermore, the Minneapolis agents believed that it was more important to prevent Moussaoui from getting any additional flight training.

After conducting several interviews, the FBI agents, along with two INS agents, went to Moussaoui's hotel. The INS agents temporarily detained Moussaoui and his roommate, Hussein al-Attas, while checking to determine if they were legally in the United States. Al-Attas showed the INS that he had a valid student visa and agreed to allow the agents to search his property in the hotel room.[5] The INS agents determined that Moussaoui had not received an extension to allow him to stay in the United States beyond May 22, 2001, so they took him into custody. The agents packed Moussaoui's belongings, noticing that he had a laptop computer among his possessions.

After Moussaoui's detention, the Minneapolis supervisory agent called the office's legal counsel and asked if there was any way to search Moussaoui's possessions without his consent. He was told he had to obtain a search warrant.

Over the ensuing days, the Minneapolis agents considered several alternatives, including trying to obtain a criminal search warrant, seeking a search warrant under FISA, and deporting Moussaoui to France after arranging for the French authorities to search Moussaoui's possessions and share their findings with the FBI. Adding to the sense of urgency, a supervisor in the INS' Minneapolis office told the FBI that INS typically does not hold visa waiver violators like Moussaoui for more than 24 hours before returning them to their home countries. Under the circumstances, however, the INS said it would hold Moussaoui for seven to ten days.

On Saturday, August 18, Minneapolis sent a detailed memorandum to FBI headquarters. That memorandum described the Moussaoui investigation and stated that it believed that Moussaoui posed a threat.

The Joint Inquiry Staff has been told in interviews with the Minneapolis agents that FBI headquarters advised against trying to obtain a criminal search warrant as that might prejudice any subsequent efforts to get a search warrant under FISA. Under FISA, a search warrant could be obtained if they could show there was probable cause to believe Moussaoui was an agent of a foreign power and either engaged in terrorism or was preparing to engage in terrorism. FBI headquarters was concerned that if a criminal

5 Al-Attas was recently convicted of making false statements to the FBI regarding statements by Moussaoui and the extent of his relationship with Moussaoui. He remains in custody as a material witness.

warrant was denied and then the agents tried to get a warrant under FISA, the court would think the agents were trying to use authority for an intelligence investigation to pursue a criminal case.

During this time frame an attorney in the National Security Law Unit at FBI headquarters asked the counsel in the Minneapolis field office if she had considered trying to obtain a criminal warrant and she replied that a FISA warrant would be the safer course. Minneapolis also wanted to notify the Criminal Division about Moussaoui through the local U.S. Attorney's Office, believing it was obligated to do so under Attorney General guidelines that required notification when there is a "reasonable indication" of a felony. FBI headquarters advised that Minneapolis did not have enough evidence to warrant notifying the Criminal Division.

The FBI case agent in Minneapolis had become increasingly frustrated with what he perceived as a lack of assistance from the Radical Fundamentalist Unit (RFU) at FBI headquarters. He had had previous conflicts with the RFU agent over FISA issues and believed headquarters was not being responsive to the threat Minneapolis had identified. At the suggestion of a Minneapolis supervisor, the Minneapolis case agent contacted an FBI official who was detailed to the CTC. The Minneapolis agent shared the details of the Moussaoui investigation with him and provided the names of associates that had been connected to Moussaoui. The Minneapolis case agent has told the Joint Inquiry Staff that he was looking for any information that CTC could provide that would strengthen the case linking Moussaoui to international terrorism.

On August 21, 2001, the Minneapolis case agent sent an e-mail to the supervisory special agent in the RFU who was handling this matter urging that the U. S. Secret Service in Washington, D. C. be apprised of the threat potential there indicated by the evidence. In an interview with the Joint Inquiry Staff, the RFU agent to whom the e-mail was addressed said that he told the Minneapolis agent that he was working on a notification to the entire Intelligence Community, including the Secret Service, about the threat presented by Moussaoui.

The RFU supervisory special agent sent a teletype on September 4, 2001, recounting the FBI's interviews of Moussaoui and al-Attas, and other information it had obtained in the meantime. The teletype, however, merely recounted the steps in the investigation. It did not place Moussaoui's actions in the context of the increased level of terrorist threats during the summer of 2001, nor did it provide its recipients with any analysis of Moussaoui's actions or plans, or information about what type of threat he may have presented.

A CIA officer detailed to FBI headquarters learned of the Moussaoui investigation from CTC in the third week of August 2001. The officer was alarmed about Moussaoui for several reasons. CIA stations were advised of the known facts regarding Moussaoui and al-Attas and were asked to provide any relevant information they might have.

On Wednesday, August 22, the FBI legal attache's office in Paris provided its report. That report began a series of discussions between Minneapolis and the RFU at FBI headquarters focusing on whether a specific group of Chechen rebels were a "recognized" foreign power, one that was on the State Department's list of terrorist groups and for which the Foreign Intelligence Surveillance Court had previously granted orders. The RFU agent believed that the Chechen rebels were not a "recognized" foreign power and that, even if Moussaoui were to be linked to them, the FBI could not obtain a search warrant under FISA. Thus, the RFU agent told the Minneapolis agents that they needed to somehow connect Moussaoui to al-Qa'ida, which he believed was a "recognized" foreign power. This led the Minneapolis agents to attempt to gather information showing that the Chechen rebels were connected to al-Qa'ida.

Unfortunately this dialogue was based on a misunderstanding of FISA. The FBI's Deputy General Counsel told the Joint Inquiry Staff that the term "recognized foreign power" has no meaning under FISA and that the FBI can obtain a search warrant under FISA for an agent of <u>any</u> international terrorist group, including the Chechen rebels. But because of the misunderstanding Minneapolis spent the better part of three weeks trying to connect the Chechen group to al-Qa'ida. The Minneapolis case agent contacted CTC, asking for additional information concerning connections between the group and al-Qa'ida; he also suggested that the RFU agent contact CTC for assistance on the issue. The RFU agent responded that he had all the information he needed and requested that Minneapolis work through FBI headquarters when contacting CTC. Ultimately, the RFU agent agreed to submit Minneapolis' FISA request to the attorneys in the FBI's National Security Law Unit (NSLU) for review.

The Joint Inquiry Staff interviewed several FBI attorneys with whom the RFU agent consulted about Moussaoui. All have confirmed that they advised the RFU agent that the evidence was insufficient to link Moussaoui to a foreign power. One of the attorneys also told the RFU agent that the Chechen and his rebels were not a "recognized" foreign power. The attorneys also told the Staff that, if they had been aware of the Phoenix memo, they would have forwarded the FISA request to the Justice Department's Office of Intelligence Policy Review (OIPR). They reasoned that the particulars of the Phoenix memo changed the context of the Moussaoui investigation and made a stronger case for the FISA warrant. None of them saw the Phoenix memo before September 11.

Two FBI agents assigned to the Oklahoma City Field Office's international terrorism squad visited Airman Flight School in Norman, Oklahoma on August 23. In September of 1999, one of the agents had been assigned a lead from the Orlando Field Office to visit the flight school concerning another individual who had been identified as Usama Bin Ladin's personal pilot and who had received flight training at Airman. The agent had not been given any background information about this individual. Although he told us that he thought that this lead had been the most significant information he had seen in Oklahoma City, the agent did not remember the lead when he returned to the flight school two years later to ask questions about Moussaoui. He told the Joint Inquiry

Staff that he should have connected the two visits but that he did not have the time to do so.

During a conversation on August 27, 2001, the RFU agent told the Minneapolis supervisor that the supervisor was getting people "spun up" over Moussaoui. According to his notes and his statement to the Joint Inquiry Staff, the supervisor replied that he was trying to get people at FBI headquarters "spun up" because he was trying to make sure that Moussaoui "did not take control of a plane and fly it into the World Trade Center." The Minneapolis agent said that the headquarters agent told him, "[T]hat's not going to happen. We don't know he's a terrorist. You don't have enough to show he is a terrorist. You have a guy interested in this type of aircraft – that is it." The headquarters agent does not remember this exchange. The Minneapolis supervisor told the Joint Inquiry Staff that he had no reason to believe that Moussaoui was planning an attack on the World Trade Center; he was merely trying to get headquarters' attention.

In a subsequent conference call with FBI headquarters, the chief of the RFU Unit told Minneapolis that a connection with a specific recognized foreign power, such as HAMAS, was necessary to get a FISA search warrant.

On August 28, 2001, after reviewing the request for a search warrant, the RFU agent edited it and returned the request to Minneapolis for comment. The RFU agent says that it was not unusual for headquarters agents to make changes to field submissions in addition to changes made by the NSLU and OIPR. The major substantive change that was made was the removal of information about connections between the Chechen rebels and al-Qa'ida. The RFU agent said he removed it because he believed this information was insufficient and that, if he received approval from the NSLU to use the Chechen rebels as a foreign power, he would have added it back to an expanded section about Chechnya.

After the edit was complete, the RFU agent briefed the FBI Deputy General Counsel. The Deputy General Counsel told the Joint Inquiry Staff that he agreed with the RFU agent that there was insufficient information to show that Moussaoui was an agent of a foreign power, but that the issue of a "recognized" foreign power did not come up. After that briefing, the RFU agent sent an e-mail to Minneapolis saying that the information was even less sufficient than he had previously thought because Moussaoui would actually have to be shown to be a part of a movement or organization.

After concluding that there was insufficient information to show that Moussaoui was an agent of any foreign power, the FBI's focus shifted to arranging for Moussaoui's planned deportation to France on September 17. French officials would search his possessions and provide the results to the FBI. Although the FBI was no longer considering a search warrant under FISA, no one revisited the idea of attempting to obtain a criminal search warrant, even though the only reason for not attempting to obtain a criminal search warrant – the concern that it would prejudice a request under FISA – no longer existed.

On Thursday, September 4, 2001, FBI headquarters sent a teletype to the Intelligence Community and other U.S. Government agencies, including the Federal Aviation Administration (FAA), providing information about the Moussaoui investigation. The teletype noted that Moussaoui was being held in custody but did not describe any particular threat that the FBI thought he posed, for example, whether he might be connected to a larger plot. The teletype also did not recommend that the addressees take any action or look for any additional indicators of a terrorist attack, nor did it provide any analysis of a possible hijacking threat or provide any specific warnings. The following day the Minneapolis case agent hand-carried the teletype to two employees of the FAA's Bloomington, Minnesota office and orally briefed them on the status of the investigation. The two FAA employees told the Joint Inquiry Staff that the FBI agent did not convey any sense of urgency about the teletype and did not ask them to take any specific action regarding Moussaoui. He just wanted to be sure the FAA had received the cable.

Prior to September 11, 2001, no one at the FBI canvassed other individuals in the custody of and cooperating with the U.S. Government in connection with past terrorism cases to see if any of those individuals knew Moussaoui.

The final preparations for Moussaoui's deportation were underway when the September 11 attacks occurred.

Conclusion

The staff has described three series of events – pertaining to al-Mihdhar and al-Hazmi, the Phoenix EC, and Zacarias Moussaoui – each of which raises significant questions in their own right. In the wake of the September 11 attacks, they also illustrate the danger of seeing events in isolation from each other. In our view, taken together, they clearly demonstrate how our counterterrorist efforts must be based on a comprehensive and current understanding of the overall context in which terrorist networks like al-Qa'ida operate.

The first matter involved Khalid al-Mihdhar and Nawaf al-Hazmi, the two hijackers who came to the attention of the Intelligence Community in early 2000 but subsequently entered the United States unobserved and undetected later. The Intelligence Community succeeded in determining that these Bin Laden operatives were traveling in January 2000 to Malaysia and in collecting important information about them. The system broke down, however, in making the best use of that information and in ensuring that it was effectively and fully shared with agencies, like the FBI, the State Department and the INS, that could have acted on it to either prevent them from entering the United States or surveil them and uncover their activities while in the United States.

In addition, the FBI and the CIA had responsibilities to respond to the October 2000 attack on *USS Cole*. Each had information that the other needed to carry out those responsibilities. But, at a key meeting in New York on June 11, 2001, the CIA did not provide to the FBI information about the Malaysian meeting and its participants that

could have assisted the FBI in its investigation. These events reflect misunderstandings that have developed over the last several years about the use of information derived from intelligence gathering activities in criminal investigations.

The problem of communication demonstrated by the al-Mihdhar/al-Hazmi story existed not only between the CIA and FBI, but also within the FBI itself. Once it was determined in late August 2001 that Khalid al-Mihdhar was in the United States, the search to determine his whereabouts was constrained by FBI policies and practices regarding the use of intelligence information in FBI criminal investigations. This limited the resources that were made available for the FBI to conduct the search during a time in which al-Mihdhar and al-Hazmi were purchasing their September 11 tickets and traveling to their last rallying points.

The second matter – the Phoenix EC – also illustrates the Intelligence Community's strength and weaknesses. An FBI field agent perceived, amidst a profusion of cases, that terrorists could use the well-developed system of flight training education in the United States to prepare an attack against us. The field agent understood that it was necessary to go beyond individual cases and to undertake an empirical analysis broader than the geographic limits of a single field office. The idea was submitted to FBI headquarters, where, for a variety of reasons, it generated almost no interest. First, no one gleaned from the FBI's own records that others at the Bureau had previously expressed concerns about possible terrorists at U.S. flight education institutions. Second, anticipating future threats has not been a significant part of the FBI's general approach to its work. Third, the highest levels of the Intelligence Community had not communicated effectively to its personnel the critical importance of analyzing information in light of the growing awareness of an impending terrorist attack in the summer of 2001. Finally, FBI management did not perceive it would be useful to simply alert others at the FBI to the danger that one of its field offices perceived.

As for the third matter, one can see in the pre-September 11 handling of the case of Zacarias Moussaoui a myopic focus within both the FBI and the DCI's CTC on the case at hand. An FBI field agent and his supervisor saw a potential threat, were concerned about the possibility of a larger plot to target airlines, and reported their concerns to FBI headquarters. The Moussaoui information was also shared with the DCI's CTC. But, neither FBI headquarters nor the DCI's CTC linked this information to warnings emanating from the CTC in the summer of 2001 about an impending terrorist attack, nor did they see a possible connection to information available on August 23, 2001 that Bin Ladin operatives had entered the United States. The same unit at FBI headquarters also had the Phoenix EC, but still did not sound any alarm bells.

No one will ever know whether a greater focus on the connection between these events would have led to the unraveling of the September 11 plot. But, clearly, it might have drawn greater attention to the possibility of a terrorist attack in the United States, generated a heightened state of alert regarding such attacks, and prompted more aggressive investigation and intelligence gathering regarding the information our Government did possess prior to September 11.

Mr. Chairman, members of these two Committees, this completes my statement for today's hearing. Thank you.

STATEMENT OF ELEANOR HILL, STAFF DIRECTOR, JOINT INQUIRY STAFF

Ms. HILL. Thank you.

Mr. Chairman, members of the Committees, at our last hearing last week we discussed information that the Intelligence Community had available prior to September 11, 2001, regarding the September 11 hijackers.

Today, as the Chairman has alluded to, I will discuss two additional topics: First, the July 10, 2001, electronic communication, or EC, from the FBI's Phoenix field office to FBI headquarters, also known as the Phoenix memo or in this statement as the Phoenix EC; and the investigation prior to September 11, 2001, of Zacarias Moussaoui. As mentioned last week, I want to again emphasize the significance of these areas, not just individually but also, perhaps more importantly, when viewed collectively.

Information regarding all three areas was available in the same section at the Federal Bureau of Investigation's headquarters in late August, 2001. Two of these areas were addressed in the Director of Central Intelligence's Counterterrorism Center at approximately the same time. Yet no one, apparently, saw the potential collective significance of the information, despite the increasing concerns throughout the summer of 2001 about an impending terrorist attack.

I am first going to discuss the Phoenix electronic communication.

The FBI's special agent in Phoenix, who I am told will be here testifying later this morning, who wrote the EC, told the joint inquiry staff that he first became concerned about aviation-related terrorism in the early 1990s. He was working on two cases in which Libyans with suspected terrorist ties were working for U.S. aviation companies.

In addition, several bin Ladin operatives had lived and traveled to the Phoenix area in the past, including a bin Ladin lieutenant convicted for his role in the 1998 embassy bombings. The Phoenix agent believes that that individual established an Usama bin Ladin support network in Arizona while he was living there and that this network is still in place.

In writing the EC, the Phoenix agent said he never imagined terrorists using airplanes as was done on September 11. His primary concern was that Islamic extremists studying everything from aviation security to flying could be learning how to hijack or destroy aircraft and to evade airport security.

In April of 2000, the agent interviewed the individual who was to become the subject of the Phoenix EC. When he normally interviews young foreign nationals, he told us that they usually tend to be at least somewhat intimidated in their first contact with an FBI agent. By contrast, this individual told the agent directly that he considered the U.S. Government and the U.S. military legitimate targets of Islam. In looking around the individual's apartment, the agent noticed a poster of bin Ladin and another poster of wounded Chechnyan mujahedin fighters. He was also concerned by the fact that this individual was from a poor Middle Eastern country and had been studying a non-aviation-related subject prior to his arrival in the United States.

Another incident increased the agent's suspicion about Middle Eastern flight students in the Phoenix area. During a physical surveillance of the subject of the Phoenix EC, the agent determined that he was using a vehicle registered to another individual. In 1999, the owner of the car and an associate of his were detained for trying to gain access to the cockpit of a commercial airliner on a domestic flight. They were released after an investigation. The FBI closed the case, and the two were not prosecuted.

A year later, the individual's name was added to the State Department's watch list after intelligence information was received indicating that he may have gotten explosive and car bomb training in Afghanistan.

In August, 2001, that same individual applied for a visa to reenter the United States and, as a result of the watch listing, was denied entry.

In May, 2001, the Phoenix agent became increasingly concerned by the number of individuals of potential investigative interest enrolled in aviation training. At that point, he began to draft the EC, which focuses on 10 individuals who were the subjects of FBI investigations. Not all were in flight training. Several were aeronautical engineering students, and one was studying international aviation security.

One of the individuals under investigation was the primary focus of the Phoenix EC. That individual was a member of the al-Muhajiroun, whose spiritual leader was a strong supporter of bin Ladin and who had issued a number of fatwas against the United States, one mentioning airports as a possible target.

The subject of the Phoenix investigation was taking aviation-related security courses. As a member of the al-Muhajiroun, he was organizing anti-U.S. and anti-Israeli rallies and calling for Jihad.

The investigation of this individual led to the opening of investigations on six of his associates also involved in aviation training.

We asked the Phoenix agent whether he had received any intelligence from FBI headquarters or from other Intelligence Community agencies that contributed to the suspicions he raised in the EC. According to the agent, the Phoenix office did not receive FBI, Intelligence Community or foreign intelligence service products on a regular basis. He told us that he believes that, prior to September 11, 2001, the FBI was not running counterterrorism as a national level program. He often has felt that he is "out on an island" in Phoenix.

He said that, prior to headquarters downsizing, the FBI used to do a better job of disseminating intelligence products to the field. He does not believe that sufficient resources are devoted to counterterrorism, even though it is officially a Tier 1 program. In his words, counterterrorism and counterintelligence have always been considered "the bastard stepchild" of the FBI, because these programs do not generate the statistics that other programs do.

The Phoenix EC requested that FBI headquarters consider implementing four recommendations: One, headquarters should accumulate a list of civil aviation university colleges around the country; two, FBI officers should establish liaison with those schools; three, headquarters should discuss the Phoenix theories with the Intelligence Community; and, four, headquarters should consider

seeking authority to obtain visa information on individuals seeking to attend flight schools.

On July 30, 2001, an intelligence assistant in the Radical Fundamentalist Unit, or RFU, at FBI headquarters assigned the lead on the Phoenix EC to an intelligence operations specialist. The RFU IOS, in turn, contacted an IOS, intelligence operations specialist, in the Usama bin Ladin Unit to effect a transfer.

The UBLU IOS then consulted two other operations specialists, intelligence operations specialists, in her unit. Their discussions centered on the legality of the visa information proposal and whether it raised profiling issues.

On August 7, 2001, the EC was forwarded to an intelligence analyst in the Portland office stating that the document "basically puts forth a theory on individuals being directed to come here to study aviation and their ties to extremists. Nothing concrete or whatever, but some very interesting coincidences. I thought it would be interesting to you, considering some of the stuff you were coming up with in PD, Portland. Let me know if anything strikes you."

The Portland analyst has said that she had spoken to the IOS at the Usama bin Ladin Unit on several occasions about the aviation-related ties of terrorist subjects in the Portland and Seattle areas. She did not take action on the communication or disseminate it any further, as it was only sent to her for informational purposes.

On August 7, 2001, both IOSs decided that the lead should be closed. In the electronic system, the RFU IOS noted that the lead was, "covered, consulted with UBLU, no action at this time, will reconvene on this issue."

The UBLU IOS maintains that she fully intended to return to the project once she had time to do additional research but that September 11 occurred and she had not yet had an opportunity to do so.

Both IOSs also said that they considered assigning the Phoenix project to a headquarters analytic unit but decided against it. In an interview with the supervisory agent in the UBLU, the staff was told that the EC should have been assigned to an analytic unit, because it was a long-term, labor-intensive suggestion and that analytic units would have more time to devote to it than the operational units.

The chiefs of both the RFU and the UBLU informed the staff that they did not see the Phoenix communication prior to September 11. Moreover, neither remembers even hearing about the flight school issue until after September 11.

The manner in which FBI headquarters handled the Phoenix EC provides a valuable window into the FBI's operational environment prior to September 11 and illustrates several procedural weaknesses that have been recognized and are currently being addressed.

The manner in which the EC was handled demonstrated how strategic analysis took a back seat to operational priorities prior to September 11. That many in the U.S. Government believed an attack of some type was imminent in the summer of 2001 apparently only served to further de-emphasize strategic analysis.

For example, the IOS handling the Phoenix EC was primarily concerned with an individual in the EC who was connected to individuals arrested overseas. The IOS paid less attention to the flight school theories. For his part, the RFU chief said he was seeing about 100 pieces of mail daily and could not keep up. His solution was to assign the review of intelligence reports to his IOS.

Even the analytic unit responsible for strategic analysis was largely producing tactical products to satisfy the operational section. In fact, there was no requirement to handle projects with nationwide impact, such as Phoenix, any different than any other project. This now has been changed. Any lead of the types such as Phoenix presented must now be raised to the section chief level.

The handling of the Phoenix EC also exposed information-sharing problems between FBI headquarters elements. A number of analysts commented that the UBLU and the RFU frequently do not share information with the international terrorism analytic unit. Had the project been transferred to the analytic unit, the capability to conduct strategic analysis on al-Qa'ida was limited, because five of the unit's analysts had transferred into operational units.

The handling of the Phoenix EC also illustrates the extent to which technological limitations affect information flow at the FBI. A number of individuals who were addressees on the EC stated that they did not see it prior to September 11. The FBI's electronic system is not designed to ensure that all addressees on a communication actually receive it.

Furthermore, the system is capable of recognizing units only if they are precisely designated in the lead section. Otherwise, a unit would not receive the communication. In fact, the electronic system was considered so unreliable that many FBI personnel, both at the field offices and at headquarters, used e-mail instead.

Several FBI personnel interviewed conceded that it was possible that routine leads on which there was no direct communication were falling through the cracks. The joint inquiry staff has been informed that the FBI recently determined that there are 68,000 outstanding and unassigned leads assigned to the counterterrorism division dating back to 1995.

Since many FBI personnel have not been using the electronic system for these purposes, it is difficult to know how many of these leads have actually been completed. We are told that the counterterrorism division's management is currently looking into this situation.

FBI officials have noted, both in public statements and in Congressional testimony, that the September 11 hijackers did not associate with anyone of investigative interest. However, there is some evidence that hijacker Hani Hanjour, who was unknown to the Intelligence Community and law enforcement agencies prior to September 11, 2001, was an associate of an individual mentioned in the Phoenix EC. This individual had been engaged in flight training in the United States, and the FBI believed that he was possibly a radical fundamentalist.

The FBI believes that as early as 1997 Hanjour and the individual named in the Phoenix EC trained together at a flight school in Arizona. Several instructors at the flight school say that they were associates, and one thinks that they may have carpooled to-

gether. The FBI has confirmed at least five occasions when the Phoenix subject and Hanjour were at the flight school on the same day.

On one occasion in 1999, the flight school logs indicate that Hanjour and this individual used the same plane. According to the flight instructor, the individual mentioned in the EC was there as observer. The rules of the school were such that for this individual to observe, Hanjour would have had to approve of his presence in the aircraft.

Another individual informed the FBI that this individual named in the EC and Hanjour knew each other both from flight training and through a religious center in Arizona.

The FBI's evidence linking the two in the summer of 2001 is not as strong.

The FBI has located records from the flight school in Phoenix indicating that on one day in June, 2001, Hanjour and several other individuals signed up to use the Cessna simulator. The next day, the two individuals who signed up with Hanjour the previous day came to the facility with the individual mentioned in the Phoenix EC.

Another employee of the flight school has placed Hanjour and the individual together during that time frame, although she was not completely confident in her identification. The FBI attempted to investigate this individual in May of 2001, but discovered that he was out of the country. The FBI was apparently unaware that he had returned to the United States soon after and may have been associating with Hanjour and several other Islamic extremists.

A Phoenix agent told the staff that, had the individual been in the country in May of 2001, they would have opened an investigation. However, the Phoenix office generally did not open investigations on individuals who they believed had permanently left the United States.

The Phoenix office also did not notify the INS, State Department, or the CIA of their interest in this individual.

No one can say whether the FBI would have developed an investigative interest in Hanjour had they opened an investigation on the individual mentioned in the Phoenix EC prior to September 11. If the hijackers were in fact associating with individuals of investigative interest, there are more significant questions as to whether or not they should have come to the FBI's attention prior to the attacks. These associations continued to raise questions about the FBI's knowledge and understanding of the radical fundamentalist network in the United States prior to September 11.

The Phoenix EC was not the first occasion that the FBI had been concerned about terrorist groups sending individuals to the United States for aviation study. Neither the individual involved in drafting the Phoenix EC nor the FBI personnel who worked on it at headquarters were aware of this broader context.

In March, 1983, the INS published a rule in the Federal Register terminating the non-immigrant status of Libyan nationals or individuals acting on behalf of Libyan entities engaged in aviation or nuclear-related education. The INS turned to the FBI for assistance in locating any such individuals.

In May of 1983, FBI headquarters sent a "priority" communication to all field offices asking them for assistance in complying with the INS request. The joint inquiry staff has not been able to locate all of the relevant records, so it is not clear how many students the FBI located and deported.

In 1998, the chief pilot of the FBI's Oklahoma City field office contacted an agent on the counterterrorism squad to inform him that he had observed large numbers of Middle Eastern males at Oklahoma flight schools. An intraoffice communication to the counterterrorism squad noted the chief pilot's concern that the aviation education might be related to planned terrorist activity and his speculation that light planes would be an ideal means of spreading chemical or biological agents.

The communication was sent to the office's weapons of mass destruction control file. It appears to have been for informational purposes only. There is no indication that any follow-up action was either requested or conducted.

The FBI also received reporting in 1998 that a terrorist organization might be planning to bring students to the United States for training at flight schools.

The FBI was aware that individuals connected to the organization had performed surveillance and security tests at U.S. airports and made comments suggesting an intention to target civil aviation. There is no indication that the organization actually followed through on their plans.

In 1999, reporting was received that yet another terrorist organization was planning to send students to the United States for aviation training. The purpose of this training was unknown, but the terrorist organization leaders viewed the requirement as being "particularly important," and were reported to have approved an open-ended amount of funding to ensure its success.

In response, an operational unit in the counterterrorism section at FBI headquarters sent a communication to 24 field offices asking them to pay close attention to Islamic students in their area from the target country who were engaged in aviation training.

The communication requested that field offices "task sources, coordinate with the INS, and conduct other logical inquiries in an effort to develop an intelligence baseline" regarding this terrorist group's use of students.

To date, we have found no indication that the FBI field offices conducted any investigation after receiving the communication.

In November of 1999, the FBI sent a letter to INS explaining the intelligence and requesting a database search for individuals studying in the United States from the target country. According to interviews, the INS never provided any information in response to the request.

The project was subsequently assigned to the international terrorism analytic unit at FBI headquarters. The analyst assigned to the project determined that there were 75 academic institutions offering flight education in the United States and an additional 1,000 flight schools.

In November, 2000, the analyst sent a communication to the FBI field offices informing them that no information was uncovered concerning this terrorist group's recruitment of students studying avia-

tion and stated that "further investigation by FBI field offices is deemed imprudent" by FBI headquarters.

The former unit chief of the operational unit involved in this project told the joint inquiry staff that he was not surprised by the apparent lack of vigorous investigative action by the field offices. In his opinion, the field offices did not like to undertake difficult, labor-intensive projects like this with a high risk of failure. He told us that the FBI's culture often prevented headquarters from forcing field offices to take investigative action that they were unwilling to take.

The Phoenix EC was also sent to two investigators in the FBI's New York field office who specialized in Usama bin Ladin cases. They were asked to "read and clear" but were not asked to take any follow-up action.

A joint inquiry staff audit of electronic records shows that at least three people in New York saw the EC prior to September 11. It does not appear to have received much attention or elicited much concern. Two of the three do not recall the communication prior to September 11. The third remembered reading it but said it did not resonate with him because he found it speculative.

The New York agents stated that they were well aware that Middle Eastern men frequently came to the United States for flight training. A communication noting that Middle Eastern men with ties to bin Ladin were receiving flight training in the United States would not necessarily be considered particularly alarming because New York personnel knew that individuals connected to al-Qa'ida had previously received flight training in the United States.

In fact, one of these individuals trained at the Airman flight school in Norman, Oklahoma, the same place where Zacarias Moussaoui trained prior to his arrival in Minnesota. Mohammed Atta and another of the hijackers visited this same flight school but decided not to enroll there. The commonly held view at the FBI prior to September 11 was that bin Ladin needed pilots to operate aircraft he had purchased in the United States to move men and material.

Mr. Chairman, I also will now turn to the investigation by the FBI of Zacarias Moussaoui.

Zacarias Moussaoui also first came to the attention of the FBI during the summer of 2001——

Chairman GOSS. Ms. Hill, may I interrupt for a moment, please?

Ms. HILL. Yes.

Chairman GOSS. We are advised that there is a vote on in the Senate. I yield to Senator Graham.

Chairman GRAHAM. Ms. Hill, would this be an appropriate place to break for the members of the Senate to be able to make this vote?

Ms. HILL. Yes, Mr. Chairman, I think so, because I am about to start on the Moussaoui case.

Chairman GRAHAM. Then I would recommend to our Senate members that we vote and return as expeditiously as possible.

Chairman GOSS. Because we want all members to hear the opening presentation and the opening statements of the witnesses we will have later, we will be in recess until the return of the Senate.

Ms. HILL. Thank you, Mr. Chairman.

[Recess.]

Chairman GOSS. The Committee will please come back to order and we will continue the hearing which has been suspended for the vote of the Senate. I note that two of the big four are back.

I also would like to with great pride take a moment of privilege and introduce to our colleagues on both sides the leadership tomorrow from southwest Florida. We have about 25 of the students and seniors who are up here with the Congressional Classroom who are observing this hearing for a while this morning, and these folks worked hard to get here. They will be here for a week following Members around, learning about the Executive branch and so forth. It is an excellent idea, and I urge other colleagues to consider it. It is the most rewarding thing I think I do as a Member of Congress to have the privilege of hosting these folks and following up with them. We have been doing it for 14 years, and many of them have gone on to be great leaders. So it is a useful thing.

If any other of the Members have similar groups here, we will be glad to recognize them as we go along.

Returning to the business at hand, Ms. Hill.

Ms. HILL. Thank you, Mr. Chairman. Zacarias Moussaoui also first came to the attention of the FBI during the summer of 2001, at a time when the Intelligence Community was detecting numerous indicators of an impending terrorist attack against U.S. interests. Moussaoui has been indicted and faces a criminal trial this fall. Among other things, Moussaoui has been charged with Federal charges of conspiracy to commit aircraft piracy "with the result that thousands of people died on September 11, 2001."

In order to avoid affecting the course of that proceeding, the Joint Inquiry Staff has limited the amount of detail in this presentation while attempting to provide a general understanding of the facts of the investigation, and I want to take just a moment to update the members of the committees on where we are regarding the limitations on what we can say about the Moussaoui case vis-a-vis the criminal trial that is pending in Alexandria.

We had been working very closely with the Justice Department, and this is not a classification issue. This was over and above the review of the statement because of classification issues. We have been working very closely with the Justice Department to ensure that in no way we prejudice Mr. Moussaoui's right to a fair trial in the criminal case, and as of last Friday, the Justice Department—I believe it was last Friday—the Justice Department had filed a motion with Judge Brinkema, who is presiding over the criminal case, to clarify what the FBI witnesses who will be here this morning when I finish to testify can and cannot say in their testimony about the Moussaoui case.

And the concern was that under the local rule 57 in the Federal Court in Virginia they would be prohibited from talking about some very broad categories of information, including—and I will just mention a few—obviously anything that would comment on Mr. Moussaoui's guilt or innocence, anything that would reveal what trial witnesses would be testifying to, statements of witnesses and also anything relating to statements of the defendant himself, Mr. Moussaoui.

The Justice Department had asked the court to clarify to what degree that would limit the witnesses' ability to answer questions, and basically had asked that the court clarify those limitations so that we would know how to proceed this morning.

The joint committees responded and did file a written response in the court on Monday, which was yesterday, and we had assumed—we were trying to be cautious in proceeding by deleting a lot of the material in this statement that pertained to Moussaoui's statements, or witness statements.

Last night, late in the day, we received a written order from Judge Brinkema, who had ruled on the Justice Department motion and our response, and I will read it to you—it is only a three-page order. It was signed by her yesterday, but the important and pertinent part of it is the statement which responds to what witnesses can and cannot say in these hearings about the Moussaoui case, The joint inquiry made clear in its August 5th, 2002 letter to the Assistant Attorney General for the criminal division the limited parameters of the inquiry and has reiterated in its reply that the committees will not ask witnesses to comment about the merits of the case."

Indeed, the questions are expected to focus on—and this is quoting from our motion—"what government officials heard, observed, reasoned, recommended and acted on or did not act on prior to September 11." The committees are not interested in "expressions of current judgment from government witnesses about the defendant's guilt or innocence or the government's plans for presenting its case."

And this is the pertinent part. The judge ruled, "given the ground rules articulated by the joint inquiry, FBI personnel should have no difficulty responding to Congress's questions without violating local rule 57 or any other order of this court. Accordingly, the renewed expedited motion for clarification is denied."

So Judge Brinkema, as of last night, has, I think, made it clear that the witnesses are free to answer questions about—a quote from her order—"what government officials heard, observed, reasoned, recommended and acted on or did not act on prior to September 11."

Obviously—and she mentions this in the order, and we had represented to her—we are not asking the witnesses to come and testify on whether or not they believe Mr. Moussaoui is innocent or guilty or on the merits of the criminal case or plans for presenting evidence in the criminal case, but to the extent we can go into what people knew or heard or did prior to the 11th without talking about the merits of the case, I believe the judge has pretty clearly stated that that is permissible and would not violate the local rule.

My only other caveat is that our statement included more detail which was taken out before this order was entered, and so we will probably, at a later date, now go back and try for the record to reinsert some of the detail that was in here, consulting with the Department of Justice on that.

Mr. CHAMBLISS. Mr. Chairman, could we get a copy of the judge's order disseminated to all members before we begin an examination?

Chairman GOSS. I believe in fact there was some effort to get them in the book. I am not sure it is the full order. Is there a tab?

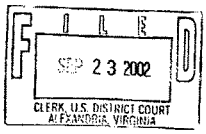
Ms. HILL. I believe it is——

Mr. CHAMBLISS. In the book.

Chairman GOSS. This just came in. I believe most of the books were updated.

Ms. HILL. It is only a three-page order, and, Mr. Chairman, I would also ask that we make this part of the record, the judge's order.

[The information referred to follows:]



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	
a/k/a "Shaqil,"	)	
a/k/a "Abu Khalid al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

Before the Court is the Renewed Expedited Motion of the United States for Clarification Regarding the Applicability of Local Criminal Rule 57 to Information to Be Made Public in Congresional Proceedings ("Renewed Expedited Motion for Clarification"), in which the Department of Justice again asks the Court for an advisory ruling on the applicability of Local Rule 57 to the testimony of Federal Bureau of Investigation ("FBI") witnesses who are scheduled to testify during open hearings before the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence beginning on September 24, 2002. The United States specifically proposes that the Court order that Local Rule 57 applies to "all statements" made by Department of Justice employees who are called to testify at the public hearings.[1]

[1] Having reviewed the United States' Motion, the Reply on behalf of the Joint Inquiry, and standby defense counsel's Response, we find that oral argument will not assist us in resolving the Renewed Motion. We defer ruling on standby defense

09/23/02 MON 18:09 FAX 7035575128 JUDGE L M BRINKEMA 002

Local Rule 57 was enacted to balance the fair trial rights of criminal defendants against the public's right to be informed about criminal proceedings on the court's docket. Local Rule 57(C) provides that

> "a lawyer or law firm[2] associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be further disseminated by any means of public communication, if such statement concerns...(1) the prior criminal record...character or reputation of the accused...; (2) the existence or contents of any confession, admission, or statement...by the accused...;...(4) the identity, testimony, or credibility of prospective witnesses...; (5) the possibility of a plea of guilty...; [or] (6) any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case."

The general rule does not preclude a lawyer or law firm "in the proper discharge" of its official or professional obligations from publicly commenting about the fact of an arrest, describing evidence seized, or discussing the nature of the offense charged. Moreover, Local Rule 57 is not "intended to preclude...the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that

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counsel's request to postpone the start of jury selection, request for copies of all testimony before the Committees and documents relied on during the hearings, and concerns about the disclosure of classified information until the United States has had an opportunity to respond.

[2] Local Rule 57 applies to FBI personnel because they are part of the Department of Justice, which is the law firm prosecuting this case.

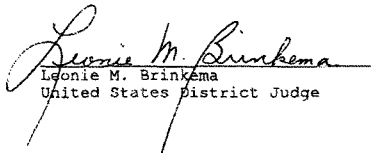
09/23/02 MON 18:09 FAX 7035575128 JUDGE L M BRINKEMA 003

are publicly made against such lawyer."

The Joint Inquiry made clear in its August 5, 2002 letter to the Assistant Attorney General for the Criminal Division the limited parameters of the inquiry and has reiterated in its Reply that the Committees will not ask witnesses to comment about the merits of this case. Indeed, the questions are expected to focus on "what government officials heard, observed, reasoned, recommended, and acted on (or did not act on) prior to September 11." Reply at 7. The Committees are not interested in "expressions of current judgment from government witnesses about the defendant's guilt or innocence or the government's plans for presenting its case." Id. Given the ground rules articulated by the Joint Inquiry, FBI personnel should have no difficulty responding to Congress' questions without violating Local Rule 57 or any other order of this Court. Accordingly, the Renewed Expedited Motion for Clarification is DENIED.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; and counsel for the Joint Inquiry.

Entered this 23rd day of September, 2002.



Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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Senator LEVIN. Mr. Chairman.

Chairman GOSS. Yes, sir.

Senator LEVIN. Mr. Chairman, when the material is reinserted and then put in the record, could Ms. Hill give us a copy of the reinsertion, highlighting the material which has been reinserted which was not in her report which she is presenting today.

Chairman GOSS. The answer to that, Senator, is yes. In fact, the principals have discussed a way to do that this morning and make sure everybody understands what has been of particular interest to us which we are now free to highlight again.

Ms. HILL. All right. With that caveat, I will proceed to read the highlights of the statement.

Our review of the FBI's investigation to date has identified three issues in particular to which I will draw Members' attention—the differences in the way the FBI field offices and headquarters components analyzed and perceived the danger posed by the facts uncovered during the FBI's investigation of Moussaoui prior to September 11; the tools available to the FBI under the Constitution and laws of the United States to investigate that danger, notably, the Foreign Intelligence Surveillance Act, FISA, and whether FBI personnel were well organized and informed about the availability of those tools; and whether the substance, clarity and urgency of the threat warning provided by the FBI to other parts of the Intelligence Community corresponded to the danger that had been identified.

The FBI's focus at the time Moussaoui was taken into custody appears to the staff to have been almost entirely on investigating specific crimes and not on identifying linkages between separate investigations or on sharing information with other U.S. Government agencies with counterterrorist responsibilities. No one at FBI headquarters apparently connected Moussaoui, the Phoenix memo, the possible presence of Khalid al-Mihdhar and Nawaf al-Hazmi in the United States and the flood of warnings about possible terrorist attacks during the summer of 2001.

The staff has determined that Moussaoui contacted the Airman Flight School in Norman, Oklahoma on September 29, 2000 and expressed interest in taking lessons to fly a small Cessna aircraft. On February 23, he entered the United States at Chicago's O'Hare Airport, traveling on a French passport that allowed him to stay in the United States with a visa for 90 days. On February 26, he began flight lessons at Airman Flight School. On August 11, 2001, Moussaoui and his roommate, Hussein al-Attas, arrived in Egan, Minnesota and checked into a hotel. Moussaoui began class at Pan Am Flight School there on August 13, 2001.

While Airman Flight School provided flight lessons in piloting Cessnas and similar small aircraft, Pan Am Flight School provided ground training and access to a Boeing 747 flight simulator used by professional pilots. Most of Pan Am's students are either newly-hired airline pilots who use the flight simulator for initial training or are active airline pilots who use the equipment for an update or a refresher training.

Although anyone can sign up for lessons at Pan Am, the typical student has a pilot's license, is employed by an airline and has sev-

eral thousand flight hours. Moussaoui had none of these qualifications.

Based on concerns expressed by a private citizen, the FBI's Minneapolis field office opened an international terrorism investigation of Moussaoui on August 15, 2001. Agents of the INS share space and worked closely with the FBI in Minneapolis and were able to immediately determine that Moussaoui had been authorized to stay in the United States only until May 22. Thus, Moussaoui was out of status at the time, August, that the FBI began investigating him.

On the same day, the Minneapolis field office learned about Moussaoui, it asked both the CIA and the FBI's legal attache in Paris for any information they had or could get on Moussaoui. They also informed FBI headquarters of the investigation. The supervisory agent in Minneapolis told the joint inquiry staff that FBI headquarters had suggested that Moussaoui be put under surveillance but that Minneapolis did not have enough agents to do that. The Minneapolis agents also believed that it was more important to prevent Moussaoui from getting any additional flight training.

After Moussaoui's detention, the Minneapolis supervisory agent called the office's legal counsel and asked if there was any way to search Moussaoui's possessions without his consent. He was told he had to obtain a search warrant. Over the ensuing days, the Minneapolis agents considered several alternatives, including trying to obtain a criminal search warrant, seeking a search warrant under FISA and deporting Moussaoui to France after arranging for French authorities to search his possessions and share their findings with the FBI.

On Saturday, August 18, Minneapolis sent a detailed memorandum to FBI headquarters. That memorandum described the Moussaoui investigation and stated that it believed that Moussaoui posed a threat. The joint inquiry staff has been told that FBI headquarters advised against trying to obtain a criminal search warrant, as that might prejudice any subsequent efforts to try to get a search warrant under FISA.

Under FISA, a search warrant could be obtained if they could show there was probable cause to believe Moussaoui was an agent of a foreign power and either engaged in terrorism or was preparing to engage in terrorism.

FBI headquarters was concerned that if a criminal warrant was denied and then the agents tried to get a warrant under FISA, the court would think the agents were trying to use authority for an intelligence investigation to pursue a criminal case. Minneapolis also wanted to notify the criminal division about Moussaoui through the local U.S. attorney's office, believing it was obligated to do so under Attorney General guidelines that require notification where there is "reasonable indication" of a felony. FBI headquarters advised Minneapolis that they did not have enough evidence to warrant notifying the criminal division.

The FBI case agent in Minneapolis had become increasingly frustrated with what he perceived as a lack of assistance from the radical fundamentalist unit, RFU, at FBI headquarters. He had had previous conflicts with the RFU over FISA issues and believed

headquarters was not being responsive to the threat Minneapolis had identified.

The Minneapolis case agent contacted an FBI official who was detailed to the CTC. The Minneapolis agent shared the details of the Moussaoui case with him and provided the names of associates that had been connected to Moussaoui. The Minneapolis case agent has told the staff that he was looking for any information that CTC could provide that would strengthen the case linking Moussaoui to international terrorism.

On August 21, 2001, the case agent sent an e-mail to the supervisory special agent in the RFU who was handling this matter, urging that the United States Secret Service in Washington, DC. be apprised of the threat potential there indicated by the evidence. The RFU agent to whom the e-mail was addressed said that he told the Minneapolis agent that he was working on a notification to the entire Intelligence Community, including the Secret Service about the threat presented by Moussaoui.

The RFU's supervisory agent sent a teletype on September 4, 2001 recounting the FBI's interviews of Moussaoui and al-Attas and other information it had obtained in the meantime. The teletype, however, did not place Moussaoui's actions in the context of the increased level of terrorist threats during the summer of 2001, nor did it provide its recipients with any analysis of Moussaoui's actions or plans or information about what type of threat he may have presented.

On Wednesday, August 22, the legal attache's office in Paris provided its report. That report began a series of discussions between Minneapolis and the RFU at headquarters focusing on whether a specific group of Chechen rebels were a recognized foreign power, one that was on the State Department's list of terrorist groups and for which the FISA court had previously granted orders.

The RFU agent believes that the Chechen rebels were not a recognized foreign power, and that even if Moussaoui were to be linked to them, the FBI could not obtain a search warrant under FISA. Thus, the RFU agent told the Minneapolis agents that they needed to somehow connect Moussaoui to al-Qa'ida, which he believed was a recognized foreign power.

Unfortunately, this dialogue was based on a misunderstanding of FISA. The FBI's deputy general counsel told the joint inquiry staff that the term "recognized foreign power" has no meaning under FISA and that the FBI can obtain a search warrant under FISA for an agent of any international terrorist group, including the Chechen rebels. But because of this misunderstanding, Minneapolis spent the better part of three weeks trying to connect the Chechen group to al-Qa'ida. Ultimately, the RFU agent agreed to submit the Minneapolis FISA request to the attorneys and the FBI's national security law unit for a review.

The FBI attorneys advised the RFU agent that the evidence was insufficient to link Moussaoui to a foreign power. Attorneys told our staff that if they had been aware of the Phoenix memo, they would have forwarded the FISA request to the Justice Department's Office of Intelligence Policy Review. They reasoned that the particulars of the Phoenix memo changed the context of the Moussaoui investigation and made a stronger case for the FISA

warrant. None of them saw the Phoenix memo before September 11.

Two FBI agents assigned to the Oklahoma City field office's international terrorism squad visited Airman Flight School in Norman, Oklahoma regarding Moussaoui on August 23. In September of 1999, one of those agents had been assigned a lead to visit the same flight school concerning another individual who had been identified as bin Ladin's personal pilot and who had received flight training at Airman. Although the agent told us that he thought that this lead had been the most significant information he had seen in Oklahoma City, the agent did not remember the lead when he returned to the flight school two years later to ask questions about Moussaoui. He said that he should have connected the two visits, but that he did not have the time to do so.

During a conversation on August 27, 2001, the RFU unit at headquarters told the Minneapolis supervisor that the supervisor was getting people "spun up" over Moussaoui. According to his notes and his statement to the joint inquiry staff, the supervisor replied that he was trying to get people at FBI headquarters spun up because he was trying to make sure that Moussaoui "did not take control of a plane and fly it into the World Trade Center."

The Minneapolis agent said that the headquarter's agent told him, "That is not going to happen. We don't know he is a terrorist. You don't have enough to show he is a terrorist. You have a guy interested in this type of aircraft. That is it."

The headquarter's agent does not remember this exchange. The Minneapolis supervisor told the staff that he had no reason to believe that Moussaoui was planning an attack on the World Trade Center. He was merely trying to get headquarter's attention.

On August 28, 2001 after reviewing the request for a search warrant, the RFU agent edited it and returned the request to Minneapolis for comment. The RFU agent says that it was not unusual for headquarter's agents to make changes to field submissions, in addition to changes made by the NSLU and OIPR. The major substantive change that was made but was the removal of information about connections between the Chechen rebel and al-Qa'ida.

After the edit was complete, the RFU agent briefed the FBI deputy general counsel. The deputy general counsel told the joint inquiry staff that he agreed with the RFU agent that there was insufficient information to show that Moussaoui was an agent of a foreign power. After that briefing, the RFU agent told Minneapolis that the information was even less sufficient than he had previously thought, because Moussaoui would actually have to be shown to be a part of a movement or an organization.

After concluding that there was insufficient information to show that Moussaoui was an agent of any foreign power, the FBI's focus shifted to arranging for Moussaoui's planned deportation to France on September 17. Although the FBI was no longer considering a search warrant under FISA, no one revisited the idea of attempting to obtain a criminal search warrant, even though the reason for not attempting to obtain a criminal search warrant, the concern that it would prejudice a request under FISA, no longer existed.

On Thursday, September 4, 2001, FBI headquarters sent a teletype to the Intelligence Community and other U.S. Government

agencies, including the FAA, providing information about the Moussaoui investigation. The teletype noted that Moussaoui was being held in custody but did not describe any particular threat that the FBI thought he posed, for example, whether he might be connected to a larger plot. The teletype also did not recommend that the addressees take any action or look for any additional indicators of a terrorist attack, nor did it provide any analysis of a possible hijacking threat or provide any specific warnings.

The following day, the Minneapolis case agent hand-carried the teletype to two employees of the FAA's Bloomington, Minnesota office, and orally briefed them on the status of the investigation. The two FAA employees told our staff that the FBI agent did not convey any sense of urgency about the teletype and did not ask them to take any specific action regarding Moussaoui. He just wanted to be sure the FAA had received the cable.

The final preparations for Moussaoui's deportation were under way when the September 11 attacks occurred.

And I want to just add, in conclusion, a few comments. The staff has described three series of events pertaining to al-Mihdhar and al-Hazmi, the Phoenix EC and Zacarias Moussaoui, each of which raises significant questions in their own right. In the wake of the September 11 attack, they also illustrate the danger of seeing events in isolation from each other. In our view, taken together, they clearly demonstrate how our counterterrorist efforts must be based on comprehensive and current understanding of the overall context in which terrorist networks like al-Qa'ida operate.

During last week's hearing, we focused on the story involving al-Mihdhar and al-Hazmi and the problems which it illustrated about the use of information derived from intelligence-gathering activities in criminal investigations.

This morning I want to comment on the two matters we discussed in today's testimony. The second matter, the Phoenix EC, also illustrates the Intelligence Community's strength and weaknesses. An FBI agent perceived amidst a perfusion of cases that terrorists could use the well-developed system of flight training education in the United States to prepare an attack against us. The field agent understood that it was necessary to go beyond individual cases and to undertake an empirical analysis broader than the geographic limits of a single field office. The idea was submitted to FBI headquarters, where, for a variety of reasons, it generated almost no interest.

First, no one gleaned from the FBI's own records that others at the Bureau had previously expressed concerns about possible terrorists at U.S. flight education institutions. Second, anticipating future threats has not been a significant part of the FBI's general approach to its work. Third, the highest levels of the Intelligence Community have not communicated effectively to their personnel the critical importance of analyzing information in light of the growing awareness of an impending terrorist attack in the summer of 2001.

Finally, FBI management did not perceive it would be useful to simply alert others at the FBI to the danger that one of its field offices had perceived. As for the third matter, one can see in the pre-September 11 handling of the case of Zacarias Moussaoui a my-

opic focus within both the FBI and the DCI's CTC on the case at hand. An FBI field agent and his supervisor saw a potential threat, were concerned about the possibility of a larger plot to target airlines and reported their concerns to FBI headquarters.

The Moussaoui information was also shared with the DCI's CTC, but neither FBI headquarters nor the DCI's CTC linked this information to warnings emanating from the CTC in the summer of 2001 about an impending terrorist attack, nor did they see a possible connection to information available on August 23, 2001 that bin Ladin operatives had entered the United States. The same unit at FBI headquarters also had the Phoenix EC, but still did not sound any alarm bells.

No one will ever know whether a greater focus on the connection between these events would have led to the unraveling of the September 11 plot, but clearly it might have drawn greater attention to the possibility of a terrorist attack within the United States, generated a heightened state of alert regarding such attacks and prompted more aggressive investigation and intelligence gathering regarding the information that our government did possess prior to September 11.

Mr. Chairman, that concludes my statement this morning. Thank you.

Chairman GOSS. Thank you very much, Ms. Hill. The Members are well advised that the full statement is in their book under tab 2 as well, and it is certainly worth reading closely more than once.

At this time I want to advise Members that, to accommodate other matters, we will recess for a luncheon break between 12:30 and 2:00 today—more or less those times. We will try to break the questioning off at a reasonable time very close to 12:30, and ask Members please to be back here at 2:00. I know there will be a lot of questions.

Additionally, I didn't want to take a chance on up-staging the Chairman from the Senate side, so it is my pleasure to introduce the former First Lady of Florida and the forever First Lady of Chairman Graham, Adele Graham, who is with us today and their daughter Susan.

We are going to give them a quiz on this at the end of the day and find out how we did. Thank you very much for being with us, Adele.

At this time, I ask unanimous consent that the hearing stand in recess at the call of the Chair and request that the press, the public and any other unauthorized persons leave the room so that it may be prepared for our next panel.

Due to sensitivities related to the responsibilities at the FBI, our three witnesses today will testify while sitting behind an opaque screen. All cameras will have to be relocated so as to show photography only from the audience side of the screen. Before the press leaves, I request that the room be arranged and cameras located in a manner that the witnesses cannot be seen by the public or press.

What I have basically just said is we are going to clear the room, put the screen in place and bring the witnesses in, and then we will be very happy to readmit our guests. And Mrs. Graham, I apologize for welcoming you and then asking you to leave. So we

will be suspended until the room is right, and I ask everybody's cooperation.

[Recess.]

Chairman GOSS. The screen works extremely well. I cannot see around it. Are we prepared to continue?

Thank you. The hearing of the Joint Inquiry is now called back to order. I would now like to introduce our next panel and describe the circumstances of this portion of our hearing. Our three witnesses are all from the FBI and will remain shielded by the screen. None of these witnesses will be addressed by name but should be referred to by their job titles which we have just gone through. There is a Phoenix FBI agent, an FBI headquarters supervisor and a Minneapolis FBI agent.

The committees have agreed to limit their public exposure as much as possible due to their roles in sensitive matters and the extraordinary work they do protecting our country.

Each of our committees has adopted a supplemental rule for this joint inquiry that all witnesses shall be sworn. I will ask the witnesses to raise their right hand.

[Witnesses sworn.]

Chairman GOSS. Let the record so indicate.

I have been advised that if Mr. Bowman and Mr. Rolince intend to answer any questions, they will also have to be sworn. Will you please raise your right hands.

[Witnesses sworn.]

Chairman GOSS. Thank you very much, gentlemen.

Are there any other representatives of the FBI today who would wish to be publicly identified at this time? Not that we know of. Thank you, then.

I think we have had enough explanation about the rules here, so I am going to bypass this. If there are any further people that we need to have testify, we will need to advise them that they will have to be sworn in as well.

The prepared statements of the witnesses will be placed in the record of these proceedings. I will now call on our witnesses for their prepared testimony, which I direct Members to the books. You will find it there as well. And I will start with the Phoenix FBI agent, who will be followed by the headquarters FBI supervisor, who will be followed by the Minneapolis field agent. Gentlemen, we welcome you. Please proceed.

TESTIMONY OF AN FBI PHOENIX AGENT

FBI PHOENIX AGENT. Thank you. Messieurs Chairman, members of the committee, let me begin by saying I am aware that Congress has the responsibility, duty and obligation to oversee and critique the performance of the Nation's intelligence services. I greatly respect your responsibilities in this regard and believe your inquiry will result in changes to our intelligence services that will make them better and stronger. I do, however, take exception and have problems with the manner in which classified information and the identities of FBI special agents have been exposed to the public.

Terrorism cases such as the investigation that led to my authoring of the July 10, 2001 electronic communication are typically classified secret in their entirety. Various intelligence sources and

methods are utilized while conducting these sensitive investigations. FBI special agents assigned to work these matters involve themselves on a daily basis with Islamic extremist elements representing various terrorist organizations. The very nature of these cases involve individuals who do not like the United States or what the United States represents, thus making them a threat to the national security and a threat to the individual special agents.

Special agents are constantly attempting to recruit human sources of information to penetrate the terrorist cells that operate in the United States and overseas. Human sources are absolutely necessary in order to obtain the intelligence needed to identify, penetrate and neutralize the terrorist threat. The recruitment of these sources takes a great deal of time and effort in order to build a degree of trust between the special agent and the source. Good human sources are few and far between. The FBI and the United States government need to protect these sources in order to encourage others to assist us in the war on terrorism.

During May of 2002, this year, I willingly testified before various closed House and Senate committees. I was graciously treated by members of these committees. However, I was astounded and very disappointed that my identity and the classified information I provided was immediately made available to the national and international news media. My photograph was plastered all over print and television media. Reporters from all over the world called my office and my residence attempting to get a statement from me. The media quickly identified through publicly-available records where I lived and showed up at the front door of my residence.

On one occasion, a reporter from an internationally known news magazine confronted my 12-year-old son while he was taking out the trash and tried to elicit information from him. This incident caused my son great distress and made me very angry. The media also identified where my mother and father live and attempted to get a statement from them. In short, a circus atmosphere was created by the unnecessary release of my identity and the classified information I provided to Congress.

Finally, I have been informed that a documentary appeared on the Al-Jazeera news network within the past couple of weeks concerning the events surrounding September 11, 2001. Several al-Qa'ida leaders were interviewed. My name and photograph was also included in this documentary. While the exact contents of what was discussed concerning me are currently unknown, I am particularly concerned knowing this network is broadcasting my name and image throughout the Middle East.

As a result of the above, despite my longstanding practice of not discussing the details of my job with my family due to its classified nature, I had to explain to my family and close friends what was happening. I explained to them that I did nothing wrong and was not solely responsible for the horrific events that took place on September 11, 2001. As you can imagine, the stress upon my family and myself was tremendous and continues until this day.

On a professional level, the public exposure of my identity and the information I provided in closed testimony resulted in me having to close valued human intelligence sources who were targeting against the subject of the July 10, 2001 electronic communication.

These individuals took great personal risks to their physical security to provide the United States Government with information on this subject. I promised them a confidential relationship with the United States Government, which was broken when my identity and the information they had provided was made public and it appeared all over the world.

The United States Government let these individuals down. Various Members of the House and Senate have publicly stressed the need for the United States Intelligence Community to develop more human sources to penetrate the various terrorist organizations who want to cause harm to our country and our national interests abroad. Congress will make this task very difficult if they do not take seriously the classified nature of the intelligence work. The protection of intelligence agents, human intelligence sources and technical sources should be protected at all costs.

I believe that the unnecessary disclosure of my identity has put the safety of my family and myself at risk. I ask myself, what are senior members of al-Qa'ida thinking when they see my image in the media. If I were in their position, I would be thinking that there must be a source who has penetrated the organization. I believe that al-Qa'ida would consider me a terrorist target and would want to kill me. Just as I believe Congress has the duty and responsibility and obligation to oversee and critique the Nation's intelligence services, they have an equally important responsibility to protect the identities of the Nation's intelligence agents who are diligently trying to protect the Nation on a daily basis. I feel in this regard Congress has personally failed me as an FBI special agent and as an American.

A Member of Congress a couple months ago invoked whistleblower protection for me without my asking for it. I do not consider myself a whistleblower. I don't feel nor have I ever felt threatened or been mistreated by FBI headquarters executive management. On the contrary, FBI headquarters executive management has been very supportive of me. While I appreciate the Member's concern for my wellbeing, I believe his concerns, as well-intentioned as I am sure they were, were misdirected. Greater emphasis should have been placed on protecting my identity and the information I provided during closed sessions. I am not afraid of the FBI, but I am very concerned about al-Qa'ida and what they may want to do to me and my family. Sadly, I can thank the United States Congress for my current situation.

The horrible events of September 11, 2001 have forever changed the way we as a Nation view things. Did the Nation's intelligence services fail the Nation prior to September 11? I believe they did. Can they do things better? You bet they can, once Congress gives the intelligence services the tools and resources to accomplish the mission.

These hearings are extremely important. Congress, during these hearings, should be very careful not to divulge the identities of the Nation's intelligence officers, sources and methods used in collecting the intelligence information, as well as the information itself. The Nation is at war, and Congress has the responsibility, duty, and obligation to protect this type of information.

This concludes my prepared statement, and I would be willing to take any questions.

Chairman GOSS. Thank you very much. We are going to have the testimony from your colleagues as well, and then we will go into our questioning mode.

The gentleman from FBI headquarters.

[The prepared statement of the FBI Headquarters Agent follows:]

PREPARED REMARKS OF
FBI HEADQUARTERS COUNTERTERRORISM
UNIT CHIEF

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2002

Messrs. Chairmen, members of the Committees, I am pleased to appear before you today. Messrs. Chairman, I have been a Special Agent with the FBI for more than 15 years. Of these more than 15 years, approximately13 have been dedicated to the FBI's Counterterrorism mission as a field agent, FBIHQ Supervisor, a Field Division Joint Terrorism Task Force Supervisor and as a FBIHQ Counterterrorism Unit Chief. It was in the capacity of Unit Chief that I was serving on that most tragic day for our nation, September 11, 2001, having returned to FBI Headquarters from the field about three months previously. It was my unit that handled the Zacarias Moussaoui matter and through which the "Phoenix E.C." passed.

There is an ongoing Capital prosecution in the Eastern District of Virginia against Zacarias Moussaoui, with Defendant's jury schedule to be selected beginning in December, 2002. Because of this and as an employee of the Department of Justice, I am bound by Local Rule 57, which prohibits prejudicial pre-trial publicity to protect the Constitutional trial

rights of Criminal defendants. For example, I am prohibited from discussing 1) the existence or contents of any statement given by the Defendant or failure of the Defendant to make a statement, 2) character and/or reputation of the Defendant, 3)identity, testimony or credibility of any prospective witness or witnesses and 4) any opinion as to the Defendant's guilt or innocence or as to the merits of the case or evidence or anything else that would interfere with a fair trial. Therefore, I may be unable to answer some of your questions in an Open Session, but I am prepared to answer all of your questions in a Closed Session.

Within the course of these hearings, this Committee has heard of the frustrations of FBI field agents in their efforts to conduct their duties and responsibilities on behalf of the American people. Having served as a field agent and field supervisor, I know of their sense of frustration posed by rules and regulations, National Security law and the sense of being held in check by Washington.

As a FBI Headquarters Unit Supervisor and Unit Chief, I am also aware of FBI Headquarter's role in supporting and coordinating terrorism investigations, and the necessity of Washington's oversight to ensure compliance with existing policies and law. I have also witnessed first hand, a dedicated group of Counterterrorism professionals that have been routinely overwhelmed by large case loads and continual crisis management. They also confront the daily frustrations posed by limited resources, especially within our analytical ranks, and inadequate technology which hampers their ability to communicate within FBI Headquarters, with our 56 field divisions and 44 Legal Attaches around the world, as well as with other elements of the Law Enforcement and Intelligence Community. Since

September 11, 2001, our Director has already made many changes within the FBI to address these systemic problems. These reforms must continue.

Messrs. Chairmen, throughout my career I have found all of the FBI's Counterterrorism personnel–Agents, Analysts and other Professional Support to be a highly dedicated, highly competent group of professionals. They will continue to serve on the front lines of this war against international terrorists.

I am prepared to answer your questions.

TESTIMONY OF AN FBI HEADQUARTERS AGENT

FBI HEADQUARTERS AGENT. Mr. Chairman, members of the committees, I am pleased to appear before you today. Mr. Chairman, I have been a special agent with the FBI for more than 15 years. Of these more than 15 years, approximately 13 have been dedicated to the FBI's counterterrorism mission as a field agent, FBI headquarters line supervisor, a field division joint terrorism task force supervisor and as an FBI headquarters counterterrorism unit chief.

It was in the capacity of unit chief that I was serving on that most tragic day for our Nation, September 11, 2001, having returned to FBI headquarters from the field about three months previously. It was my group that handled the Zacarias Moussaoui matter and through which the Phoenix EC passed.

Mr. Chairman, I must note that there is an ongoing capital prosecution in the eastern district of Virginia against Zacarias Moussaoui, with defendant's jury scheduled to be selected beginning in December 2002. Because of this, and as an employee of the Department of Justice, I am bound by local rule 57, which prohibits prejudicial pretrial publicity to protect the constitutional trial rights of criminal defendants.

Therefore, I may be unable to answer some of your questions in an open session, but I am prepared to answer all of your questions in a closed session.

Mr. Chairman, within the course of these hearings, this committee has heard the frustrations of FBI field agents in their efforts to conduct their duties and responsibilities on behalf of the American people. Having served as a field agent and a field supervisor, I know of their sense of frustration as posed by rules and regulations, national security law, and the sense of being held in check by Washington.

As an FBI headquarters unit supervisor and unit chief, I am also aware of FBI headquarters's role in supporting and coordinating terrorism investigations and the necessity of Washington's oversight to ensure compliance with existing policies and law.

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Since September 11, 2001, our Director has already made many changes within the FBI to address these systemic problems. These reforms must continue.

Mr. Chairman, throughout my career I have found all of the FBI's counterterrorism personnel, agents, analysts and other professional support to be a highly dedicated, highly competent group of professionals. They will continue to serve on the front lines of this war against international terrorists. I am now prepared to answer your questions.

Chairman GOSS. Thank you, very much.

And now, sir, the agent from Minneapolis.

[The prepared statement of the FBI Minneapolis Agent follows:]

PREPARED REMARKS OF
A MINNEAPOLIS SPECIAL AGENT

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2002

Messrs. Chairmen, members of the Committees, I appreciate your invitation to appear before your Committees today in connection with your Joint Inquiry into the tragic events of September 11, 2001. I fully understand the responsibility with which you have been charged.

From July 2001 through October 2001, I was assigned as the Acting Supervisory Special Agent for the Minneapolis' Field Office's Counterterrorism Squad, which included responsibility for the Joint Terrorism Task Force. I was acting in that capacity on August 15, 2001, when the Minneapolis Field Office opened an intelligence investigation predicated upon the receipt of information concerning the suspicious activities of Zacarias Moussaoui. I continued to supervise this matter beyond September 11, 2001.

From the time of receipt of the initial information until September 11, 2001, Minneapolis aggressively pursued our investigation of Moussaoui, resulting in the collection of a significant amount of information of investigative interest. The investigation was

coordinated between Minneapolis, FBI Headquarters, other FBI Field Offices, FBI Legal Attache Offices and other members of the Intelligence Community. Based upon conversations between Minneapolis and FBI Headquarters, the decision was made to open this matter as an intelligence verses a criminal investigation. This was based upon the understanding that if Minneapolis pursued this as an intelligence matter, Minneapolis still had the option of opening a parallel criminal case. If it was pursued as a criminal matter, we would not have the option of using certain intelligence gathering techniques, such as those available under the Foreign Intelligence Surveillance Act.

During the approximately three weeks preceding and following the events of September 11, 2001, Minneapolis communicated extensively with FBI Headquarters via FBI written communications, telephone conversations and numerous emails. The purpose of these conversations was to attempt to obtain FISA search warrants for Moussaoui's personal effects and his residence and to discuss other case related logistics.

The Minneapolis Field Office experienced great frustration in navigating the FISA process. Some of the frustration can be attributed to the FISA law, some can be attributed to FBI Headquarters and some may be attributed to the circumstances of this case. Attorney General Ashcroft and Director Mueller have initiated procedures to address some of the frustrations which Minneapolis experienced concerning the application of the FISA statute.

What has been lost during this inquiry process since the tragic events of September 11, 2001 is–it is the same FBI, comprised of Special Agents, Analysts and Professional Support employees, which conducted the investigation for the arrest and investigation which resulted in the indictment of Zacarias Moussoui. We are subject to human factors and

limitations and are occasionally hamstrung by legal constraints, both real and imagined. Members of the FBI were, prior to September 11, 2001 and we remain committed to the prevention of terrorist acts.

As you know, there is an ongoing Capital prosecution in the Eastern District of Virginia against Zacarias Moussaoui, with the Defendant's jury scheduled to be selected beginning in December, 2002. Because of this and as an employee of the Department of Justice, I am bound by Local Rule 57, which prohibits prejudicial pre-trial publicity to protect the Constitutional trial rights of Criminal defendants. For example, I am prohibited from discussing 1) the existence or contents of any statement given by the Defendant or failure of the Defendant to make a statement, 2) character and/or reputation of the Defendant, 3) identity, testimony or credibility of any prospective witness or witnesses and 4) any opinion as to the Defendant's guilt or innocence or as to the merits of the case or evidence or anything else that would interfere with a fair trial. Therefore, I may be unable to answer some of your questions in an Open Session, but I am prepared to answer all of your questions in a Closed Session.

TESTIMONY OF AN FBI MINNEAPOLIS AGENT

FBI MINNEAPOLIS AGENT. Thank you.

Messieurs Chairman, members of the committees, I appreciate your invitation to appear before your committees today in connection with your joint inquiry into the tragic events of September 11, 2001. I fully understand the responsibility with which you have been charged.

From July, 2001 through October, 2001, I was assigned as the Acting Supervisory Special Agent for the Minneapolis field office's Counterterrorism Squad, which included the Joint Terrorism Task Force.

I was acting in that capacity on August 15, 2001, when the Minneapolis field office opened an intelligence investigation predicated upon the receipt of information concerning the suspicious activities of Zacarias Moussaoui. I continued to supervise this matter beyond September 11, 2001.

From the time of receipt of the initial information and continuing after September 11, Minneapolis aggressively pursued the investigation of Moussaoui, resulting in the collection of a significant amount of information of investigative interest.

The investigation was a coordinated effort involving Minneapolis, FBI headquarters, FBI field offices and legal attaches, the Immigration and Naturalization Service, and other members of the United States Intelligence Community.

Based upon conversations between Minneapolis and FBI headquarters, the decision was made to continue working the matter as an intelligence versus a criminal investigation. This was based upon the understanding that, if Minneapolis pursued this as an intelligence matter, Minneapolis still had the option of opening a parallel criminal case. If it was pursued as a criminal matter, we would not have the option of using certain intelligence-gathering techniques, such as those available under the Foreign Intelligence Surveillance Act.

During the approximately three weeks preceding September 11, 2001, and following those events, Minneapolis communicated extensively with FBI headquarters via FBI written communications, telephone calls, and e-mails. The purpose of these conversations was to attempt to obtain FISA search warrants for Moussaoui's personal effects and his residence and to discuss other case-related logistics.

The Minneapolis field office experienced great frustration during the investigation and while navigating the FISA process. Some of the frustration can be attributed to the FISA law, some of the frustration can be attributed to FBI headquarters, and some may be attributed to the circumstances of this case. Attorney General Ashcroft and Director Mueller have initiated procedures to address some of the frustrations within the FBI, the frustrations that Minneapolis experienced concerning the application of the FISA statute.

I would reiterate that, as you know, there is an ongoing capital prosecution in the Eastern District of Virginia against Zacarias Moussaoui. I am also bound by Local Rule 57 and therefore may be unable to answer some of your questions in an open session. I

would be happy and I am prepared to answer all of your questions in a closed session.

What has been lost in the media and in this inquiry process is that it is the same FBI which has been extremely criticized since September 11, 2001, that is responsible for the investigation which led to the indictment of Zacarias Moussaoui.

The FBI is, of course, subject to human factors and limitations, and we are occasionally hamstrung by legal constraints, both real and imagined. FBI personnel, both in the field and at FBI headquarters, were committed to preventing acts of terrorism prior to September 11, 2001. We continue to be committed to that mission today. Thank you.

Chairman GOSS. Thank you very much.

Our procedure for the joint inquiry is that we have agreed that questioning is going to be led off by four members who have been preselected, two from each committee, who will have 20 minutes each.

The designated lead questioners for today's hearings are Representative Castle, Senator Edwards, Representative Cramer, and Senator Hatch, in that order; and after they have completed their questioning, we will proceed to the other members of each committee for 5 minutes each with additional rounds as necessary.

For Members' information, after the lead questioners and the leadership, the order of arrival was Senator DeWine, Senator Levin, Representative Roemer, Representative Peterson, Representative Gibbons, Senator Mikulski, Senator Inhofe, Senator Kyl, Representative Bereuter, Senator Feinstein, Senator Rockefeller, Representative Harman, Representative Reyes, Representative Hoekstra, Representative Boehlert, Representative Burr, Representative Chambliss, Senator Bayh, Senator Wyden, and Representative Boswell; and so you can conduct yourselves accordingly.

It is our intent to now go to Representative Castle. He will have his 20 minutes, and at the end of that we will recess for lunch.

Representative Castle.

Mr. CASTLE. Thank you, Mr. Chairman, for all of the titles.

Before I start, let me just say to the Phoenix agent that I listened to your testimony concerning the issues of personal security, et cetera. We all obviously sympathize with that, and Congress obviously has to do its job responsibly.

Let me turn to the Moussaoui issues first, if I may. My opening question will be for the Minneapolis agent and the headquarters supervisor; and the question is simple but, we think, important. What priority did this matter receive in each of your respective offices? If we can start with the Minneapolis agent first.

FBI MINNEAPOLIS AGENT. On August 15, once we received the information about Mr. Moussaoui, we initiated the intelligence case; and we worked extremely hard. This was the number one priority on the squad that I was assigned to until and through September 11, 2001. This was our full court press. We had some other collateral cases, of course, and we didn't neglect those. However, this was the brightest burning case.

Mr. CASTLE. Thank you.

Headquarters supervisor.

FBI HEADQUARTERS AGENT. From a headquarters perspective, the second that we were made aware of this within the unit that did in fact handle that matter, it became a priority. It was a priority of the unit. Clearly we saw this as being of great importance. We saw that his activities were very suspicious, and we also made it a priority.

Mr. CASTLE. For the Minneapolis agent, you told our staff on August 21 you talked with another agent in Minneapolis who said that if you didn't make any progress with the agent who was handling the case at headquarters you should consider going to the section chief or assistant section chief at headquarters. Why didn't you do that?

FBI MINNEAPOLIS AGENT. I contacted my immediate supervisor, who was an Assistant Special Agent in Charge, acting as the Special Agent in Charge of the Minneapolis office. I advised him of the players in the chain, up to and including the Deputy Assistant Director for Counterterrorism. And once I encountered problems at the first line level at FBI headquarters, I went to my ASAC again and requested that he start moving things up the chain. It was appropriate for him to handle matters at his level in the organization, much more appropriate than it was for me to move those things forward.

So I took these concerns to my immediate supervisor, requested that he take the information further; and as to why it wasn't taken any further, I am sorry, sir, I don't know.

Mr. CASTLE. Thank you.

Our staff has been told, continuing with you, that there have been several prior incidents in which Minneapolis found itself at odds with the FBI headquarters on FISA issues. Can you describe them?

FBI MINNEAPOLIS AGENT. No, sir, I cannot. I was installed as the acting supervisor of this squad in July of 2001; and I only had some very, very brief anecdotal information from cases prior to this, nothing in specific. And, quite frankly, I didn't focus on the past problems that we had had. I was much more inclined to focus on the problem that was facing us.

Mr. CASTLE. Does the FBI headquarters agent have any helpful information with respect to that question?

FBI HEADQUARTERS AGENT. As I stated in my testimony, sir, I had arrived at headquarters about three months prior to September 11. I am not aware of specific issues. I think in the post-9/11, 2001, environment I did become somewhat aware of those, but to be able to testify to those facts would be very difficult of——

Mr. CASTLE. To be clear, your answers are you don't know the information so you cannot give it to us, rather than you are not willing to give it to us?

FBI HEADQUARTERS AGENT. That is correct. I do not have that detail.

Mr. CASTLE. To both of you, do you think that prior disciplinary actions involving agents making erroneous applications to the FISA court made agents reluctant to file FISA applications? You can start with the Minneapolis agent, perhaps.

FBI MINNEAPOLIS AGENT. Yes, sir, I do believe that.

In one of the telephone conversations I had with a supervisory agent at the Radical Fundamentalist Unit, those points were made to me about the history with the FISA court; and the position of that supervisor was that he wanted to ensure that at the time we presented everything to the FISA court every I was dotted, every T was crossed, that we were absolutely certain the information we were presenting was accurate.

My position and my response was that this case was fast breaking, information was coming in on a daily basis, sometimes several times a day, and that it was my position that we should present the information we had to the FISA court on an emergent basis, as quickly as possible, with the caveat that this is a breaking investigation. Information will be relayed to the FISA court as it becomes available, if it changes materially, the information that is presented to the FISA court.

My inclination was to push this forward as quickly as we could. I do believe that there was a chilling effect.

Mr. CASTLE. And the headquarters agent?

FBI HEADQUARTERS AGENT. I don't believe so. The supervisor that handled that particular FISA request was a very experienced supervisor. He had brought dozens of FISAs before the court in the past.

Yes, he was aware of some of the past problems with regard to the FISA court and some of the issues that had developed there. But, significantly—and I think this needs to be made very clear—is that in April, 2001, new procedures had been put in place within FBI headquarters. They are now known as the Woods Procedures. Those Woods Procedures require that the field verify facts within a FISA application before the agent goes and takes those matters before the court and swears as the affiant to the FISA request.

I think that that has greatly helped the sense of these agents going in with fact, as opposed to possibly getting tripped up.

Mr. CASTLE. Thank you.

For the Minneapolis agent, in your interview with the joint inquiry staff, you criticize the Radical Fundamentalist Unit for removing information that connected the Chechen rebels to Usama bin Ladin. What was your basis for that criticism?

FBI MINNEAPOLIS AGENT. The information as it was presented back to me by the Radical Fundamentalist Unit was that specific paragraph which was included in our application for the FISA, or our letterhead memorandum that requested the FISA, referenced what we believe to be the connection that we needed to establish between Mr. Moussaoui and a foreign power. And if—specifically, the FISA law required that we show Mr. Moussaoui was connected to a foreign power. That would be relevant information. That would be information that is required by the statute to prove the allegations, to obtain the warrant.

And it was my position at the time and it remains so today that had that information not been made available to the national security law unit, the lawyers who were to review the FISA, it would have never proceeded beyond their unit. It is statutorily required. If you fail to meet the statutory burden, then, of course, it is not going to go further. And in my frame of reference I believe that there was a chilling effect because of the prior incidents with the

FISA court. I believed at the time that there was a possibility that the case was being undersold and that this was redacted—this information was redacted because there was this chilling effect.

Mr. CASTLE. For the headquarters supervisor, on August 18 of 2001, the Minneapolis field office sent a 26-page memo to headquarters describing the Moussaoui investigation. What was your reaction to the memo?

FBI HEADQUARTERS AGENT. I did read the memo. Obviously, it was very alarming to us. I think it is very important to state that those red flags were seen by FBI headquarters, and we viewed it as a—very much a priority matter.

Mr. CASTLE. Did you perceive from that that Moussaoui was a significant threat, or because he was in custody he was not a significant threat at that time?

FBI HEADQUARTERS AGENT. Clearly, he was in custody. No question about that. But we did see this as a priority matter. We realized that we wanted to get into his belongings. We saw the computer and his personal belongings as possibly holding very pertinent information, and we moved in a manner to try to attempt to gain a FISA search warrant.

Mr. CASTLE. Let me switch back to the Minneapolis agent. Considering Moussaoui was in custody, what threat do you think he posed?

FBI MINNEAPOLIS AGENT. The staff characterized the focus of the Minneapolis investigation and the FBI investigation as on specific criminal acts, and I take exception to that characterization because our position always was we needed to get into that notebook computer, we needed to get into those individual handwritten notes to determine if there were other coconspirators that were identified, if there were battle plans that existed that we didn't know, and if there was other intelligence that could be exploited and linked to other cases that were ongoing both in the Minneapolis office and elsewhere.

So we were sensitive to the fact that this could have been a much larger conspiracy, and we were not satisfied that having Mr. Moussaoui in custody dampened the possibility of a terrorist attack.

Mr. CASTLE. Let me go along that line of questioning for a minute.

On August 21 of 2001, an agent on your squad sent an e-mail to the supervisory special agent in the Radical Fundamentalist Unit at headquarters saying it is imperative that the U.S. Secret Service be apprised of this threat potential indicated by the evidence contained in the EC. If he sees an aircraft flying from Heathrow to New York City, it will have the fuel on board to reach DC.

Do you know why that agent sent the e-mail asking that the Secret Service be notified?

FBI MINNEAPOLIS AGENT. Yes. We discussed it on the squad before he sent the e-mail. And it was our contention, initially, and the focus of our investigative hypothesis, that this was a larger issue that was speaking to the potential hijacking or commandeering of an aircraft. There were some pieces of information that were developed during the course of the investigation which led us to believe

that that was the ultimate end and had JFK airport in New York City been the intended destination from an international flight with an aircraft of the type, a 747–400, there would be enough fuel reserve to hit the Nation's Capitol; and that is what the context was.

Mr. CASTLE. I may, if time allows, return to you for questioning, but I want to turn to the Phoenix agent for some questions at this time. Let me start with this.

In your interview with the joint inquiry staff, you mentioned that you did not often see intelligence reports either from FBI headquarters or from other agencies and you often felt "out on an island" from an intelligence perspective in Phoenix. Can you comment on your previous statements—on those statements?

FBI PHOENIX AGENT. Yes. Concerning my feeling of being out on an island, I noticed—I have been doing this work for approximately 13 years, and I—several years ago, there was a significant downsizing of our people at FBI headquarters, to include analysts and supervisors.

Several years ago, many years ago, we used to get regular intelligence products put out by the Terrorist Research and Analytical Center—TRAC, I believe the acronym was—that would give us the MOs, if you will, of what different terrorist organizations may be up to in the United States around the country. It was informative for someone like myself, sitting out in Phoenix, on what was taking place elsewhere in the country.

I have noticed a decline in that type of product being put out to the field. So my comment, relative to being out on an island, involved that.

Mr. CASTLE. Well, let me go on then, for both you and the headquarters supervisor. How important do you think it is for agents working counterterrorism to be kept abreast of national and international developments in their program, and was the FBI running counterterrorism as a national level program prior to September 11, in your opinion?

Start with the Phoenix agent.

FBI PHOENIX AGENT. Yes. I believe my statements—I read that. I believe my statements that it was not being taken and put on a national level was taken out of context. I believe my management at Phoenix was not looking at it as a national priority, due to other priorities that they were looking at, such as the war on drugs.

On a national level, I do believe that they took it as a Tier 1 program and a national priority. But I also believe that it is a resource issue. The people at FBI headquarters are working day in, day out, very hard, probably putting in some of the longest hours in the Bureau dealing with threats coming in from all over the world to U.S. interests in the United States and abroad; and I believe they do not have enough people to get these type of intelligence products out to us, such as myself out in the middle of the desert in Arizona, to know what is going on around the world and within the continental United States.

Mr. CASTLE. To the headquarters agent.

FBI HEADQUARTERS AGENT. Could you repeat the question, sir?

Mr. CASTLE. Sure. How important do you think it is for agents working counterterrorism to be kept abreast of national and inter-

national developments in the program, and was the FBI running counterterrorism at a national level program prior to 9/11? And having heard the answer of the Phoenix agent, it is not a question of saying something is a priority, but, you know, were the necessary personnel and expenditures put into place to make sure that it was a priority?

FBI HEADQUARTERS AGENT. I can probably answer this question from both the field perspective, having just gone back to the headquarters about three months before 9/11, and also from headquarters.

Clearly, counterterrorism needs to be run as a national type program. That does require the resources within FBI headquarters to do that. We need the analysts to be able to pull together this information to put it into forms that are discernible to the field and to get that information out there.

Clearly, from a strategic analytical viewpoint, our resources have been lacking. No question about it. I think when you want to look at systemic problems, which I know this committee is looking at, I think clearly you are going to be focused in on strategic analysis and you are going to be focused in on technology; and to run a national program you have to have both.

Mr. CASTLE. Thank you.

For the Phoenix agent again, in your interview with joint inquiry staff, you stated that you thought that the FBI should have separate career tracks for CT and CI agents. Can you elaborate on those, counterterrorism and counterintelligence?

FBI PHOENIX AGENT. Yes. In my opinion—this is just my opinion—I believe that there have been competing interests over the years between the criminal side of the house and the counterintelligence/counterterrorism side of the house; and I believe that we are always competing with—when I say "we," the counterintelligence/counterterrorism side of the house—with the criminal side of the house for resources, surveillance resources, support resources, agent resources assigned to work these matters in the field.

Prior to 9/11, I have had many examples where I may need surveillance support on a suspected terrorist and would request that support, and that support would be diverted to the southern borders to cover a load of cocaine or marijuana that was coming across the border.

So I am of the belief that we should have separate entities, and we shouldn't be competing with each other within our own house for the resources needed to do both jobs if we are going to be continued to be tasked to do both jobs.

Mr. CASTLE. Well, for the Phoenix agent and the headquarters supervisor, have things dramatically changed since 9/11, from your perspective?

FBI PHOENIX AGENT. I believe that they have but not to the extent to which I want to see it, personally. I believe that we need many more resources directed to the protection of the national security.

You know, in these hearings that I participated before, and this current one, we keep talking about counterterrorism, which as well we should. But we cannot forget counterintelligence. We cannot for-

get about the hostile intelligence services that are out there that want to steal our weapons technology, our company's proprietary information, and things of that nature. So we have to be looking at that as well; and with the limited agents that you have employed by the Federal Bureau of Investigation, it is tough to do all of the criminal things you want to us to do, and the counterintelligence and counterterrorism responsibilities that you have tasked us to undertake.

Mr. CASTLE. And for the headquarters?

FBI HEADQUARTERS AGENT. Clearly, September was a wake-up call. From a headquarters perspective, I will speak to—the resources have already grown tremendously. We have now the ability to draw on resources within the Counterterrorism Division that were just not available before September 11, 2001. For example, we have now an entire group of people looking at nothing but terrorism financing, and that financing can clearly give us leads from an operational standpoint on going after individuals. That resource was never available. We have tremendously beefed up our analytical ranks. That needs to continue. We need to get good, trained people in and keep them.

So from a big picture look, yeah, we are going in the right direction. We have to keep this ship on course. This is too important to walk away from.

Mr. CASTLE. For both of you, the joint inquiry staff has been informed that, prior to September 11, 2001, many field offices were not unloading communications to the FBI's Automated Case System. In addition, the Automated Case System is allegedly notoriously difficult to search. What effect did the problems with the Automated Case System have on the FBI's counterterrorism efforts prior to September 11?

FBI PHOENIX AGENT. From my perspective, sir, I don't have much faith in the automatic case system. I don't like it. I don't like relying on it myself.

As far as documents getting uploaded, the way we work things internally, myself as an agent that would prepare a communication would send it through the supervisory ranks to get approved, and then it would get sent to what we call rotor.

Mr. CASTLE. If the system worked correctly, would you have faith in it and would you use it? I mean, is it something that you think should work correctly?

FBI PHOENIX AGENT. It is something that definitely should work.

Mr. CASTLE. Your comment then is based on the fact that you don't think it is working?

FBI PHOENIX AGENT. I personally do not, and many of my colleagues don't have confidence in the system as well.

But to address your questions with information being uploaded, internally, I would prepare a communication. I send it to my supervisory Special Agent to review. He or she will initial it and then it will be sent to what we call a rotor, which is a file clerk, who will be responsible for uploading that document into the system.

Now the reason why that is important, and I've got to bring this up, is because we are severely understaffed with the support side of the house in the FBI and the field, and a particular rotor could be sitting on a couple of hundred documents a day that haven't

been uploaded into the system because he or she has been tasked to do too much.

Some of these people get pulled away from their job to perform collateral duties such as answering telephones, escorting visitors into the office. In the meantime, these documents sit in piles on desks next to the computers waiting to get uploaded.

Mr. CASTLE. The time is up. But I would like to get the answer, if we could, from the FBI headquarters.

FBI HEADQUARTERS AGENT. I would echo these same sentiments. I think people at headquarters find the ACS system to be unfriendly, unreliable. It is just been a—it has been nonworkable. It has led to a lot of problems in terms of the fact that we have not used it within headquarters properly because it can't be counted on.

As a result, even though a couple of years ago I believe there was a directive that went out to the field telling them to stop sending hard copies to headquarters because they should be retrieved electronically, it was well known, both in the field and at headquarters, that you wouldn't get the communication or there was a good chance that you weren't going to get it. As such, the field would routinely still send hard copy.

Mr. CASTLE. Thank you. Thank you, gentlemen.

I yield back, Mr. Chairman.

Chairman GOSS. Thank you, Governor Castle.

We will now excuse our public guests and ask the press and others to clear the room before we excuse our witnesses. We will reconvene at 2 o'clock—I think exactly at 2, Senator Edwards, if that is convenient. At 2 o'clock we will start again, and Senator Edwards will be the lead questioner.

[Whereupon, the Committees recessed, to reconvene at 2:00 p.m., the same day.]

AFTERNOON SESSION

Chairman GOSS. Okay. The committee will be in order.

The room is right, and we appreciate everybody's cooperation. This is a public session, but we are protecting the identity of our three witnesses.

I would say that there are two gentlemen who are not behind the screen—I think members are familiar with them—that have already been sworn. Mr. Bowman is the Deputy General Counsel of the FBI. Welcome him again. And Mr. Rolince is I think known to the committee as the Special Agent in Charge of the FBI's Washington field office. We have had the pleasure of meeting with him previously.

Senator Edwards, your 20 minutes, sir.

Senator EDWARDS. Thank you very much.

Mr. Chairman, I want to thank all of the witnesses for being here today and for what you have done and for your testimony.

I want to start with Moussaoui. So I will start with the Minneapolis agent, if I can, and then later I have some questions about the Phoenix EC and the Phoenix memo.

What I would like to do is go back in time to August of 2001 and go through what you were thinking; and what you were being told

from people in Washington. I took from the earlier testimony that you gave that you considered this a high priority. Fair?

FBI MINNEAPOLIS AGENT. Yes, sir.

Senator EDWARDS. And an issue around which a lot of people in your office were focused and concerned, fair?

FBI MINNEAPOLIS AGENT. Yes, sir.

Senator EDWARDS. You indicated earlier that, besides concern about Moussaoui himself, you were also concerned about the possibility that—at that point I assume it was just a possibility—that he was part of a bigger plan, part of a conspiracy, and that there was a possibility that there were plans, or I think you used the term battle plans that were under way. Is that fair?

FBI MINNEAPOLIS AGENT. Yes, sir.

Senator EDWARDS. So you were, at that time, when Moussaoui was in custody, thinking to yourself, you and your colleagues, that one of the reasons we need this FISA warrant and we need to see what is on his computer, what these various documents show, is because of the possibility that this guy is involved in something bigger and very dangerous, even though we have him in custody, correct?

FBI MINNEAPOLIS AGENT. That is also fair. Yes, sir.

Senator EDWARDS. Now, the documents themselves and the computer, what—I assume that you had these within your control in some place, is that correct?

FBI MINNEAPOLIS AGENT. They were within the control of the INS, yes.

Senator EDWARDS. They were under the control of the government?

FBI MINNEAPOLIS AGENT. Yes.

Senator EDWARDS. So what you were thinking at the time is, I think this is a very dangerous man. I have great concerns about him. There is a possibility, at least, that he is involved in a bigger plan, a bigger conspiracy, that could be very dangerous to us and to our country. There is information contained possibly within his computer, possibly within his documents, that might tell us whether that is actually true or not; is that fair?

FBI MINNEAPOLIS AGENT. That is fair, yes.

Senator EDWARDS. Which is one of the reasons that you made it such a high priority to try to get a FISA warrant, correct?

FBI MINNEAPOLIS AGENT. That is correct.

Senator EDWARDS. Okay. And obviously you were being aggressive, which I assume is how you were trained and what you felt you should do under the circumstances?

FBI MINNEAPOLIS AGENT. Yes, sir.

Senator EDWARDS. Okay. Now, when you went to get the FISA warrant, when you got the response from headquarters and from the legal experts at headquarters, were you being told that in order to get a FISA warrant it was necessary that you have evidence, information, linking Moussaoui to a known terrorist organization, i.e., one listed by the State Department, one recognized by the FISA court? Is that something that you understood you had to get in order to get the FISA warrant?

FBI MINNEAPOLIS AGENT. Yes. We believed that we needed to identify a—and the term that was thrown around was "recognized foreign power." And so that was our operational theory. Yes.

Senator EDWARDS. So once you requested the FISA warrant in what you considered, I think you just said earlier, was a rapidly developing situation, you wanted to move quickly.

Once you made the request and you got the response, the response said to you, I have got to make a link between—in order to get a FISA, I have got a make a link between Moussaoui and a recognized terrorist organization, as opposed to just any group of people, any organization engaged in terrorist activities; is that fair?

FBI MINNEAPOLIS AGENT. Yes.

Senator EDWARDS. Okay. Mr. Bowman, that was not the law in August of 2001, was it, what the agent just said?

Mr. BOWMAN. No, sir. That was not the law.

Senator EDWARDS. So he was being told by headquarters, I assume was your contact, correct?

FBI MINNEAPOLIS AGENT. Yes, sir.

Senator EDWARDS. He was being told that he had to make a link between Moussaoui and a recognized terrorist organization, either by the State Department or by the FISA court, when in fact, all that had to be shown in order to meet that part of the test was that there was a link between Moussaoui and, for example, in this case the Chechans, correct?

Mr. BOWMAN. Between Moussaoui and some organized terrorist group in this case. Yes, sir.

Senator EDWARDS. The people who were giving them this description of the law, which was wrong at the time, are those people who worked for you?

Mr. BOWMAN. No, sir.

Senator EDWARDS. Okay. The people who were giving him, the agent, advice about the law that was wrong—and, I might add, this is to the agent—the result of that was you spent a significant period of time trying to make a link that in fact the law doesn't require you now know, correct?

FBI MINNEAPOLIS AGENT. That is correct.

Senator EDWARDS. The people who gave him that advice, can you tell me—I don't know—I don't mean by name, but can you tell me what department they worked in?

Mr. BOWMAN. I don't have any personal knowledge of that, Senator. The information which came to me had nothing to do with a recognized foreign power. There was straight facts that came to me. I assume that it came out of the terrorism division, but I don't have any personal knowledge.

Senator EDWARDS. Okay. So that we get this straight—this is directed to the agent—you had what you considered an emergent situation, was the way you described it, a potential very serious threat to the country, the possibility of a conspiracy, the possibility of—you talked earlier about airplanes and the fuel capacity of airplanes, and I think you mentioned the possibility of a plane being able to reach Washington, DC.

Obviously, you were very focused on this potentially—and, in fairness, it was only potential at that point—potentially dangerous situation. You made a request, hoping to get a quick response. You

were told something that we now know is wrong about the law, and you spent some period of time running around trying to—what is basically a wild goose chase—trying to establish something that the law did not require, you now know. Is that correct?

FBI MINNEAPOLIS AGENT. That is true to a point. We—the staff has characterized that we spent up to three weeks just trying to make this definitive link to a recognized terrorist organization. In fact, during that three weeks, the entire investigation was evolving. We weren't solely focused on making that one link. We were focused on making the connection between Mr. Moussaoui and the Chechen rebels and then also making the connection between the Chechen rebels and al-Qa'ida.

So, in general terms, yes, we were focused on looking at making a definitive link to a recognized foreign power. However, there were a couple of steps in there and a couple of collateral activities that spoke to the ultimate end.

Senator EDWARDS. But you were—in fairness, you were spending significant time trying to make this link that we know that the law did not require. Fair?

FBI MINNEAPOLIS AGENT. Yes, sir. That is absolutely true.

Senator EDWARDS. And you were thinking, I know that this may not be something, and this information is all sitting in the possession of the government, and you are just trying to get to it so you can open it and look at it and figure out what it is you need to do with it. Is that fair?

FBI MINNEAPOLIS AGENT. That is true.

Senator EDWARDS. It turns out that when—and this is information from the public indictment, and please don't comment on anything that any of you would consider outside of the realm of what is in the public information. But we now know that sitting in the briefcase, in the computer, in the information that was in the government's possession in August that you were not able to get access to—and one of the things you spent your time doing was chasing this legal requirement that in fact was not there—in these documents—and this is from the indictment—were letters indicating that Moussaoui is a marketing consultant in the United States for In Focus Tech.

Now, In Focus Tech, I think this committee has determined in our public information, is a Malaysian company. Yazzad Sufat is the president of the company, and his name also I think appeared in the documents. He was known to the CIA as the owner of the Malaysian condominium in which the al-Qa'ida meeting was held in January of 2000, before the time, of course, that we are talking about, over a year before. This was attended by two other hijackers. That was a meeting that others I believe have talked about and have already testified to.

A name trace would show that Sufat—a name trace from the FBI—a name trace request from the FBI to the CIA would have produced the information and provided a link between Moussaoui and two of what turned out to be the hijackers, a little less I guess than a month later.

Another piece of information in the indictment is that a notebook—again, these are the documents that are in the government's possession but you can't get to—a notebook listing German tele-

phone numbers and the name of Ahad Zebet, which is a name used by Ramzi Binalshibh, who was recently arrested in Pakistan, I believe the press has reported, as a key conspirator in the September 11 attacks. And he, along with three other people, three of the hijackers, were part of the terrorist cell that was formed in Germany in 1998.

And we could go on and on. The bottom line is this. There was—it appears at least from the public information there were significant data in that stuff that you were trying to get to—his computer and his papers—that would have been useful in your effort to determine whether there was a bigger conspiracy, whether this man you had in custody had contact with others, other known terrorists, others with terrorist connections, and whether there were battle plans being undertaken. But that was not something you were able to do before September 11, is that correct?

FBI MINNEAPOLIS AGENT. We were not able to access the information that we had in our possession prior to September 11, that is correct.

Senator EDWARDS. Okay. Now, I would like to, if I can, focus on the Phoenix agent, on the Phoenix EC. Let me go through a group of facts and just get you to respond, if you can.

There have been some public indications from the FBI that there was no connection of any kind between your memo and the hijackers or the people who were involved in the September 11 attacks.

I am going to go through a series of things.

The FBI I think now believes—I am not going to call him by name because his name is classified—that one of the individuals mentioned in your memo was in fact an associate of Hani Hanjour, who was the pilot of Flight 77, the hijacking pilot of Flight 77, that there was significant information that Hanjour and this person had ongoing association during the time from 1997 through the year 2000, including information from flight school records and witness statements.

This individual, I believe, at the time you wanted to start an investigation on him you determined that—which was May or June, I have forgotten the exact date—you determined that he was out of the country. Is that correct?

FBI PHOENIX AGENT. That is correct.

Senator EDWARDS. But he came back. We now know he came back in the country shortly thereafter, during the summer of 2001. Is that correct?

FBI PHOENIX AGENT. Yes.

Senator EDWARDS. Okay. During the summer, there is also some information that he was training at the same facility that Hanjour was training in Phoenix, is that correct?

FBI PHOENIX AGENT. Senator, this is still a pending investigative lead that could lead to a prosecution.

Senator EDWARDS. Fair enough. You don't need to say any more. But, let me ask you this—and, again, just don't comment on it if it is not appropriate. But the fact that this individual who you wanted to investigate but who was out of the country, and then we now know came back in the summer of 2001, and particularly given his experience level as a pilot and that he was signing up for Cessna low-level flight training and there is information that he

was there with some others, including Hanjour, during the summer of 2001 who were engaged in flight training, let me just ask you a broad question without going through the details, which I know you want to keep classified.

Is it possible that this person who we are talking about who is listed in your memo, is it possible that he was there in the summer of 2001 for the—after he came back into the country for the purpose of either helping with the training of Hanjour, identifying whether Hanjour was qualified to do what was done on September 11? Is that a possibility?

FBI PHOENIX AGENT. It is a possibility. It is an investigative theory that we are looking into.

Senator EDWARDS. Okay. Is it possible that he was looking at not just Hanjour but some of the others that he was associated with during that summer as the more experienced pilot to, for lack of a better term, "screen" who might be capable of carrying out the September 11 plans out of that group?

FBI PHOENIX AGENT. Yes. That is possible as well.

Senator EDWARDS. Okay. There have been statements—I won't read them. Some of them have been in response to questions by me and others from the FBI in May of this year indicating that there was no connection of any kind between—well, actually, before I get to that, let me go back.

When this man who you wanted to investigate and who we now have these various connections with was out of the country and he came back in, did you know he came back in?

FBI PHOENIX AGENT. I didn't. I didn't.

Senator EDWARDS. Okay. When you all discovered that this person who you were concerned about and wanted to investigate was outside of the country, did you notify anybody who might have identified him coming back in, the State Department, the INS, any of the other government agencies who may have known that he was coming back into the country?

FBI PHOENIX AGENT. No, we didn't, Senator. And the reason for that, if I can follow up on that, is because when we first became aware of the individual prior to September 11, he was out of the country. At that time, we did not routinely open up cases on individuals on—who were out of the country.

In this particular situation, it would have been an intelligence type of investigation and a preliminary inquiry, which would have given us 90 days to see if the individual was involved in terror activity. So inasmuch as he was out of the country, the practice at that time was not to open up a case.

So, therefore, to answer your question, there would be no—we wouldn't be putting him into a TIPOFF system or any other type of border crossing system to see if this person was coming back into the country.

Senator EDWARDS. But to put all of that back into context of what was happening at the time when you were involved and you were, as the other agent was, very aggressively pursuing these leads, this was one of a number of individuals that you wanted to investigate, and he—you have determined that he left the country. We now know he came back in. None of the people who would have been responsible for identifying him coming back in knew that they

needed to look for him, is that fair, aside from you and the FBI office?

FBI PHOENIX AGENT. Yes. That would be correct.

Senator EDWARDS. Okay. And there is at least a theory, to use your words, there is at least a theory that this man may have been the person responsible for helping train Hani Hanjour and/or screen which of these pilots were capable of carrying out the attack, we know that now, correct?

FBI PHOENIX AGENT. Post-9/11.

Senator EDWARDS. Correct. Yes.

FBI PHOENIX AGENT. Yes.

Senator EDWARDS. The policy that existed at that time for not notifying the other government agencies about somebody like this who you were concerned about and wanted to conduct an investigation on, has that changed since 9/11?

FBI PHOENIX AGENT. I can speak for the Phoenix division. Yes. I mean, if we had a situation like this today, we would be looking and opening up an investigation on the individual in question here.

But, prior to that, we had enough people that were residing in the United States, residing in the Phoenix area that we needed to open up cases on. Prior to 9/11, we just did not open up cases on individuals that we had determined had left the country.

And, again, keep in mind with the Attorney General Guidelines, so on and so forth, that govern those type of investigations that we can get into more detail in closed hearings, this individual would have been characterized as nothing more than a preliminary inquiry because he looked interesting, okay, due to some information that we received from other sources and methods.

So there is no stating that even if we had a full—even if we had an investigation, initiated an investigation on him prior to 9/11, that we would have been able to go any further than the preliminary inquiry stage.

Senator EDWARDS. If you had known, which you didn't, that this individual had come back into the country, would you have been monitoring him in the summer of 2001?

FBI PHOENIX AGENT. Yes. We would have been very interested in his presence back in the United States.

Senator EDWARDS. And if you had been monitoring what he was doing in the summer of 2001, the things that you have now determined were going on in the summer of 2001, post-9/11 which you indicated, some of those things presumably you would have observed and seen?

FBI PHOENIX AGENT. Not necessarily. And the reason being, again, I would like to reiterate, it would be a preliminary inquiry, and I would be limited underneath the Attorney General Guidelines what I could do to investigate that individual. Okay? And that doesn't mean that I would be able to find the things that I think that you are getting at about this guy during that preliminary inquiry stage.

Senator EDWARDS. I was going to ask you about monitoring. Knowing what you knew about him at the time that you wrote your memo, is that something you would have wanted to do, monitor his whereabouts, monitor his interaction with others? We now know that included interaction with Hanjour.

FBI PHOENIX AGENT. Yes, it would been something I wanted to do.

Senator EDWARDS. Okay. And if you had that authority and had been able to do that, you presumably would have seen some of these things that went on in the summer of 2001?

FBI PHOENIX AGENT. It is a possibility. Yes.

Chairman GOSS. Senator.

Senator EDWARDS. I see that my time is up, Mr. Chairman. I thank the witnesses very much. And I thank the chair.

Chairman GOSS. I thank the Senator for very good questions.

Mr. Cramer.

Mr. CRAMER. Thank the Chairman.

I want to thank the witnesses that are here today. We have two field agents here, headquarters agent, a lawyer and a supervisor as well, as I understand it.

I want to pick back up on where my colleague, Mr. Castle, was when he left his question time. I want to talk about the resources that you had available to you and, practically speaking, how you used those resources. Then I want to ask you to walk me through, even though to a certain extent you have done that already, certain ways you communicated.

For example, and I will start with the Phoenix agent here if I could, when you sent your memo, your EC to headquarters, how many different people—I don't want names—but how many different people did you send that memo to?

FBI PHOENIX AGENT. Six individuals at headquarters.

Mr. CRAMER. And the way your communications system works, do you know if all of those received the memo?

FBI PHOENIX AGENT. I personally do not know if they all received it, the way the system works.

Mr. CRAMER. Did you hear from any of those individuals?

FBI PHOENIX AGENT. No.

Mr. CRAMER. All right. Do you determine yourself in the field office whether—who you send it to? In other words, is that called uploading? You decide who to send it to?

FBI PHOENIX AGENT. I decide who to put on the attention line of my communications, yes.

Mr. CRAMER. And you can block as well? You can decide to send it to only one person and not to share it with other individuals as well?

FBI PHOENIX AGENT. No, that is not my intention. If I put somebody on there that I want it to go to, I want it to get to that person and only those persons. So I am not—you know, I don't try to block anybody from getting anything.

Mr. CRAMER. All right. And did you expect to hear from those six individuals?

FBI PHOENIX AGENT. Well, this is a question that I have been asked before. I sent this communication as a routine electronic communication, because there was no immediate action required on it. There was no terrorist threat information contained in the electronic communication, and I just wanted to send it to them for their consideration.

Prior to my sending it, though, I did contact a senior FBI analyst, and I said, hey, these are my concerns, my suspicions. Who

do you think I—who do you recommend I send this to? And this particular analyst gave me the names of the individuals who are listed on the EC.

Mr. CRAMER. Now if I could come to the headquarters agent now. Could I ask you to—you came into this particular unit when?

FBI HEADQUARTERS AGENT. I came into this unit in approximately mid-May of 2001.

Mr. CRAMER. But you have 15 years of experience.

FBI HEADQUARTERS AGENT. That's correct.

Mr. CRAMER. In the field and headquarters as well?

FBI HEADQUARTERS AGENT. That's correct.

Mr. CRAMER. Could you comment in some detail on the state of technology as you found it there at headquarters?

FBI HEADQUARTERS AGENT. If I can, I will go back. When an EC is set from the field to headquarters, it is—a lead is sent to a particular unit at headquarters. It will not be sent to an individual. The attention line is, once the communication gets into the building, theoretically it would be brought to the attention of those people, but in terms of it serving as an electronic means of providing it to them, that does not work that way.

Mr. CRAMER. All right. Then who determines, once it comes into the building—our concern is—and we have had an excellent summary from Eleanor Hill of the staff before you were made available to us today. As you know, we have had prior opportunities to get into these matters. But what I am concerned about is the culture at FBI and how you communicate, why certain people get certain messages. Is that a resource problem? Does resource mean people? Does resource mean technology? What does it mean?

As I observe it from the summaries I have had available to me, the communication in this case, the EC from the Phoenix agent, went to the weakest link at headquarters, and then a person there determines where it goes from there.

FBI HEADQUARTERS AGENT. It did not necessarily go to the weakest link. The way it would take place within headquarters is that the lead would arrive there. It would be given to a particular person as a lead. It would be sent to an individual. In this case, it was sent to the IOS, an intelligence operations specialist. Those are the people that do the work. That is where the rubber meet it is road in terms of headquarters handling a specific lead sent from the field.

Mr. CRAMER. All right. And then you are in the RFU unit, right?

FBI HEADQUARTERS AGENT. That's correct.

Mr. CRAMER. And that is an operational unit?

FBI HEADQUARTERS AGENT. That's correct. The RFU is an operational unit.

Mr. CRAMER. And the UBL unit——

FBI HEADQUARTERS AGENT. Is a second operational unit.

Mr. CRAMER. All right. And then the analysis unit is a separate unit, correct?

FBI HEADQUARTERS AGENT. The operational units have what we would call intelligence—I am sorry—investigation operations specialists. Those are tactical analysts. Those are analysts that work specific case issues. They are the people that handle leads that headquarters needs to handle. They are the people that write the

FISA packages. They are the people who are moving specific cases forward.

Apart from those IOSs, you have a second group of analysts known as intelligence research specialists. Those are IRSs. They are not within the operational groups. They are in a separate—at the time, pre-9/11, they were in a separate division. Those are the people that would be expected to do strategic type analysis.

Mr. CRAMER. And how was the information routed to those individuals before 9/11, before we have reviewed what happened and what we could do differently?

FBI HEADQUARTERS AGENT. The field could—could have sent it directly to the IRSs. They could have sent it directly to the division that was responsible for strategic analysis, or in this case—and in the case of Phoenix as I remember it and I see it—is that the lead was set for the operational group, the Counterterrorism Division, into the operational units within the Counterterrorism Division. And then it would have been for those IOSs or for the supervisors to recognize that there might be a need for strategic analysis and then to move it to the strategic analytical group. That could be done electronically by reproducing another electronic communication, in setting a specific lead for the strategic analyst, or it could have been done via an e-mail or a telephone call and just walking a hard copy to them.

Mr. CRAMER. All right. In the case of the Phoenix EC, your EC, the IOS, who decides which IOS gets that memo? Or how is that decided? What is the process?

FBI HEADQUARTERS AGENT. It is done based on area of responsibility. So if a particular analyst is responsible for a particular field division or a particular subject matter, then the individual who is going into the computer would recognize that this particular IOS has responsibilities for this program area. Or it might be a case number. It might be that all Phoenix communications are handled by this particular IOS. So that lead would then have been sent to the particular analyst that was responsible for the case or the program matter. So the attention line is not necessarily significant.

It could be that the wrong person was put on the attention line, in which case the individual setting that lead would have moved it to the proper IOS.

Mr. CRAMER. Well, our information is that the—in this case, the EC was assigned to a particular IOS because that was the first name on the list.

FBI HEADQUARTERS AGENT. I think that she also—why exactly it was set to her, I am not exactly sure, but I think it was also that she had some of the program responsibilities that was addressed within that EC.

Mr. CRAMER. If we could, back to the Phoenix agent, then. Your EC as well went to the UBL unit, and you never heard from them. Is that correct?

FBI PHOENIX AGENT. That's correct.

Senator, if I can make a point—or, sir. The reason why I went to the UBL unit and the RFU unit is because of the nature of the subject under investigation. We couldn't put him into a particular category. So the division that I made after conferring with the per-

son I contacted at headquarters was let us send it to both units, the Usama bin Ladin unit and the Radical Fundamentalism Unit.

Mr. CRAMER. And were your aware prior to 9/11 that headquarters had closed the lead and that they were not taking any additional actions at the time based on your communication?

FBI PHOENIX AGENT. No, I was not.

FBI HEADQUARTERS AGENT. If I could speak to that, the lead is not stated as closed. The lead is stated that they will reconvene on this matter at a later time. Those operational specialists handled the immediate actionable items that were before them, and then what they wanted to do was to reflect to Phoenix division—in my mind, what they wanted to do was to reflect to Phoenix division that they had received the lead and that they were looking at it, they were aware of it, and they were going to act on it at a later date.

Mr. CRAMER. All right. The New York agents interviewed stated that the Phoenix EC did not resonate with them and that they found it speculative. Why do you think that is? Why don't you think they took seriously a memo like this? Was that because they were the leading counterterrorism office and Phoenix was more or less an island, as you have stated it, out there?

FBI PHOENIX AGENT. Sir, I can't speak for why my colleagues thought the way they did when they received that. I don't know why they did. I have seen other reasons why they claim they didn't want to take action on it, to include that they had seen other people coming in for training for Usama bin Ladin. I wished they would have taken a look at it, because it would have been nice to know.

Mr. CRAMER. But you—to this day, you don't know why?

FBI PHOENIX AGENT. No, I don't.

Mr. CRAMER. How about Headquarters?

FBI HEADQUARTERS AGENT. I am sorry. I do not know why.

Mr. CRAMER. And this is for Phoenix as well as Headquarters, we are made aware now of an astounding summary of information about terrorist groups—reports of terrorist groups that were planning to use airplanes as weapons. Did any of—were those reports available to you in Phoenix? Were you aware of those? Is that partially why you responded to write this summary of information, that you were trying to pass up the line that was ignored?

FBI PHOENIX AGENT. I wasn't aware of all of the situations that you discuss, sir. I did have an interest in Islamic extremists using or attacking the civil aviation industry due to prior and previous investigations I had worked, if that answers your question.

Mr. CRAMER. All right. And to the Headquarters agent, did you see or hear about the Phoenix EC prior to 9/11? Did you yourself have any experience with that?

FBI HEADQUARTERS AGENT. I have no recollection of ever reading that communication. I did not get—it was not brought to my attention before 9/11; and when it was brought to my attention post 9/11, that was the first time that I really tuned in on it.

Mr. CRAMER. But you were one of the six listed that the memo was addressed to, is that correct?

FBI HEADQUARTERS AGENT. My name was on the attention line.

Mr. CRAMER. All right. And how to date would that be handled differently?

FBI HEADQUARTERS AGENT. I am not sure if that would be handled differently today in terms of a name appearing on an attention line. I can tell you that, based on my position, that my name is on hundreds, if not thousands, of documents in that building that will probably not be brought to my attention.

Mr. CRAMER. All right. If I could, I would like to get you to comment about technology and this process, because we are talking about communication. We are talking about names of people in a system that responds to that, and I want to know how the technology figures into that.

I understand from the Headquarters agent, from a summary of information about your statements in the past, that you found the technology inadequate, that you found it not very useful. Would you give me more specifics and tell me how you think that has affected the way communication occurs, if it has affected that?

FBI HEADQUARTERS AGENT. The computers—the systems in our building are very cumbersome. I have heard from talking to analysts, for example, that on a given day you can search a name of a subject within ACS and get a set of results. The next day—or a second analyst could go into the system and request the same information and get a completely different set of results. I cannot explain that. My experience comes primarily from what I am told by the supervisors and the analysts that work for me.

Another very significant piece that really needs to be brought to the attention of this committee is that the Counterterrorism Division within FBI is a part of the Intelligence Community. The counterterrorism community, the Intelligence Community, primarily works in a classification level at a TS level, or, in the case of CIA, will frequently put HUMINT on communications. Our systems do not go to that level of classification. Our computer system is only at a Secret level.

So communications coming into our building from NSA, from CIA cannot be integrated into our existing databases. So if an analyst is working, say, on a subject in Phoenix division and they run that person's name through our databases, they will not retrieve information on that person that other agencies may also have. It is required of them to get up, walk over to a different set of—or a different computer that has access to a different database and search that name in that database; and the two databases will never come together and be integrated.

So it is a setup for failure in terms of keeping a strategic picture of what we are up against.

Mr. CRAMER. Well, I happen to be on the Appropriations Committee as well, and I am on the Commerce, Justice, State Appropriations Subcommittee, and we listen to the FBI every year, and we—I am an old prosecutor, and I want to give you the tools that you need in order to do the job that we want you to do. But we ask every year, what do you need in terms of technology? Is this a money issue? Is it just a technology overload issue? Is the agency so subdivided that you are having a hard time getting a handle on that?

And, honestly, I can't read between the lines as to how—now, this may not be something for you to answer here today, but I am trying to understand from the user point of view of what technology you have, what you don't have and how that might play into this. The Trilogy system that you made reference to, is it anticipated that that will help reorganize, to a certain extent, the way communications occur?

FBI HEADQUARTERS AGENT. I do not have the expertise to speak to that.

Mr. CRAMER. All right. Now, if I could, because time is limited, we talked—or it was brought up earlier that there are 68,000 outstanding or unassigned counterterrorism leads in the FBI's electronic Automated Case System. And that that dates back to 1995. Are we making any progress? What are we doing to improve that? That to me sounds intolerable.

FBI HEADQUARTERS AGENT. I have tried to take that on in terms of looking at that problem from both the UBL and the RFU unit standpoint. We are getting through that system now.

I think we need to make it very clear, though, because there is 68,000 leads outstanding on that point, that does not mean that those leads were not handled. Frequently what has happened is you have a duplication of a lead. For example, a lead will be set for FBI Headquarters to both the Counterterrorism Division and the UBL unit. Well, the operational unit that would cover that lead is the UBL unit. They would maybe clear that lead out, but it would remain in the system from the Counterterrorism Division's lead bucket. So even though the lead is shown in the computer as not covered by the Counterterrorism Division, it is covered by the operational unit. So there is a lot of duplication in that. That is one.

Two is, as I have said in my earlier testimony, is that the system is very cumbersome, and people unfortunately have just become very frustrated with it, to the point where they have somewhat——

Mr. CRAMER. They have no confidence in it? They are working around it, is what it sounds like to me.

FBI HEADQUARTERS AGENT. That is exactly the case, sir.

Mr. CRAMER. And I would assume that leads are falling through the cracks.

FBI HEADQUARTERS AGENT. We hope not.

What will frequently happen, for example, is even though a field division sends a lead to Headquarters and ACS, they are also e-mailing that communication to the particular FBI Headquarters SSA. So they are getting it and working on it via the e-mail but not necessarily within the ACS system.

Mr. CRAMER. My time is almost up, but I do want to work in one more question, and this is on the Moussaoui investigation. You said at Headquarters that this was a priority and that you considered Moussaoui to be a threat. Did you alert other field offices to the matter in order to determine whether there were similar cases in other field offices?

FBI HEADQUARTERS AGENT. I can tell you that a September 4 teletype was written from Headquarters. It was sent to two FBI field divisions, and it was sent to elements of the Intelligence Community. It was not sent to numerous other field divisions, and that

is just the nature of how the FBI operated in a pre-9/11 environment, namely that we were investigation-driven.

The investigation was in Minneapolis. It was in Oklahoma City. As leads developed that would have included other field divisions, then it would have opened, and we would have started to move the investigation out to other divisions. But in a pre–9/11 environment, we were clearly an investigation-driven agency, and unless a particular field division needed to see it, they would not.

Mr. CRAMER. Which has to change.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you very much, Mr. Cramer.

Senator Hatch, the floor is yours for 20 minutes.

Senator HATCH. Thank you, Mr. Chairman.

I would like to direct some questions to Mr. Bowman and Mr. Rolince, and of course if any of you would care to comment, just raise your hands. I would be happy to have you do it.

In the wake of the September 11 incident, Attorney General Ashcroft worked closely with Congress to formulate—help formulate the PATRIOT Act which has provided the law enforcement community with necessary tools and resources that I feel were long overdue. Among other things, the Act enhanced the ability of law enforcement and intelligence authorities to share information and coordinate their antiterrorism efforts. The Act has updated our laws relating to the electronic surveillance.

We know now that e-mail, cellular telephones and the Internet were the principal tools used by the terrorists to coordinate their deadly attacks. The sad fact, however, is that the bulk of the proposals that were incorporated into the PATRIOT Act had been requested by the Department of Justice for years but had languished in Congress because we were unable to muster the collective political will to enact them into law. Now I am concerned that there are additional necessary legislative reforms that we here in Congress should be doing everything in our power to make into law.

Now, Mr. Bowman and Mr. Rolince, I am very interested in your views on these subjects. Senators Kyl and Schumer have identified a problem with FISA, the so-called lone wolf problem that I agree is a serious problem and needs to be addressed. We held a hearing on July 31, 2002, to examine this issue, and I certainly hope and expect this legislation would become law this year, because it does enjoy bipartisan support, and it would be helpful to you. Do you agree with that?

Mr. BOWMAN. Yes, sir. I do agree with that. On July 31, I testified on that very matter and submitted testimony which explained why the lone wolf has become a modern issue in terrorism. Senators Feinstein, Kyl and DeWine and I had quite a dialogue on it on July 31.

The bottom line to it is, sir, there is testimony before your committee and in written testimony that you can look in—I would be happy to repeat any of it, but I don't want to waste your time. I think that it is numbers-wise a huge problem at the moment but is certainly a problem we have seen growing over the last few years.

Senator HATCH. Mr. Rolince.

Mr. ROLINCE. Thank you, Senator.

If I could address that from an operational standpoint, this has been recognized for the better part of a year, year and a half, and we specifically had unit chiefs such as the one before you and a prior UBL unit chief bring over the former head of OIPR and all of her attorneys to address the problem. Because what we were doing was putting agents in a position to try to fit people into a group that they didn't—in which they did not necessarily belong.

The last thing that any of us ever want to see happen is people standing in front of a FISA court judge and raise their right hand and swear to facts that they either do not believe are true or are being cancelled, are not sufficient, which goes back to the Moussaoui issue, agent of a foreign power, not just the foreign power, could you prove him to be an agent?

So when Senators Kyl and Schumer—in my personal view, they hit the nail right on the head. That is exactly one of the things that we need to be looking at.

Senator HATCH. In addition, I believe there are other reforms we in Congress need to enact to assist law enforcement and the Intelligence Community in their efforts to combat terrorism. For example, although the PATRIOT Act enhanced the ability of Federal law enforcement and intelligence authorities to share information with one another, I understand the statutory constraints on the authority of Federal officials to share information with their State and local counterparts remain and that these constraints apply to information obtained through grand jury investigations, wiretaps, FISAs, as well as educational records, visa and consumer information.

Now it seems to me that in order to succeed in this war on terrorism it is critical that we have close cooperation in and between State and local and Federal officials as well as—and, in your view, do existing laws limit your ability to share important information with State and local authorities?

Mr. BOWMAN. I think there is a—there are some limitations here, Senator, which are important. The amendments to the FISA—or to the PATRIOT Act on grand jury in Title III information runs to Federal officers, which was a great help. And I don't want to diminish what a significant change that was for us, but it does not allow us to get that kind of information to the 650,000 State and local authorities that are out there.

The rules are slightly different, depending on what type of information you are talking about. FISA information is not included in that kind of a restriction. There are some other restrictions that go into it.

One of the things that the Attorney General has been looking into and developing a process for is the procedures under which we can get classified information to State and locals to help them with their eyes on target.

Senator HATCH. Don't similar limitations and restrictions apply to the information you are permitted to share with your international counterparts——

Mr. BOWMAN. Yes, sir.

Senator HATCH [continuing]. Who are cooperating and assisting our national efforts to combat terrorism?

Mr. BOWMAN. Yes, sir. There are some limitations there. The same limitations apply for the grand jury in Title III information. There are some speed bumps on other things, FISA, for example, to share with—if it is a U.S. person, at least, we have—to share with a foreign power, we have to get the permission of the Attorney General. We have to make sure that they agree to protect the information that we give them and so forth.

Senator HATCH. Okay. Another concern I have relates to administrative subpoenas. Isn't it the case that the Federal law enforcement officials currently have the authority to issue administrative subpoenas to investigate cases involving Federal health offenses, child abuse and child pornography, all of which are important and very appropriate? However, I have to say that you don't have the same authority with respect to terrorism investigations. Now doesn't it make sense to expand this authority to terrorism cases as well if you are going to have that authority for health care offenses, child abuse and child pornography?

Mr. ROLINCE. Absolutely. The answer is absolutely, Senator.

We have just locally—here in the Washington field office is a great example—moved to entire squads to go after criminal enterprises. They are supervised by individuals who formerly ran violent crime bank robbery squads and drug squads.

The first thing they came to me—the first request they brought forward was that we try to move down the road to get an administrative subpoena, simply because it is faster and it is more efficient.

An Assistant Special Agent in Charge of a field office can and does sign those on a regular basis for the kinds of crimes you just described. Yet to get that same kind of information within a counterterrorism/counterintelligence investigation, you can't get it. But you can get a grand jury subpoena or national security letter, both of which, although effective, are less efficient. We can get it much more quickly with administrative subpoena, and we certainly would like that.

Senator HATCH. Well, as one of the prime authors of the PATRIOT Act, I am not finding fault with the PATRIOT Act. What I am trying to point out is we wish we could have done better for you and that these matters should have been done, but sometimes we get involved in some of the politics around here rather than doing what is best for the American people.

Since September 11, there has been a growing concern about the risk of a serious cyberattack, particularly one against our infrastructure, which could have devastating consequences. Now, although the PATRIOT Act included several important provisions to improve our Nation's cybersecurity, in my view it did not go far enough.

Just last week I offered an amendment to the homeland security bill which, among other things, would give communications providers and law enforcement greater flexibility when dealing with emergency situations where there is a risk of serious bodily injury or death. Specifically, the amendment creates a good-faith exception that would allow communications providers to disclose communications to a government entity such as a hospital or a law en-

forcement agency in an emergency situation involving the danger of death or serious bodily harm.

It seems to me that if somebody wants to bomb on elementary school but does not mention when such an attack will occur, a communications provider should be able to disclose that information immediately and not worry about whether the danger is imminent.

In such a case, where a communications provider believes in good faith that the emergency exists, don't we want the provider to act quickly without the fear of liability?

Mr. BOWMAN. Yes, Senator. I think that is a very important point. As we all know now, there has been an extremely large number of Internet communications which have been relevant to the terrorism investigations. We have been working closely with ISPs all over the country, the big and the small, and there have been any number of the ISPs who have been bending over backwards trying to find ways to help us within the law, and it is obvious in some cases that they feel very constrained on what they can do. It is also obvious that they are trying very hard to do the right thing, and I think your proposal would go a long ways towards eliminating the fears that they have in trying to do the right thing.

Senator HATCH. And in protecting the American people.

Mr. BOWMAN. Absolutely, sir.

Senator HATCH. Well, the bottom line is that I believe, in addition to examining what intelligence failures occurred leading up to 9/11, we in Congress need to do all we can in our power to give our law enforcement and intelligence agents the tools and resources that they need to protect us from further terrorist attack, and I hope that that is part of this review process. I hope the Congress will act expeditiously to enact these very important reforms.

But let me just shift here for a minute. The staff's statement details chronological intelligence reporting of foreign nationals with Middle Eastern terrorist ties seeking aviation training in the United States. I think I have counted at least 12 or 13 bits of information, classified information indicating that our law enforcement and intelligence communities had some idea about the possibility of using aviation or planes. The reports go back to the early 1980s even during the Reagan administration and continue right up to the present time.

Now, as the staff has taken note, this suspicious activity spurred FBI headquarters in 1999 to request 24 field offices to scrutinize Islamic students from an unidentified target country who were engaged in aviation training in these offices' jurisdictions. The FBI's international terrorism analytic unit, in coordination with the INS, was to consolidate the information obtained by the field offices. However, the project was never continued, because the field offices did not follow through.

Mr. Chairman, I think this was one of the most serious and disturbing sections of the staff report; and I compliment the joint inquiry staff for bringing these facts to light. I think there is a lot of blame that can go around to people, and some of it might rest here in Congress.

One of the justifications set forth as to why the field offices neglected their duties relates to the Buckley amendment. Now it is my understanding that, prior to the enactment of the PATRIOT

Act, the Buckley amendment limited the disclosure of educational records to third parties. Under the PATRIOT Act, the Attorney General or his designee may now seek access to educational records that are relevant to an authorized investigation or a prosecution of a terrorism-related offense or an act of domestic or international terrorism. But it is most unfortunate if this legal requirement impeded law enforcement's efforts to complete this critical project.

Now, Mr. Rolince or Mr. Bowman, in your view, did the state of the law in 1999 indeed make it difficult for field offices to complete this critical mission, and that is before the PATRIOT Act came into being?

Mr. ROLINCE. Senator, I think the answer to your question goes in a lot of different directions, both to resources and to our inability to effectively carry out our duties.

The Federal Education Rights and Privacy Act and the Buckley amendment certainly stood out there and regulated—passed by, I believe, your predecessors back in about 1974—the kinds of information that the FBI could in fact get from a college campus. And the reason it is important is, if you look into the numbers—and you don't hear much dialogue about what happens if you follow up with the Phoenix EC.

There are, according to the numbers provided to me by the FAA, 108 flight centers analogous to Embry-Riddle University in this country that are accredited and for which we would have to get a grand jury subpoena to go beyond the name and the address of the student, and you would only get the address if that was a matter of public record. There are 1,675 flight centers. There are in excess of 69,000 certified ground instructors and in excess of 82,000 certified flight instructors in this country. That, in fact, is the universe.

I have been to the local law enforcement on the college campuses and asked them, quite frankly, if we came and knocked on your door asking about individuals on whom we did not have pending investigations, what would the response have been, assuming you can get past the profile issue? And I will assume that somebody smart could have written something that would have been accepted by everyone.

And they basically said to me, you will get the name and address, and if you want more, you will have to come back with a Federal grand jury subpoena because of that law and that amendment.

I then asked three separate Attorney General-convened joint terrorism task forces around the country in different regions—in Denver, in Washington, D.C. and in Atlanta—just to the attorneys in attendance, how many of you would be willing to give a Federal grand jury subpoena to an FBI agent to access records of an individual on whom we do not have an investigation? In all three sessions, among hundreds of people, one hand went up.

So the practicality and the reality of implementing the Phoenix recommendations are, quite simply, if you shut down the entire bin Ladin program lock, stock and barrel, shut it down, touch base with each of those individuals that I talked about, assume you get wholesale cooperation, they give you everything they have, the mathematics works out to it is a 17-month project.

Senator HATCH. Well, let me mention one other thing. The Phoenix memo includes suspicions of terrorist activity that were based in part on ethnicity. Now, while some may disagree, it seems to me that a general fear of being accused of improper racial profiling may have had a chilling effect and caused law enforcement agents in this instance, or perhaps in others, to be reticent in their investigations. Indeed, I understand that the intelligence operations specialists who reviewed the Phoenix memo expressed such concerns.

Now, haven't similar concerns been voiced within the FBI and other contexts as well? And if you want to answer that.

Mr. ROLINCE. I think you only need to go back to the Millennium to get a sense of how the FBI would have reacted if we pushed that out the front door. There was a proposal on the table to interview every subject of every full and pending—every full and every preliminary inquiry investigation within the UBL program once Ressam came across the border and we were concerned about follow-on events for the Y2K. That met with overwhelming resistance by the SACs in the field for a lot of different reasons, one of which is we would be hounded unmercifully over the profiling issue, and we pared it back to a listing of individuals and cases and circumstances that everyone could in fact agree with.

Now, the reality is, if you read the communication, it doesn't suggest profiling. It, in fact, suggests going out and trying to gather a list of everybody from anywhere that is coming in to take that training. Practically speaking, that would not—that would not be practical. At some point, you have to hone it probably to the 60 or so countries that are identified as having an al-Qa'ida presence. But at some point in time if you come down to Middle Eastern males between the ages of 21 and 41 and if you can define it as those who went to the camps or not, some would call that a profile. I wouldn't disagree.

Senator HATCH. Well, and that has been working against us in this particular case, that you are unable to watch males between those age groups, Middle Eastern males.

Mr. ROLINCE. If you go back to the Marine Corps barracks bombing, up through the annex, the embassy, Khobar Towers, Dar al Salaam, Nairobi, there is a consistency and certain traits. And I know we are struggling with this whole issue of profiling or common characteristics, call it what you will, but those are the facts.

Senator HATCH. Well, legislation introduced by others in this Congress proposes to ban racial profiling and prohibit law enforcement agencies from relying to any degree on race, ethnicity or national origin. Now, do any of you share my concern that such so-called racial profiling legislation could affect the FBI's ability to vigorously pursue leads which are based, at least in part, on ethnicity, and do you deny that that was definitely a part of the problem here in these cases?

Mr. BOWMAN. Yes, sir. I think you are absolutely right. If that legislation were passed and I were asked for legal advice on what to do, I would have to follow the legislation, as would the special agents.

Senator HATCH. No matter what the——

Mr. BOWMAN. No matter what would happen——

Senator HATCH [continuing]. As a result in this country.

Mr. BOWMAN. And you hear it today. Our agents are extremely cognizant of the law, and they are very concerned about not going beyond it, and the laws that are passed are the ones they are going to follow.

Senator HATCH. And they were, in these cases.

Mr. BOWMAN. Yes, sir.

Senator HATCH. And these arose in these cases, and they were afraid to go out and do anything about it, and they were reticent about it.

Mr. BOWMAN. That is absolutely correct, and the issue still persists.

Senator HATCH. In May of this year, Attorney General Ashcroft announced revised investigative guidelines that are intended to enable the FBI to take a more proactive approach to prevent and detect terrorism and other crimes before they occur. Among other things, the new guidelines permit agents to engage in online research on the Internet to employ commercial data mining services when necessary to investigate terrorists and to access public places that are open to citizens.

Now isn't it the case that, prior to these guideline revisions, agents were restricted from surfing the Internet to determine whether there are sites that address subjects such as how to manufacturer explosives?

Let me just add one other—my time is about up, so let me add one other part to this. Weren't FBI agents who investigated the kidnapping and murder of Daniel Pearle forced to obtain information from the Wall Street Journal employees who were able to gather information using a relatively simple data mining service, because the existing guidelines restricted the agents from gathering such information? And under the old guidelines, weren't there situations where the FBI was hindered in its ability to pursue legitimate investigations because of the fear of investigating criminals at this time occurring under the guise of political and religious activity?

So, without revealing any sensitive law enforcement information, can you provide some examples of why it is necessary for agents to enter public places or events for intelligence and investigative purposes and why you should be able to surf the Internet and why you should be able to overcome some of these limitations?

Mr. BOWMAN. I think you have hit the nail on the head for much of this, Senator. The reasons for some of those restrictions are historical. They go back to events of the 1960s and 1970s. The restrictions which were put on back in the 1970s were intended to try to prevent abuses in the future. They focused on events and processes that have long since been changed.

The fact of the matter is, everybody in the world knows what the weaknesses of our system are as far as being able to penetrate it, as far as being able to take advantage of it, to whether it is for terrorists or criminal purposes, and if we cannot put the agents where the action is, then we are never going to be able to fully investigate many situations.

The fact is, we do have to put agents in open spaces. We do have to put them where we expect to find terrorists and criminals.

Senator HATCH. My time is up, Mr. Chairman.

Chairman GOSS. Thank you, Senator.

Chairman Graham.

Chairman GRAHAM. Thank you, Mr. Chairman.

This first question is for all three of the panelists. To your knowledge, did anyone in the FBI, either at field or headquarters level, see the interrelationship between the Moussaoui case, the Phoenix communication, the possible presence of Mihdhar and Hazmi in the United States and the flood of warnings about possible attacks against U.S. interests in the United States, potentially using airplanes as weapons of mass destruction? All of that was happening in the spring and summer of 2001. Did anybody see the interconnections of those events?

FBI HEADQUARTERS AGENT. Senator, I will address that from the headquarters standpoint first; and the answer to that is no. The connection was not made. And I think that goes to a number of issues, one being that just the volume of information that is consistently being acted upon at both the headquarters and the field level, the consistent threats that are varied in nature, everything from cars and boats and everything else that we consistently see. The volume of work that is handled by the people on a day-in-and-day-out basis, it is just—it is extremely difficult for individuals to keep these matters connected and to see everything and to make these connections in their head.

Again, I think that speaks to two key issues that I tried to emphasize here today of a systemic nature, and that is a lack of analytical resources and technology. I think in the case in which you just stated in terms of making these correlations and connections, our weaknesses in both those areas need to be fixed.

Chairman GRAHAM. Do either of the two agents have any comments on that question?

Yes, Mr. Rolince.

Mr. ROLINCE. As we noted in a prior hearing, Senator, I think it is critical that we keep this in the context of what was going on at the time; and, yes, the staff report, which was very thorough, talked to a number of different instances wherein the use of an airplane or commandeering an airplane was, in fact, mentioned.

I had an analyst go back to January 1 of 2001 and pull up the threats disseminated within the FBI's website up through September 10 at the Secret level. Two hundred sixteen different threats, six of which mention airports, airlines. Three percent of what came in at the Secret level in 2001 went to that issue.

What my colleague I think is saying I think we all agree with, is that we literally have every possible kind of threat you can imagine coming in day in and day out, and when the next attack comes, I have no doubt that we are going to be able to go back into the body of threat information, find indicators that talk to it with some degree of specificity.

Chairman GRAHAM. My second question is, assuming that this may not be commercial airlines, it may be cargo containers on maritime vessels or other forms of threats, that living in the environment of a large volume of information and the necessity to try to glean from that what is most important and relevant, have there been any changes in the personnel, the technology, the investigative approach of which in your opinion would have changed the an-

swer that you just gave if the circumstance were today and not the spring and summer of 2001?

FBI HEADQUARTERS AGENT. Would you like me to—from the headquarters perspective, I think that the Director is clearly moving in the right direction on that, and namely that the analysts are coming on board to begin to look at these issues I think that that strategic analytical group is beginning to get their arms around issues similar to what you are suggesting. I think that the technology problems, though, quite frankly, they are still there. I don't think they are any better. Again, the analytical resources are coming together, but the technology being still a major gap.

Chairman GRAHAM. Any other comments on that question?

Thank you, Mr. Chairman.

Chairman GOSS. Thank you very much, Mr. Chairman.

Ms. Pelosi.

Ms. PELOSI. Mr. Chairman, with your permission, I would like to yield my five minutes to the distinguished gentleman from Minnesota at the time he comes up in the questions process. Being a pilot and, as I say, close to this issue in Minnesota, I want Mr. Peterson to have my five minutes at that time.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Ms. Pelosi.

Senator Shelby.

Vice Chairman SHELBY. Thank you. Thank you, Mr. Chairman.

I would like to direct my questions to the FBI agent at headquarters. We have gone through this before, but when FBI Minneapolis contacted headquarters on the FISA, for a FISA, what date was that, if you recall?

FBI HEADQUARTERS AGENT. I think—to the best of my recollection, I think we are looking around August 21.

Vice Chairman SHELBY. And what was your concern again regarding their request for a FISA at that time?

FBI HEADQUARTERS AGENT. We didn't have concern that they had a need for a FISA. There was clearly in our minds a need to get into that computer and get to those belongings—and his belongings.

Vice Chairman SHELBY. Didn't they have to have some kind of search warrant, a FISA, a criminal search warrant to get into it?

FBI HEADQUARTERS AGENT. They could have—the theme that quickly materialized was one of a tactical-type decision, whether to go towards a criminal search warrant or whether to go to a FISA search warrant.

Vice Chairman SHELBY. Did you advise them what to do?

FBI HEADQUARTERS AGENT. We put our heads together within the operational unit and came up with what we believed to be the proper way to go after that.

Vice Chairman SHELBY. Were you the head of the unit?

FBI HEADQUARTERS AGENT. Yes, I was.

Vice Chairman SHELBY. Okay. Go ahead, sir.

FBI HEADQUARTERS AGENT. I think it was the collective opinion of myself and the supervisor who was handling that case that we did not see a probable cause for obtaining a criminal warrant. But, obviously, we are not attorneys; and I don't believe that the supervisor that was handling this matter in particular was an attorney.

So we elevated that up to the national security law unit within headquarters, and we asked that the Minneapolis division bring it back to their own chief division counsel to try to do a collaborative-type effort to make the best decision.

Vice Chairman SHELBY. Excuse me. What kind of time frame are you talking about as you kicked it upstairs and then kicked it back to the FBI headquarters in Minneapolis?

FBI HEADQUARTERS AGENT. I think it was a fairly quick movement. I would say within a day we had pretty much——

Vice Chairman SHELBY. A day, you call that a quick movement, something that is of that importance?

FBI HEADQUARTERS AGENT. In terms of getting the answers and in getting the people to put their heads together, I think it moved pretty quickly.

Vice Chairman SHELBY. So the answer was no on the FISA, is that correct?

FBI HEADQUARTERS AGENT. No, that is not correct.

Vice Chairman SHELBY. Well, correct the record, then.

FBI HEADQUARTERS AGENT. The decision that we came to in the operational unit and within NSLU, if I could speak for them, is that FISA was the way to proceed, and I think that was substantiated by the CDC in Minneapolis, also.

Vice Chairman SHELBY. Okay. Did the FBI Minneapolis then proceed under the FISA and come back to you for clearance or whatever you do—permission—under a FISA?

FBI HEADQUARTERS AGENT. Right. In terms of the strategy that was employed, we moved forward to attempt to acquire a FISA search warrant.

Vice Chairman SHELBY. Okay. Did you present—did the Justice Department on your recommendation present an application for a FISA to the FISA court?

FBI HEADQUARTERS AGENT. No application was presented to the Department of Justice.

Vice Chairman SHELBY. Why not?

FBI HEADQUARTERS AGENT. A decision was made that the probable cause standards of FISA were not met.

Vice Chairman SHELBY. And when you say a decision was made and you were in charge, was that ultimately your decision?

FBI HEADQUARTERS AGENT. It is a collaborative effort with the national security law unit.

Vice Chairman SHELBY. Did you notify then Minneapolis of some problems they might have had with the FISA application?

FBI HEADQUARTERS AGENT. It was voiced to Minneapolis that we were having problems with the foreign power issue of the FISA application. And I think it is important to note that the FISA process never really ends. You know, we were looking at that FISA process continually right up until September 10, but obviously there came a time when we started to move towards a deportation.

Vice Chairman SHELBY. But the clock was ticking all this—this started in August, and on September the 10 you were still fooling around with it—or maybe fooling around is not the proper word. You were still grappling with it, is that correct, the FBI headquarters?

FBI HEADQUARTERS AGENT. It is not uncommon to grapple with the FISA——

Vice Chairman SHELBY. Were you still grappling with it?

FBI HEADQUARTERS AGENT. Yes. We were still trying to get to the foreign power issue.

Vice Chairman SHELBY. Okay. What happened on the morning of the 11 September? Did Minneapolis FBI contact you, headquarters, again for a FISA or a criminal warrant after the Trade Towers were hit?

FBI HEADQUARTERS AGENT. I was contacted by an individual in Minneapolis division who asked that they be allowed to go forward and attempt to acquire a criminal warrant.

Vice Chairman SHELBY. A criminal warrant against Moussaoui or a warrant to search the laptop?

FBI HEADQUARTERS AGENT. To search both the laptop and his other belongings.

Vice Chairman SHELBY. Did you turn that down?

FBI HEADQUARTERS AGENT. No.

Vice Chairman SHELBY. Did you approve it?

FBI HEADQUARTERS AGENT. I told Minneapolis in no uncertain terms they should go forward immediately.

Vice Chairman SHELBY. Well, we have been told that—and I don't know if this is correct or not, that FBI headquarters turned it down—turned the application again for a search warrant down on the morning of the eleventh after the Trade Towers were hit and a Federal judge in Minneapolis issued the necessary warrant to search the laptop. Is that right?

FBI HEADQUARTERS AGENT. That is not accurate.

Vice Chairman SHELBY. Well, explain what is accurate.

FBI HEADQUARTERS AGENT. I will, if I could.

Minneapolis—I received a phone call almost immediately, 9:50 in the morning or whatever, from an Assistant Special Agent in charge of Minneapolis who I knew, and he said to me, we would like to go forward with that. I said, absolutely, go forward. At that point in my mind, you know, all bets were off.

Vice Chairman SHELBY. And this is the morning of the eleventh you are speaking of?

FBI HEADQUARTERS AGENT. That's correct. At that point Minneapolis went forward and approached the U.S. Attorney's Office in Minneapolis and acquired the search warrant and, you know, obviously significant probable cause was added to their warrant in the fact that three airplanes had smashed into buildings and a fourth airplane that was hijacked had crashed in Pennsylvania.

Vice Chairman SHELBY. I know my time is up, but could you just briefly tell us what was found in the laptop? Can you do that?

Chairman GOSS. I think that is——

Vice Chairman SHELBY. Is that——

Chairman GOSS. Mr. Nahmias, you want to give us guidance on that?

Mr. NAHMIAS. I think the concern is that since that happened after September 11—or on September 11 and deals with evidence in the criminal case, we——

Chairman GOSS. We won't go that, then.

Vice Chairman SHELBY. I will hold that for a special hearing.

Thank you very much, Mr. Chairman.

Chairman GOSS. Senator DeWine.

Senator DEWINE. Thank you very much, Mr. Chairman.

First of all, let me thank all five of you for your service to our country. We appreciate it very, very much.

A number of things that have come out of this hearing today reinforced some things I think we probably already knew, but let me just mention a couple.

One is that we have saddled the FBI with a communications system that is broken. No corporation in this country would tolerate it. It is shameful, and from your testimony it appears that we still have a long, long, long way to go to fix it. That certainly has to be the top priority of this Congress and a top priority of the FBI. It is unfair to you. It is unfair to the country.

Second, testimony has reinforced how difficult it is I think for the FBI to, when it has to, get out of the case mode. I started my career as a county prosecutor. I have some familiarity with this area, as many on this committee do. You are trying to make a case. You are focused on whether you have the evidence to make the case.

You know, when the Phoenix memo came in, it seems it clearly had new information. It mentions some things that in hindsight look very, very tantalizing, very, very interesting. It is a product, I will say, obviously of a Phoenix agent with some very imaginative, creative, good work, good analysis—the type of thing that needs to be done and needs to be rewarded in our system.

Your field office didn't seem to think, however, that it added very much to what it already knew, and I suspect that was because they were looking at it as a case. Did this help them make a case? But they failed to see, obviously, the big picture.

And the question to the three of you, is it ever feasible to really expect the FBI agents, who have been trained historically to look at cases, to look at things from an intelligence point of view? Can the FBI really do preventive intelligence?

Let me start with the Phoenix agent.

FBI PHOENIX AGENT. Yes, I think we can. I think we have demonstrated that since our very inception, I believe. I will just point to the examples during the Cold War, the FBI's counterintelligence division during the Cold War and the effectiveness we had against the Soviets——

Senator DEWINE. Do you disagree with the premise, then?

FBI PHOENIX AGENT. Yes, I do disagree with the premise. I think we need more resources, more analysts, more support persons to attack this problem. I personally feel—it is my opinion that we cannot do everything that we are mandated to do, both criminally and from an intelligence point of view, and do it all well.

Senator DEWINE. Good point.

FBI headquarters?

FBI HEADQUARTERS AGENT. Clearly, I think that we are up for the commission. I will echo my colleague's sentiments. I think it comes down to redirecting resources. I think clearly analysis is going to be a big piece of it, and then a bigger piece is training, and the training issue is one that headquarters has to grab the bull by the horns right now and get our people trained to look at these issues from a national perspective, from a strategic perspective.

Senator DEWINE. And the Minneapolis agent.

FBI MINNEAPOLIS AGENT. Sir, I think we are absolutely up to the task. The type of people that are recruited into the FBI are people that are multifaceted and people that look beyond just what is happening in their own backyard. As evidenced by the way we attacked the problem in Minneapolis, we were interested in exploiting the information that we had in the government's possession, because we thought it might speak to either a larger conspiracy or ongoing cases that were already proceeding in other divisions in the FBI. We were clearly focused on the bigger picture and were not with this myopic look at a single case or a single criminal act.

So, absolutely, we are up to the task; and I think that is going on in field divisions right now. I think it can happen to a greater degree and much more effectively, but the type of people that are working these cases are the people that have clearly an international focus.

Senator DEWINE. Well, I think your testimony has been very helpful today. I think your answers just a moment ago, all three of you, are very helpful. You have listed a number of things that, frankly, fall outside of your responsibility, that go to things such as resources, that go back to our responsibilities, and I hope Congress will heed your advice.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Senator.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

First, I have two requests of our chairmen before I ask my questions. One is, I would request that there be a redaction and then a release publicly of both the Phoenix memo and the Minneapolis documents. I have made a request many, many months ago, back in May or June, for the public release after redaction to protect sources and methods. The letter I get back from the FBI was that they hope to do this at some point in the not-too-distant future. It is still not done. It is an essential part of our investigation, I believe, that the documents with proper redaction be released publicly. Without that, accountability is less likely. So I would ask the Chairs to take that under consideration.

Secondly, I would like to highlight a portion in the staff report this morning on page 23 where, near the bottom of that page, it says that a CIA officer detailed at FBI headquarters learned of the Moussaoui investigation from CTC in the third week of August. The officer was alarmed about Moussaoui for several reasons. Those reasons are stunning quotes, if I can put it that way, from documents which I can't see any reason should not be released, and I would hope that the Chairs and the Vice Chairs would get together and see whether or not we can get the disclosure of those quotes.

This was at a time when the CIA stations were advised of the known facts about Moussaoui. All I can tell you is that the references in the report are to specific decisions, findings made by that officer, which are directly relevant to this investigation, into the events of 9/11. So I would ask that our Chairs would consider that request as well.

Chairman GOSS. That request has already, in fact, been made. It is a work in process. I am not sure how it is going to come out. But you will be advised.

Senator LEVIN. The first one as well?

Chairman GOSS. Yes, sir. Both of those.

Senator LEVIN. Now the questions. This would be for our headquarters agent. The Phoenix FBI agent recommended that FBI headquarters "should discuss the concerns raised by the agent in the Phoenix memorandum with other elements of the U.S. Intelligence Community, and task the community for any information that supports Phoenix suspicions."

I gather that was not done, is that correct? And if so why not, briefly?

FBI HEADQUARTERS AGENT. I have learned, obviously post 9/11, of some of the actions that were taken both by the field and by the analysts. In fact, it is my understanding that our Phoenix division had, in fact, discussed a number of the subjects, in fact, maybe all of them, and maybe my colleague could complete on this also with the CIA. And at a couple of meetings the issues of—the issue of the infiltration of the airline industry by terrorist subjects was discussed.

Senator LEVIN. So therefore, are you saying that FBI headquarters, specifically your unit, did, in fact, discuss the concerns raised by the agent with the Intelligence Community? Is that what you are saying, that you acted on that request?

FBI HEADQUARTERS AGENT. No, I am not.

Senator LEVIN. Why did you not act on that request?

FBI HEADQUARTERS AGENT. I can't answer that except to speak to what I learned post 9/11.

Senator LEVIN. All right. Well, that doesn't then answer the question.

You don't know why you didn't act on that request at the time, is that the answer to the question?

FBI HEADQUARTERS AGENT. That is correct.

Senator LEVIN. Now, the next question then relates to the Minneapolis issue. In the case of Phoenix, you have an agent who requests specifically that his concerns be shared with the Intelligence Community. You did not act on that request, inexplicably. Now we have got another similar situation in Minneapolis.

But here, apparently the Minneapolis division did notify the CIA's counterterrorist center, the CTC, and according to Ms. Rowley, was, in her words, chastised for making the direct notification without the approval of the FBI.

Now, let me ask our Minneapolis agent. Do you know if that statement of Ms. Rowley is true?

FBI MINNEAPOLIS AGENT. That is true, sir.

Senator LEVIN. All right. This to me goes to the heart of——

FBI MINNEAPOLIS AGENT. Excuse me, if I may qualify that a little bit. It is true to a point. The word "chastised" is perhaps a little prejudicial here. I did receive a communication from a supervisor at FBI headquarters that indicated his preference would be that we contact FBI headquarters to coordinate any intelligence sharing with CIA headquarters.

He indicated to me that the information flowed better when they were communicating headquarters to headquarters. I know that has been a longstanding preference of FBI headquarters.

Senator LEVIN. Did you or she consider that to be a reprimand of sorts, a correction of a previous action?

FBI MINNEAPOLIS AGENT. It seemed to me to be a direction of FBI headquarters to cease and desist.

FBI HEADQUARTERS AGENT. I would like to speak to that if I could.

Senator LEVIN. I am out of time.

Chairman GOSS. You are out of time. I would yield you an additional minute because you took a minute on administrative matters which are a benefit to all of us. So if you would like the additional minute, it is your choice, sir.

Senator LEVIN. If you can do that in 30 seconds, that will give me 30 seconds for my last question.

FBI HEADQUARTERS AGENT. I can. Namely, the supervisor who was handling that matter is the person who is going to be the affiant on the FISA. That individual has to be aware of everything that is going on in that case.

And communications cannot be kind of going around him. The reality of it is, is things do work much better when they go through headquarters. There was no effort to hinder in any manner communications between CIA and FBI.

In fact, I can tell you from firsthand experience with my conversations with CIA, and with our FBI representative at CIA during that time frame, that there was exceptional flow of information back and forth.

Senator LEVIN. This is a very quick question. It is one thing where there is reticence on the part of agents where there are legal barriers to take certain actions. But, where there are no barriers, that is where we get into trouble, it seems to me. That is where I have difficulty understanding the failures to act.

One of the great failures here had to do with the FISA warrant, what is the standard for getting a FISA warrant, and the so-called foreign power provision, which you viewed or were told was a barrier, erroneously, by the legal division at FBI. Apparently it was established by Senator Edwards it was erroneous.

Now, my question is this: I read the law. The legal advice is clearly erroneous. You don't have to have a foreign power, you have a foreign terrorist group. That is enough for a FISA warrant under the law as it existed.

FBI HEADQUARTERS AGENT. A foreign power with regard to a FISA in a terrorism case would be a terrorist organization.

Senator LEVIN. Exactly right. The terrorist organization is enough. Yet, this was not pursued because you were told that you had to prove that there was a foreign power connection.

FBI HEADQUARTERS AGENT. No, that is not true.

Senator LEVIN. If that is not correct, fine, I will let Senator Edward's Q and A answer that.

My question is this: Apparently there was an acknowledgment that there was a misinterpretation of the law. Okay. How many FISA requests were denied based on that misinterpretation of law, in addition to the one that we are talking about here? That is a

very specific, numerical question. How many requests were not approved based on the misinterpretation which was acknowledged or explored by Senator Edwards?

Mr. BOWMAN. May I briefly answer that, if I may, Mr. Chairman? I don't know of any other instance in which something like this came up. But I don't think, Senator, that Senator Edwards' questions got quite to what you were focused on there. The fact of the matter is that the agent of a foreign power is something that is not defined in the statute, but is addressed in the legislative history, which we have to follow, because that is where we get an explanation of it.

An agent of a foreign power in the legislative history describes a knowing member of a group or organization, and puts an onus on the government to prove that there is a nexus which exists between that individual and the organization which would make it likely that that individual would do the bidding of the foreign power. That is the stretch that we weren't able to get to.

Mr. ROLINCE. Mr. Chairman, I think that is absolutely essential, because there seems to be a disconnect between whether or not we did not get the FISA because we could not connect him to a foreign power.

We did not get the FISA because the decision came out, in consultation with OGC, that we could not plead him as an agent of that foreign power.

Senator LEVIN. If I could put in the record the definitions of foreign power in 50 U.S. Code Section 1801(A). And foreign power is defined as, including in Subsection 4, a group engaged in international terrorism, or activities in preparation therefore.

Mr. ROLINCE. No disagreement, but we have to prove that he is an agent of that foreign power.

Senator LEVIN. Of that group?

Mr. ROLINCE. Right. That is where we were lacking, that he was an agent of that group.

FBI HEADQUARTERS AGENT. If I could, this is a very significant issue, and one that we should probably take up a closed session. And it needs to be explored, because this is a problem that we are going to face many times now in the future. And this issue of how to get at these so-called lone wolves needs to be addressed.

Chairman GOSS. Thank you very much. We will do that. And we have in plain text up here what Senator Levin has just held up, it is in our briefing books. We are reading it obviously as layman, not as operatives in the field, or people having to deal with it. Obviously this needs more dialogue. We will arrange to have it in a freer atmosphere for those of us who have to deal with this stuff. I think your suggestion is excellent.

We will proceed now to Mr. Roemer.

Mr. ROEMER. Thank you, Mr. Chairman. Mr. Chairman, I want to, first of all, thank and also commend particularly the agents from Phoenix and Minneapolis.

As we look back on the horrors of September 11, we find that going back to Minneapolis and Phoenix, there were, in fact, field agents out there that found clues that could have brought more attention to these matters, that pieced together important ingredients and evidence in the case, that may significantly help us down

the lines. So I want to thank you for your hard work and your successful work in some ways.

Given your experience in the field, given your assessment of the threat, given your knowledge of where al-Qa'ida may operate successfully in this country—first of all, the Phoenix agent—how likely is it that we are going to be hit again? And when do you think that may take place?

FBI PHOENIX AGENT. Well, this would be purely speculation.

Mr. ROEMER. That is all I am asking.

FBI PHOENIX AGENT. I believe that, first of all, that the watershed event for the international terrorism community took place on February 26, 1993. And I wish we had these type of hearings back then to address that threat, because I believe that that was the first page of a new chapter in American history. I believe that the enemy is here, is ingrained in our communities and is willing to strike again.

I just—I couldn't tell you when. I believe that we are making some headway and having some success with disrupting his activities in the country as is evidenced with what took place a couple of days ago in Buffalo and elsewhere around the country.

But, to give you a time frame——

Mr. ROEMER. On a scale of 1 to 10, Phoenix Agent, how likely do you think a hit from some of these terrorist groups might be, 10 being very likely?

FBI PHOENIX AGENT. I would say it would be low right now. I would say 1, because of our offensive efforts post 9/11.

Mr. ROEMER. That is in country or from outside?

FBI PHOENIX AGENT. I can only speak for inside of country.

Mr. ROEMER. Minneapolis agent.

FBI MINNEAPOLIS AGENT. Sir, I am unfortunately not prepared to answer your question, because circumstances concerning my assignment have changed significantly since my involvement in this case. I don't have current information or access to the current information because of my present assignment. And for me to speculate would be completely out of scope.

Mr. ROEMER. I appreciate your honesty, and I appreciate the hard work that you did prior to this.

Coming back to the Phoenix agent, I want to say that from our testimony from Eleanor Hill, she quotes New York FBI personnel who found your Phoenix memo "speculative but not necessarily significant."

I, on the opposite hand, find it significant, because it was speculative. You almost laid out the case for a strategic analyst that, piecing together different threat assessments and different clues coming in, that this might well happen at some point in the future, but that it could be happening in other places in the country.

We are told that five intelligence research specialists, strategic analysts were transferred from the analytical unit to the operational unit, and in the opinion of one of the interviewees in the strategic analytical capability, the FBI against al-Qa'ida, that it was "gutted."

Do you have any comment on the state of the strategic analysts prior to 9/11?

FBI PHOENIX AGENT. I don't have any information concerning what took place at headquarters in terms of the downsizing and transferring of people. But, as I testified earlier, we in the field, I in particular, I can speak to myself, saw a decreased amount of analytical material that came out of headquarters that could assist somebody like myself in Arizona.

Mr. ROEMER. I hope that we are dealing with that, both from a training and a resource capability now and looking into the future as well, too.

Finally, FBI headquarters agent, you said in response to a question from Mr. Cramer that your name was on the Phoenix memo to headquarters, but you did not recall seeing it. Is that correct?

FBI HEADQUARTERS AGENT. That is accurate. I do not believe I ever saw that communication. In fact, I think your investigators for this committee that have been investigating this matter have confirmed that the best they could.

Mr. ROEMER. I am not so much going to try to grill on whether or not you recall seeing it, not reading it or passing it on. What you said afterwards concerns me about the system a little bit more.

You said that you still do not see some things with your name on it, sometimes that could amount into the hundreds of memos or documents going through FBI headquarters. So if there is another Phoenix-type memo coming through, you may not see it.

And maybe there are three or four other names on that memo, but I want to be reassured that three or four of those people, including you, would see it this time and be able to act on it. Are we going to fix the system so that those four or five names or six names in this instance—however many were on it—that they are seeing it, reading it, and responding to the field offices.

FBI HEADQUARTERS AGENT. That is a fix that comes with technology and resources.

Mr. ROEMER. So it is not fixed?

FBI HEADQUARTERS AGENT. It is not fixed. I think this has to be clear, nor do I need to see everything on—as an individual, I cannot possibly see and consume every piece of paper. Unfortunately, there is a culture in the FBI where names go on attention lines. That is not necessarily necessary. I think it needs to be focused on program responsibilities or cases, and field division responsibilities.

Just because of my position, they tend to put my name on that communication. I myself do not necessarily need to see it nor could I possibly take on all of those pieces of communication with my name on it.

Mr. ROEMER. I would just hope they take your name off it, and the people that would have their name on it would be reading it and responding to it. Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Mr. Roemer. Mr. Peterson, you have ten minutes, sir.

Mr. PETERSON. Thank you, Mr. Chairman. I want to thank Ms. Pelosi for her kindness in giving us some time. We in Minnesota are probably, as you expect, probably a little more focused on what we are talking about today than other places. And I wanted to commend the agent from Minneapolis and all of the other people. We are proud of the work that you do. And you folks did a great

amount of work, and a very good piece of work on this issue. I want to thank all of you for what you do for your country.

Now, having said that, I want to bring up a couple of things that keep coming up. I want to try to sort through this sequence a little bit.

I just heard this again today, and I wanted for the Minneapolis FBI agent to clarify this, that someone brought up to me during the break, that the flight school had called the FBI office in Minneapolis two or three times before they got a response. This has been printed before, and as I understand it, that is not the case. Are you familiar with what happened during that?

FBI MINNEAPOLIS AGENT. I am not at all aware of any prior telephone calls. I have heard that also in the past. We have been unable to confirm that in Minneapolis. I can tell you the first call was August 15. That happened about 1 o'clock in the afternoon. And immediately following that call, the agent hung up the phone, came into my office and the intelligence case was opened.

Mr. PETERSON. That is—I just wanted to get that on the record. That is the way I understood it.

Also in Ms. Hill's statement today, she says that the supervisory agent in Minneapolis told the joint inquiry staff that the FBI headquarters had suggested that Moussaoui be put under surveillance, but the Minneapolis office didn't have enough agents to do that.

It wasn't too long after this all happened that he was arrested because he was an INS violation. But is that true? Was there a decision made to where they couldn't put him under surveillance because there weren't enough people? And that raises a question of how much of a priority this was in some people's minds.

FBI MINNEAPOLIS AGENT. That statement is partially true. The decision on whether or not we were going to put Mr. Moussaoui under surveillance rested with me. And I made the decision that he was going to be arrested because we had a violation. The INS was participating as a member, a full member of our joint terrorism task force.

My background in the criminal arena suggests that when a violation occurs and you can stop further or potential criminal activity, you act on that.

So that is exactly what I instructed the agents to do. If we had the possibility of arresting him, we were going to arrest him. If we needed to surveil him, we certainly could have instituted a surveillance plan.

Mr. PETERSON. That was not an issue?

FBI MINNEAPOLIS AGENT. It was not appropriate to do in this case.

Mr. PETERSON. Now, on this whole issue of trying to get at his computer and his effects, I understand that initially you were looking for a criminal search warrant. Is that——

FBI MINNEAPOLIS AGENT. The initial telephone call I made to the radical fundamentalist unit was to request a notification to the Department of Justice's Office of Intelligence Policy Review to grant us concurrence to walk across the street to the United States Attorney's office and discuss the possibility of a criminal warrant. That was not to say that we were committed to getting a criminal warrant, because as the FBI headquarters agent has mentioned, the

feeling of FBI headquarters was we had not yet reached the threshold of probable cause to obtain a criminal warrant.

I don't disagree with that assessment. And when the information came to light that we would be better instituted to pursue the FISA warrant, because it granted us greater options or a larger number of options in the future, it was very clear that that was the right decision, was to pursue it as a FISA matter. That is the way we went.

Mr. PETERSON. Now, there was some concern that if you went through the criminal process and were turned down, that it would jeopardize your FISA request too, as I understand it?

FBI MINNEAPOLIS AGENT. Yes, sir.

Mr. PETERSON. We got some indication that this—I guess this was asked earlier—that there was some kind of adversary relationship between Minneapolis and headquarters, that there had been some issues before in these areas, and apparently both of you gentlemen weren't there long enough to be aware of that.

Mr. Rolince, do you know that? Would that have been a factor in all of this? And we also have the reprimand of Colleen Rowley talked about. Was there some kind of problem between Minneapolis and headquarters that affected this?

Mr. ROLINCE. No. It absolutely should not have been a factor. If there had been a prior disagreement between the supervisor at my colleague's unit and any agent in Minneapolis, it certainly had not been raised with management within the international terrorism operations section prior to that.

So I would take it to mean that, if there were some issue, it wasn't significant, because nobody brought it to anyone's attention to do anything about it.

The second part of your question. I think it is important to understand that you don't want 11,000 agents in the FBI picking up the phone calling back to CIA or INS or State Department or any other headquarters in Washington with their leads. There is a rational, logical reason why leads come into headquarters. There is a headquarters-to-headquarters dialogue. And the answer goes back out. In this instance, at that time, there was a memorandum of understanding between the FBI and the CIA that that is exactly how we would handle inquires from the field. That is more effective. It is more efficient. And it is the way our counterparts in Washington want it to work.

Mr. PETERSON. There is also some information that the headquarters didn't think that the people in Minneapolis understood the FISA process, and the people in Minneapolis were very frustrated, I think, in the way this whole—they really were frantic to try to get at this stuff. How are people in the field trained on FISA? Are they only trained at Quantico, or do they get updated on court decisions and legal changes? Now, do you—an agent in the field, are you trained on this at all?

FBI MINNEAPOLIS AGENT. I had received no training on the FISA process prior to this incident. I—my background had been as a domestic terrorism investigator. I had received some fairly extensive training on the Attorney General Guidelines and matters related to domestic terrorism.

FISA problems, or the FISA Act is not often, if ever, invoked in domestic terrorism measures. So personally, I had not had any. However, there were other agents on my squad, the agent who was assigned as the case agent in this matter and an agent who was assigned to the parallel criminal case, post September 11, who had received some in-service training from Quantico, in addition to the on-the-job training and training from the supervisor that preceded me, in how to handle the FISA matters.

So there was an understanding of the FISA process in Minneapolis by the specific case agent as evidenced by the fact that this case agent had a couple of prior FISAs, and had been through the process before.

FBI PHOENIX AGENT. Sir, if I can address that issue as well, I have been working counterterrorism matters for approximately 13 years. During the course of my career I have been to several in-services at Quantico that give us updated training on the FISA process—how to put together the packages, what is needed to make them successful.

Most recently I was at a FISA in-service just right after 9/11 where we addressed some FISA issues as well. So I have had the benefit of having that training. And the training is available and has been put on by our national security law unit.

Mr. PETERSON. I know there was a lot of frustration in the Minneapolis office. I stopped by there shortly after 9/11 and so forth.

Was there ever any attempt by anybody in Minneapolis to go above the radical fundamentalist unit, to try to jump over them and try to get somebody at a higher level to listen to what you were talking about?

FBI MINNEAPOLIS AGENT. I took the information, as I mentioned earlier, to my immediate supervisor, who was an assistant special agent in charge. He also happened to be acting as the special agent in charge of the office.

So there were some internal concerns, or really some demographic things that were happening within the Minneapolis office at the time that this matter was under way.

We did not have a Special Agent in charge of the office. So we had an acting special agent in charge acting in his stead or her stead. We did not have a full-time supervisor on this squad. I was acting as the supervisor in the absence of someone who had recently been promoted. So the networks that are established by those management personnel that are normally in those key positions would definitely have come to play or could have come to play had the circumstances been a little bit different.

When I took the information up to my assistant Special Agent in charge, I provided him with a list of the names of the people who were supervising the radical fundamentalist unit, and in fact the people who were supervising the international terrorism operations section.

And I—I am prepared to speak to you today as to why those telephone calls were not made. I requested that they would be made.

FBI HEADQUARTERS AGENT. If I could add to that also, as the chief of the unit at the time, I want to be very clear, probably in my own defense here, that I was not made aware of the issues in terms of Minneapolis's frustration with regard to this process. I

think that clearly there was some miscommunication. I think some of the frustration was driven by that miscommunication. And obviously in hindsight, I very much would have wanted a phone call, and unfortunately that did not take place.

Mr. ROLINCE. If I could take 30 seconds on that, I think it is critical to understand that on a regular basis field offices around the country, SACs visit the office, they are on the fax, they are on the fax, they are on the phone, they are on the e-mail. It is a regular occurrence to lobby for your FISA, to get it moved up in terms of priority or to make an appointment with OIPR, to debate the issues and the merits of your FISA.

That is something as you look for things you can do better, we, clearly in the FBI, are looking for things that we can do better, in encouraging that dialogue. That is certainly one of them. We should not have chief division counsels who are peripheral to an issue where you are desperate.

The chief division counsel in all 56 field offices—and this is a problem we have identified from years ago—needs to be a player within the FISA realm. Their forte, their expertise for years has been Title III. There has been a reluctance to jump on and get educated and be part of this process. Instead, they defer to NSLU, which overburdens the people at headquarters. So it is something that the Bureau has recognized, we need to continually promote, and it has to happen in order to make a more effective system.

Mr. PETERSON. Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Mr. Peterson. I appreciate it. Before I go to Senator Mikulski, it has been brought to my attention that we have two other distinguished visitors; Senator Shelby's wife, Annette, and my wife Mariel are here. And we welcome them also and appreciate your patience with us.

Senator Mikulski.

Senator MIKULSKI. Thank you very much, Mr. Chairman. First, to the men testifying, and really to the men and women that you represent, know that I believe, as this United States Senator, I have tremendous respect for you.

And I have tremendous respect for what you do every day. While the rest of us are eating Thanksgiving dinner or are opening Christmas presents, you are out there in the field, and you have missed many a family event, and all of the things that we know go into it. And I believe from just the testimony that we have heard, that the agents in the field and the field offices were really doing their job.

And to the Phoenix agent, your rebuke of Congress is well taken. I accept the validity of that rebuke. I am not one of the ones who wagged on you or made you public or whatever. But I think that statement was well taken. And for this committee to have effective oversight, and to expect the cooperation of the agencies, we need to make sure that we protect you, while we are asking you to protect us.

So I think that statement of yours was very well presented. It was presented in an excellent, forthright way. And I appreciate it.

FBI PHOENIX AGENT. Thank you.

Senator MIKULSKI. I want to go to really solutions. Much of our inquiry has been kind of looking back. I would like to look ahead.

And with three men who had incredible responsibility during this time, and who I am sure have agonized day after day, memo after memo what could have been done differently, I would like to ask you to share with the committee what you think would be the top three things you think the Congress should do, or your agency should do, to really improve our situation and to make sure that these kind of gaps and so on would never happen again.

And if you could just go down the line, because I was looking at the issue of a smoking gun. There isn't a smoking gun. Are there systemic issues? Yes. So if we look at the systemic issues, then what are the solutions?

FBI PHOENIX AGENT. Speaking for Phoenix, the top three things that I would like to see. And number one is the most imperative, is the additional resources applied throughout the Intelligence Community with our analytical capability. There should be one place established where raw intelligence from the field, both from overseas and within the United States, from all of the different intelligence agencies that are out there collecting gets dumped and analyzed and looked at and raw material put into a—analytical product and gets disseminated to the officers in the field.

The second thing is the need for more investigators here in the United States within the FBI. We talk about this in our squad areas every day. We cannot continue to do the number of things that we are charged with doing with the number of agents we have. 11,000 agents, when you think about it, for a country of close to 300 million is amazing. When you look at cities like New York who have 35,000–plus police officers trying to protect their citizens, certainly I think we need more agents to do the job.

And third is, we need to increase our technical capabilities, our information flow. I mean, in direct reference to my memorandum, we should have a capability to wash and then rewash visa applicants through the U.S. Intelligence Community databases to see if anybody that is applying for visas to come into this country are known to the U.S. Intelligence Community as being involved with terrorist organizations. And not to mention, as we have heard, time and again today, better information technology for us in the FBI so we can communicate with each other more effectively.

Senator MIKULSKI. Thank you. Would the agent who handled Moussaoui go next, and then we will wind up with headquarters.

FBI MINNEAPOLIS AGENT. Ma'am, I would reiterate a lot of the things that he said. Technology is certainly something I think that we have languished well behind the business community. It was mentioned that no business in America would operate with a system like we have. I would argue that very few private citizens in America would be satisfied with the system that we are operating with.

Technology clearly is of high, high priority on my list. The resources, to include the analytical resources, be it training of those analysts, and the recruitment and retention of personnel really at all ranks of the FBI, that would probably be my second point.

And finally is the training issue itself. We have a tremendous number of agents who are very, very capable in the disciplines that they are already trained in. However, a lot of them, since September 11, 2001, have now been transferred to an arena that they

have never been exposed to before, or the initial training that they had fell short of things that were occurring in—or the world as it was prior to September 11, 2001, or really no real sensitivity to the issues that are related to counterterrorism.

So additional in-service training and training of the agents who have been reassigned in addition to the agents who are already assigned to this type of mission really needs to be a priority.

Senator MIKULSKI. My time is almost up, but they will let me finish.

FBI HEADQUARTERS AGENT. From a headquarters standpoint, I am going to go back to my two main themes as what I see as systemic problems. And clearly they have been hit on. The technology, number one. The FBI is a member of the Intelligence Community. We have to be able to communicate with them. We have to be able to have databases that can be integrated with them, and right now we do not. It is a major problem. It is a major problem for our analysts.

Number two, analytical resources at headquarters. You have heard this throughout today's testimony. From a tactical standpoint, we have outstanding tactical analysts that do a phenomenal job day in and day out. Unfortunately, from a strategic analytical standpoint, the resources are woefully inadequate.

Finally, from a real operational standpoint, I think we need to have a hard look at foreign students in our universities. And I can't get into more than that in this setting. But I think it is an issue that we need to address in a closed session.

Senator MIKULSKI. Thank you. My time is up. But thank you very much.

Chairman GOSS. That is an issue that has come to the attention of the appropriate oversight committees. I am sure it will continue to be.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. That is an issue that we did have hearings on in the Technology and Terrorism Subcommittee of the Judiciary. And as a matter of fact, part of the Visa Reform and Border Security Act deals with tightening the myriad of loopholes that exist in the foreign student program. If you have any other recommendations, I, for one, as the Chair of that subcommittee, would love to have them, because we are going to be holding an oversight on progress with respect to terrorism in that area.

But I wanted to ask you, Mr. Bowman, if I might, this question: Just quickly following up on Senator Levin's question, as I understand it, then, the FBI's national security lawyers essentially used the wrong standard of designated group, ergo Chechen, not on the list, ergo not designated, rather than any group, and some three weeks was taken in that endeavor.

Then I think Senator Levin asked the question: Well, how much other FISA requests went through the same thing? Is the answer there was no other FISA—this was the only FISA request that happened to encounter that kind of false standard?

Mr. BOWMAN. Two different parts of your question, Senator. First of all, no one in the national security law arena said that the

Chechens were not a power that could be—that could qualify as a foreign power under the FISA statute.

The issue that came to us was whether there was any foreign power to which you could attach Moussaoui. And we did not see that.

The second part of your question was whether there are others who have been given an erroneous standard, whether there were other FISAs that did not come to us because there was an erroneous standard. I don't know what I don't know.

This is the only time that I have heard that advice was actually given that you don't have—you don't have a foreign power, because there isn't a recognized one. That is certainly not what we train them to.

Senator FEINSTEIN. Just a suggestion. It might be well to take a look and see if there are others. It would be interesting to know.

I wanted to make an observation and see if the agents couldn't comment on the observation. The Phoenix memo essentially happened during the month of July. I remember that month very well, because we in the Senate were having hearings. The intelligence, so-called chatter was at a high.

The anticipation was that the United States was going to experience either here or abroad on our interests or our people some kind of attack. There was a real sense of alert. And I think other members of the committee shared this sense as well. And I think it was well known out there.

Now, into this comes this memo—and I have read it several times—which is thorough, which is well documented, which contains good investigative leads. Additionally, from an intelligence perspective, UBL and that organization had been—we learned—on the front burner, the highest administrative priority since about 1999.

And yet the memo, which went up the procedures to then at least five different people, it didn't apparently strike anybody with any sense of urgency to take another look. Despite what everybody says, I find that interesting.

And my question to you is, other than a strategic analytic unit, which I understand from the Phoenix agent is a substantial lacking in the FBI today, other than that, did you have any strong feeling, because you have said you felt like you were kind of an isolated person in Phoenix, to just get it on the desk of the FBI Director, get it to somewhere else, because you had done a lot of work on this memo.

This wasn't just, you know, off the cuff. This was a substantial research, a lot of expertise, there was a lot of history and a lot of names, and various pilots names and that kind of thing that were mentioned.

So is FBI protocol such that if you have within yourself as an agent a real belief that I have something important, and it doesn't get a response, can't you simply go above that chain of command and get it on the desk of the heads of the agencies?

FBI PHOENIX AGENT. Well, Senator, to answer your question, I refer you back to the communication. I sent it in routine. The reason why I sent it in routine was because I did not see any, at that time, any immediate action required. There was no immediate

threat information required in there. Basically what I wanted was an analytical product. I wanted this discussed with the Intelligence Community. I wanted to see if my hunches were correct.

But, I am also a realist. I understand that the people at FBI headquarters are terribly overworked and understaffed, and they have been for years. And at the time that I am sending this in, having worked this stuff for 13 years, and watched the unit in action over these years, I knew that this was going to be at the bottom of the pile, so to speak, because they were dealing with real-time threats, real-time issues trying to render fugitives back to the United States from overseas for justice. And again it is a resource issue.

Senator FEINSTEIN. Did you know of the intelligence that was circulating? Did you know that Usama bin Ladin and al-Qa'ida were in the high priority intelligence in the administration?

FBI PHOENIX AGENT. I knew that they were, ma'am. I had just gotten back to work in international terrorism. I had been detailed for several months to work an arson investigation in the Phoenix area, a multi task force arson investigation that involved the destruction and burning down of numerous homes in high-dollar areas in the Phoenix metro area. We believed at the time that these were taking place, that they can be eco-terrorists. I was the senior counterterrorism agent assigned to the squad, and my command made a decision to assign me to work on that matter.

After spending approximately six months on that—I worked that from June 2000, roughly to, or excuse me, December of 2000 through May/June of 2001—I got back to work on my international terrorism cases.

And so I wasn't in the loop on all of the chatter that you refer to concerning the intelligence chatter and whatnot. But, after getting back into the case and recognizing the things that I point out in the communication, that is what led me to write it and send it up the food chain.

Chairman GOSS. Thank you.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. I echo Barbara Mikulski's statements about all of you. You work hard and the Nation appreciates it.

We all make mistakes, we are all overwhelmed. But when you are overwhelmed, the consequences are greater than when we are overwhelmed. And so I want to start off by asking a question to the Minneapolis agent.

The FBI was suggesting that Moussaoui be put under surveillance. That is what you told the Joint Inquiry staff. But, you said in your own testimony that you didn't have enough agents, didn't have enough people.

FBI MINNEAPOLIS AGENT. Well, that is partially true. We would have made those people available had we thought that was a viable option.

Senator ROCKEFELLER. Right. I am getting to that.

FBI MINNEAPOLIS AGENT. Okay.

Senator ROCKFELLER. I had assumed, until you spoke just a moment ago, that you were an FBI criminal investigator. And I am sorry I didn't know that most of your career has been spent in

working with terrorism. So Moussaoui had a French passport problem. And I am trying to figure out how it works through your mind that a French passport expiration problem means that we need to pursue him in terms of holding him to account for that, as opposed to a surveillance problem where he has already been attached and identified with wanting to fly large airplanes with which he has no previous experience.

He, therefore, has been identified potentially as a terrorist. Why wouldn't surveillance rise clearly as the priority that you would choose?

FBI MINNEAPOLIS AGENT. The reason that I made the decision that I did, and I will just take it back one step. I have spent most of my career in the criminal arena, not in counterterrorism. My counterterrorism experience was about the last year prior to my assignment in this capacity that brings me before you today.

What we were attempting to do—the information that we obtained initially to open up the intelligence case was that this person was particularly suspicious. There was no specific allegation of any criminal activity.

But, as we developed the case, we found out, first of all, he had this visa waiver pilot program violation. He was in the United States longer than he should have been, which gave us the opportunity to arrest him and arrest his behavior, because I didn't want him to get any additional time on a flight simulator that would allow him to have the knowledge that we could no longer take back from him to operate an aircraft.

This provided us the opportunity to freeze the situation as it was going on right there, prevent him from gaining the knowledge that he could use at some point in the future. And if ultimately we determined all we could do, after interviewing him and doing some other investigative steps, if all we could do was deport him, then we would be sensitized to the fact that he was interested in doing something else and he could be put in the TIPOFF System. He would be put in—the appropriate notifications could have been made if he attempted to reenter the United States.

But our focus was on preventing him getting the knowledge that he would have needed.

Senator ROCKEFELLER. Preventing him from getting the specific knowledge which he was engaged in acquiring, but there was a larger background that was apparently there. And I think it is almost like a nub-hub question that I am asking. How do you make that judgment, that somebody has done something which is illegal, therefore I am going to pursue my FBI lawyer criminal investigation, or that there is a hint here of something broader, and rather than just prevent him from being able to go back to that flight school, you are going to venture out of your very good mold on this and say that we better watch this person in a variety of ways and put him under surveillance.

FBI MINNEAPOLIS AGENT. I think it is important to remember, at least for me, it is important to remember, the circumstances that were present prior to September 11.

We had no real incidents of airplane hijacking that had happened domestically within the preceding decade. We now have a different perspective that it is very, very difficult to go back and

forget and not acknowledge. But again, I speak to my criminal background in saying if a violation has occurred and we can take further steps to stop what could speak to a continued violation, we will act.

And those were the circumstances under which I made that decision.

Chairman GOSS. Thank you.

Senator ROCKEFELLER. My time is up. Thank you.

Chairman GOSS. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman. I have got a couple of areas that I want to question in, but I also would like to associate myself with the comments made by members of this committee in thanking you for your work on behalf of this country. We all appreciate that very much.

There are a couple of things that I want to pursue. First of all, when we talk about the testimony here, and when Ms. Hill talks about the CIA officer that was detailed to FBI headquarters learned about the Moussaoui investigation, and talked about the issue of whether or not the Chechen rebels were a recognized foreign power or not, and all of that context, I would like to know from the FBI headquarters agent what lessons learned have we come away with on this?

In other words, is the FBI putting together a new program to train, perhaps in concert with the General Counsel's office, to clear up these kinds of issues, make recommendations for clearing up legislatively some of the areas that need to be clearly redefined or further defined? Is the FBI working on a comprehensive package to do that?

FBI HEADQUARTERS AGENT. We have raised this issue of the foreign power and specifically the fact of how Moussaoui somewhat alludes the present legislation. I know Mr. Bowman testified in open session before Senate Judiciary on this. I think it is an issue that the FBI clearly recognizes is a significant, significant problem with regard to individuals that we can't fit into that specific foreign power issue. That needs to be explored more.

Mr. REYES. So is your answer that, yes, the FBI is working on a comprehensive lessons-learned package, or what is the FBI doing?

FBI HEADQUARTERS AGENT. Are you saying—is the question in terms of a legal fix?

Mr. REYES. All of the above. All of the things that we have learned so far from—we now know that the FBI is stuck in a technology void in terms of communications, and analysis and all of those things.

My question is, are we in a mode of lessons learned and moving forward, have a checklist of, okay, by such and such a time we are going to make this proposal for this equipment, for this capability, those kinds of—because we are hearing the field agents frantic——

FBI HEADQUARTERS AGENT. I am just not in a position to answer that. I think that is clearly a question for the Director.

Mr. REYES. So from your level nothing.

FBI HEADQUARTERS AGENT. No, there is clearly reform under way. We have already addressed getting analytical resources in the door. That is going forward. Clearly, we are trying to improve our

means of communication with CIA and others. I don't want to indicate in any manner, though, that it was bad. I think the relationship with CIA has been excellent in the last few years. And I am speaking as a person who has been in this program for 13 years.

It has been very good. Could it be better? Yes, it could be better. I think that technology will fix some of that.

Mr. REYES. All right. For the Phoenix agent, you stated that the 1999 incident aboard the U.S. domestic flight increased your suspicions about aviation-related terrorism. Can you elaborate on the incident and why you thought it was significant?

FBI PHOENIX AGENT. On November 19, 1999, two individuals that originated their flight from the Phoenix metropolitan area were acting suspiciously on an America West Airlines flight bound for Washington, D.C.

The plane put down in Columbus, Ohio, because the flight attendants suspected or observed one of the individuals play with the cockpit door of the plane while it was in flight. The individuals were detained at Columbus, interviewed by the Columbus, Ohio Police Department, FBI Cincinnati, and subsequently released after their interviews and they were allowed to proceed on their trip.

They were heading to Washington to attend a conference that was being put on with the—or by the Saudi Arabian Royal—well, the embassy.

The individuals, within a day or two of them being released, in conjunction with the Council for American Islamic Relations in Washington, made a statement accusing the police department, the FBI, and America West Airlines of racially profiling them. And they actually were broadcast on CNN and other TV news networks around the country. I can't get into the specifics concerning one of those—or either of those individuals. Both are pending intelligence investigations.

Mr. REYES. But the upshot——

FBI PHOENIX AGENT. I can address further details on both of these guys in a closed hearing.

Mr. REYES. But the upshot of that was—did anybody pursue an investigation or drop the——

FBI PHOENIX AGENT. Post 9/11, in a post-9/11 world, I went back and looked at that as possibly being some sort of dry run. It is currently under investigation. And, again, I can get into specific details on that in a closed hearing.

Mr. REYES. Okay. And the last thing I want to say, very quickly is, if it was significant, you didn't include it in your communication. What —

FBI PHOENIX AGENT. Good question. You know, I can't account for why I didn't include that in there. I wasn't—that is a good question. I can't answer that, sir.

Mr. REYES. All right. Thank you, Mr. Chairman.

Chairman GOSS. Mr. Chambliss.

Mr. CHAMBLISS. Thank you, Mr. Chairman. And, again, let me associate myself with Senator Mikulski's remarks over there. You folks do an unbelievable job in spite of what did happened on September 11. We don't tell you enough how much we appreciate you.

Also, my subcommittee, as you know, did a report dated July 17 that was somewhat critical of some of the acts of the FBI. And I

want to tell you that it was given—the criticism was given in a vein that we were glad it was accepted in. That was in a positive way. And I appreciate the reaction of Director Mueller and the Bureau with respect to the criticisms that were made in there. It appears that changes are being made in a positive way. I am very glad to see that.

My question initially is directed to you, the Minneapolis Agent. I want to pick up where Senator Rockefeller left off there, because I am a little puzzled by this too.

The mindset of the FBI at that point in time is where our criticism and our report was directed. And that is that the mindset was more of an investigate-and-prosecute mindset versus a disrupt and interrupt.

If this was such a priority matter, and I hear from you as well as the headquarters agent that that was the case, the Moussaoui case was a matter of very much priority, I don't understand why your reaction would have been, if we can arrest him on what was really a fairly minor violation, why you would do that as opposed to putting him under surveillance in hopes that you might pick up on something down the road. That seems to be a much better action to have taken.

I realize it is easier for me to sit here today and say that. But I am just wondering why that would have been your mindset at that time. And let me ask the follow-on or, in your answer, if you would just address this. If that situation would occur today, has the mindset at the FBI changed to more of a disrupt and interrupt as opposed to an investigate and prosecute, so that your reaction might have been different today with respect to the Moussaoui incident, regarding whether or not to arrest him or whether to put him under surveillance?

FBI MINNEAPOLIS AGENT. Well, respectfully, sir, I believe that the policy that we took that day or the practice that we took that day to arrest him was designed to disrupt and interrupt any further actions that he could do in furtherance of his plan. And that was why the decision was made.

It was not—the focus was never to arrest him merely to prosecute him or deport him from the country on the visa waiver violation; it was to arrest the activity that was—the suspicious activity that was reported to us by the flight school and to allow us the time, while he was in administrative detention, to further develop any additional information we could about what plan he was up to.

But it was—my thinking was in the mode of interrupting and disrupting what I thought was a potential plot, based on the very, very limited information that we had prior to making that decision. And the information we had was prior to really going too far into the case.

Mr. CHAMBLISS. To headquarters agent, is there ever any situation where, when you receive information like the Phoenix EC, where you have got—in my State, for example, we've got 159 counties. We've got headquarters, FBI headquarters in Atlanta, and we've got several field offices out there. But really you don't have the manpower to go into all 159 counties and check every flight school. Is there such a relationship between the FBI and local law enforcement officials like the 159 sheriffs in Georgia where you

could have simply called on those sheriffs to go check flight schools?

And I am asking this more for the future as opposed to what happened there. But is there some kind of relationship there that you all have with those folks that you could get that kind of assistance?

FBI HEADQUARTERS AGENT. Speaking from my time in the field and having run a terrorism task force in the field fairly recently, that is what you strive for. The supervisors in the field, working with their management and also with the agents on the squad, they are looking to build those relationships. And, yeah, we do want that to be available to us. And I think clearly the Director has made that perfectly clear.

We want to rely and work with the locals and to be able to react much quicker in the future on terrorism type matters utilizing that resource.

Mr. CHAMBLISS. Well, I would hope that to be the case. And I am not getting very positive feedback from my local law enforcement officials about an improvement in the relationship with the FBI. But I hope there is a real effort that is being made there to make sure that that relationship is doing nothing but getting strengthened and that the sharing of information between the FBI and our local law enforcement officials is getting better and better.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Mr. Chambliss.

Senator Roberts.

Senator ROBERTS. Thank you, Mr. Chairman. I was just telling Senator DeWine I was going to associate myself with his very wise remarks and that of Senator Mikulski. As Congressman Chambliss has indicated, as usual, she has hit the nail on the head.

And I also want to associate with the previous remarks at the last couple of hearings by Senator Kyl, who has expressed concern about procedure at public hearings, a lack of focus on the very challenges that have been prioritized, I think so well, by Senator Mikulski, but I am not going to get into that today.

All of you witnesses have stated, and I wrote this down when Senator Mikulski said, all right, let's quit looking in the past and playing gotcha, and let's look in the future in terms of not problems but challenges, what do you need? And you responded that you have a tremendous need for some kind of an all-source analytical center, which I think is understandable. You addressed the technology gap within the FBI as compared to our other intelligence community agencies.

You emphasize the training, retention and recruiting—we should have it in reverse order—of analysts and certainly need better analytical resources.

So I think we all agree you need strategic analytical ability and better predictive warning analysis. But, my question is, is that your mission? Most of the questions you are getting are very specific—what did you know, when did you know it, what relationship did this have to 9/11—are what I call the gotcha questions. I am not trying to perjure them—well, I am a little bit, but we will leave that alone.

But you didn't have that mission. And my question is, now who has the responsibility in terms of a foreign threat? Is that the FBI? Is that the CIA? Is that the DIA? Certainly it is the DIA in Afghanistan. Certainly a foreign threat is still CIA. We will have those people in a public hearing as of Thursday.

I don't know if you would like to answer that in terms of your specific mission. How do we coordinate and find out who is really responsible in terms of specific mission for the analytical capability that we should have? And that may be above your pay grade and mine.

FBI HEADQUARTERS AGENT. Mr. Rolince, maybe you want to take a shot at that one.

Mr. ROLINCE. I think the mission has expanded, and I think that goes to the heart of the resource. I am not going to keep pounding on that, because I think everybody has it, but the FBI still believes that we can, will and should be the primary responders to acts of terrorism directed against this country, either internally or in terms of our ability to deploy overseas—Dar es Salaam, Nairobi, Khobar Towers and the whole litany. We want to continue to do that, and we would hope that the American people and the Congress would have the confidence in our ability to do that.

In terms of the document exploitation that you talk about in Afghanistan, that mission has not changed. We view that as force protection, followed by immediate threat to this country, followed by whatever intelligence we glean from within that system.

And I would just like to make a point that I don't think has been made, which should be made for the record. Prevention is not a new job, one for the FBI. Not only is every mission statement led with prevention, but I would submit now that we know about what the Ramzi Yousefs of this world do, the 14 we have indicted in Khobar Towers, the original World Trade Center bombers, those convicted in the Africa Embassy bombings, those are clear-cut law enforcement acts of prevention. Those people were going to kill Americans. There is no doubt in our mind. Look what Ramzi Yousef's plan was.

If we don't continue to pursue and aggressively utilize the law enforcement tool, being able to apprehend, render, try and convict these individuals, we lose a big part of prevention, and we would like to stay in the business.

Senator ROBERTS. I think you should stay in the business.

I have another question that is in reference to the Catch-22 that I think you face and that everybody faces when they get questions from a committee like this with what I will refer to again as a "gotcha question," either by a leak or by specific information that leads to a question more especially in a public hearing or even a classified hearing. There will be some specific piece of information that is rather incendiary that will lead to a headline. You can't really respond, because if you respond in full context, pointing out that there is no relevance in regards to a smoking gun on 9/11, which seems to be the effort or at least the insinuation, you can't do that, because it is classified and you will reveal a source. And you simply are stuck.

We have been trying to figure out how on earth that could be presented in a way that would be nonclassified, and so about every

second foggy night we have something like in the Washington Post that came out a day ahead of the interim report that was issued—no, it was on the hijacking report issued by the professional staff. I was in Kansas, and I didn't get a copy of this. My staff didn't get a copy of this, but it was in the Washington Post the day before, and about every—as I say, about every Tuesday or every Thursday, we have one of these.

How is your morale situation at the FBI when this comes out again and again and again and you can't respond and yet we are trying to—it is like when you have a fire department. You call the fire department. The house is on fire. We are arguing as to whether the truck made the wrong turn or tied the hose to the wrong fireplug, and we are having an investigation when there is a fire. You are fighting a damn war. How is your particular, real situation down there?

FBI HEADQUARTERS AGENT. I would like to speak to that, if I could. I think it is—these agencies—the FBI, the CIA—the fuel of these agencies is morale; and, unfortunately, we have been fairly demoralized in the course of a lot of the reporting that has gone out there and our inability to fight back, for lack of a better word.

Again—I think I said it in my testimony—the Bureau has some of the best analysts in the community. Unfortunately, they are tactical analysts and not strategic analysts.

I think the Bureau agents are the hardest-working people out there. That needs to be said. It needs to be recognized. September 11 was an incredibly tragic event, but it wasn't based on laziness. It was based on inadequate resources, and I think my colleague summed it up in saying that we need to stay in this business. We can do this job. Just give us the tools we need.

Senator ROBERTS. Well, my time has expired, Mr. Chairman.

I would point out a year ago last July there was a hearing—Senator Shelby, Senator Stevens, Senator Warner and our appropriate ranking members—where we invited 46 Federal agencies in and said, are you ready? This is before 9/11. What is your mission? What do you really do? And who is in charge? Everybody said they were in charge. Now that is 80 Federal agencies. We had at that time in the Senate 14 subcommittees and committees that allegedly had jurisdiction. Now between the House and Senate, it is 88. You talk about a need for streamlining and cooperation and some degree of direction. It is the United States Congress, it seems to me, that bears part of this responsibility.

I don't speak for other Members. I apologize to you. I think you are doing a great job, and I think some of this has been tremendously unnecessary and counterproductive. And you tell your people down there, there are some people on the Intelligence Committee that do believe in you.

Thank you, Mr. Chairman.

Chairman GOSS. Thank you, Senator.

Senator Graham.

Chairman GRAHAM. Well, I want to associate myself with the last remarks of Senator Roberts. There certainly is tremendous recognition by the members of this committee of the importance of your responsibility and the professionalism with which it is discharged,

and I don't want this hearing, which has focused on some specific events, to distort that broader appreciation.

In that regard, let me just ask a question. I am speaking particularly to the Phoenix and Minneapolis agents. You performed with a personal standard of exceptional vision and aggressiveness and creativity. Have you received any rewards or recognition to date for your service in this particular issue?

FBI PHOENIX AGENT. Well, sir, I don't expect that. I get paid by the American people to do this job, and I view it as part of my job. I get a salary, and that is reward enough, and it is reward enough to work for the agency. Now, that may sound cliche or hokey, but I sincerely believe that. I am doing my job, and I really don't believe I need any additional, extra recognition for doing it.

FBI MINNEAPOLIS AGENT. I agree with those remarks, and part of the reward that we are reaping, I believe, is the opportunity to come here and tell you our story and tell you where we think the intelligence is broken down and what the United States Congress can do to perhaps help us do our mission. Were it not for this forum, I wouldn't have that opportunity, and so we don't need any sort of monetary recognition, any sort of pat on the back. We are, in fact, doing the job that we signed on to do, and we appreciate the opportunity to do it.

Chairman GRAHAM. Well, I admire your modesty, but I am a believer that one of the things that motivates people is recognition and reward for beyond-the-call-of-duty performance, and I would suggest that you and others of your colleagues who might not be as well known as the two of you have in fact performed in such a manner and there ought to be some method by which that is recognized and therefore presented as a role model of conduct for others to aspire to.

In the staff memo relative to Phoenix, there is this sentence: "The Phoenix SA believes that el Hage established an Usama bin Ladin support network in Arizona while he was living there and that this network is still in place." To the Phoenix agent, do you agree with that sentence?

FBI PHOENIX AGENT. When I made that comment, Senator, it is speculative, and I base it on historical investigation, some of which I can't get involved in in this open session, and I would prefer to address it in a closed session.

Chairman GRAHAM. Well, the Chair may be announcing our desire to have such a closed session, and I would just alert that I will be pursuing that question should we do so.

All right. On the issue of the Minneapolis office going directly to the CIA or other intelligence agencies requesting assistance or providing information, Mr. Rolince, you indicated that there was good reason for not encouraging that kind of behavior. But in the context of the Phoenix memo where one of the specific requests made by the agent was "headquarters should discuss the Phoenix theories with the Intelligence Community," that was one of the items that was not followed, one of the recommendations not followed. Wouldn't that create a sense in the field that if they believe the situation is sufficiently urgent that they might have to take the situation into their hands and go directly to an intelligence agency?

Mr. ROLINCE. If they had asked at headquarters, can we raise this issue with CTC—in fact, the person that it was raised with was an FBI agent, ironically—and were turned down, then I would have no objection whatsoever of them moving it and escalating it.

Chairman GRAHAM. Is the "them" in this case the Phoenix or the Minneapolis——

Mr. ROLINCE. Minneapolis. But I wouldn't take the Phoenix EC—one example of something that should have been done, and I will be perfectly honest with you. One of the great frustrations in that, it talks about airlines—we have FAA people in the unit; it talks about intelligence—we have CIA people; it talks about visas—there are State Department people and Immigration people in that unit. That information should have been shared, if only for FYI purposes, with all those people at our headquarters. And it wasn't done, and it should have been done.

Chairman GRAHAM. It was indicated that the example of the FISA issue, where there was confusion as to the legal standard, that it may have been that Moussaoui was a singular exception. No other examples come to mind. Are there any other examples that come to mind analogous to the Phoenix communique where they made a specific request that information be shared with intelligence when that request was not adhered to?

Mr. ROLINCE. In the three and a half years I was there, I can think of none. I think part of the reason for that is what did not happen there was the dialogue, the travel back, the e-mails, the phone calls, the coordinating meetings with OIPR that are done on a regular basis day in and day out.

So what we generally do precludes that kind of instance from happening; and had perhaps those dialogues, visits, et cetera, taken place, we could have gotten to the heart of the issue, which was is it "agent of a foreign power" or is it "foreign power" that we are stumbling over here. But at the end of the day, we did bring back every single person from Minneapolis relevant to the situation, the Office of General Counsel and the substantive unit. We spent six hours, went through every single line of every single e-mail, and then I turned to my colleague and said, what do you think, and the Deputy General Counsel said, it is not there.

Chairman GRAHAM. And what date was that meeting?

Mr. ROLINCE. Last week of November, first week of—I am sorry. Last week of October, first week of November. I have seen two different dates. It is either the 30th or the 1st.

Chairman GRAHAM. This is 2001?

Mr. ROLINCE. This is post 9/11, 2001, yes.

Chairman GRAHAM. Senator Shelby.

Vice Chairman SHELBY. Thank you, Mr. Chairman.

I do want to take a minute, as others, and say publicly that I, too, appreciate what the Bureau has done historically and in recent times, but to overlook some of the other problems which are deep, deep problems, not just in the Bureau but in the Intelligence Community, all the agencies, we would be less than candid in this hearing. We would be less than honest with the American people. There are a lot of things that are right with the Bureau, but there are a lot of things that are wrong, I believe, and I think a lot of people share that, and I believe most of the American people share that.

We want to support the Bureau. We should first support you with resources, and there has been a shortfall in certain areas. We have talked about that.

We should support agents like the special agent and others in Phoenix that had the foresight to put together the Phoenix memo, which was never acted upon. We should support the agents out of the Minneapolis office, one who is seated here with us today. And we will.

But we should never support problems and people who are risk averse or people who do not train their people well with analytical skills in the Bureau or anywhere else or do not train them to share information. I think we are cheating the American people. We are cheating the security of the future.

With that in mind, I will tell you, this is my eighth year and final year on the committee, three more months, I suppose. I think the FBI is very important in the role you do, and I want to personally commend you, sir, and also the woman lawyer who came down, Ms. Riley, for her candor in dealing with the Moussaoui case.

To the FBI agent from Phoenix, when you sent the information, what we call the Phoenix memo, to headquarters, did you ever check on that memo? Did you ever call yourself or send a message to see what happened to all that work you did?

FBI PHOENIX AGENT. No, I did not.

Vice Chairman SHELBY. Why didn't you?

FBI PHOENIX AGENT. Because I was in the middle of the investigation itself, and that was just one portion of it.

Vice Chairman SHELBY. You were into the investigation yourself in Phoenix. Now, this was before the eleventh. I am speaking of the eleventh of September.

FBI PHOENIX AGENT. Yes.

Vice Chairman SHELBY. Was your memo dated July 10?

FBI PHOENIX AGENT. July 10, 2001.

Vice Chairman SHELBY. So from July 10 to September 11 and I suppose up to now, you never checked with FBI headquarters to see if they acted on your memo regarding your concern about the flight school?

FBI PHOENIX AGENT. No, I didn't, Senator; and the reason being is I sent it in routine, and generally a routine communication——

Vice Chairman SHELBY. You thought it was routine, but it wasn't. It turned out not to be routine.

FBI PHOENIX AGENT. Well, hindsight, sir, is always 20/20.

Vice Chairman SHELBY. Well, that is why we learn, though, from post mortems, don't we?

FBI PHOENIX AGENT. I understand, but I sent it routine, and generally when you send a routine communication in, you are giving the receiver 90 days to look at your product. And at the end of 90 days if I hadn't heard anything, I would have been picking up the phone saying, hey, did you get it, you know, querying ACS to see if somebody acted upon it. But, again, the pre-9/11——

Vice Chairman SHELBY. Excuse me. I just have so much time. Did you think it was not important? Is that what routine means?

FBI PHOENIX AGENT. No. It is——

Vice Chairman SHELBY. Okay. What do you mean by routine? How do you define it?

FBI PHOENIX AGENT. That there was no direct threat information in there. I didn't have any information in there saying a bomb was going to go off at X hour.

Vice Chairman SHELBY. No specificity, though?

FBI PHOENIX AGENT. Yes.

Vice Chairman SHELBY. But concern?

FBI PHOENIX AGENT. Concern, yes.

Vice Chairman SHELBY. Okay. To the agent from Minneapolis, I believe this question was asked earlier. When you made the arrest, you know, you had reason to believe that a law had been broken, an immigration law or something?

FBI MINNEAPOLIS AGENT. Yes, sir.

Vice Chairman SHELBY. Is that correct? Did you consider putting the agent under surveillance and elected not to for lack of resources or other things?

FBI MINNEAPOLIS AGENT. No, sir. It was not for a lack of resources.

Vice Chairman SHELBY. Was it just your judgment that that was the thing to do?

FBI MINNEAPOLIS AGENT. Yes, sir. My judgment was to attempt to interrupt this.

Vice Chairman SHELBY. Okay. Prior to that date when you arrested him and after you had the inquiry regarding the flight school in Minneapolis, had you known or had you been informed that there had been threats out there starting in 1995 with the Filipino situation, where there was evidence that people could use—would use airplanes as weapons? Did you know that?

FBI MINNEAPOLIS AGENT. I did not know that at the time, sir.

Vice Chairman SHELBY. Did you know about the French apprehending, I believe, someone that was from Algiers, a French Algerian citizen that was going to try to crash a plane—hijacked into the Eifel Tower, using that as a weapon?

FBI MINNEAPOLIS AGENT. I did not know that, sir.

Vice Chairman SHELBY. You didn't know any of that?

FBI MINNEAPOLIS AGENT. That's correct.

Vice Chairman SHELBY. So without any background on that, you arrested the man based on your best judgment. Is that correct?

FBI MINNEAPOLIS AGENT. Yes, sir.

Vice Chairman SHELBY. I know my time is up, but one last question. The FISA situation, very important. Were any of you trained when you were going through the FBI school at Quantico regarding the specificity that was required for FISAs or later?

FBI MINNEAPOLIS AGENT. No, sir, I was not during initial training.

Vice Chairman SHELBY. Were you, sir, from Phoenix?

FBI PHOENIX AGENT. Not during initial agent training.

Vice Chairman SHELBY. Were you later trained?

FBI PHOENIX AGENT. Yes, sir. I have been through many in-services regarding FISA.

Vice Chairman SHELBY. Is the FISA training now at Quantico part of the curriculum? And if not, why not, sir, the FBI headquarters?

FBI HEADQUARTERS AGENT. I know that we are having a very serious look at the training at Quantico. The present leadership in

the Counterterrorism Division, he has taken it upon himself to personally look at that issue real hard, has directed Quantico to provide all the necessary training required of new agents, supervisors, all the way up the food chain.

Vice Chairman SHELBY. Lastly, would you agree that there has been confusion in the FBI ranks to what the requirements or the criteria for FISA was?

FBI HEADQUARTERS AGENT. I think that it is a tough issue. I think we rely on our national security law unit for guidance, and I don't think that confusion exists in the national security law unit.

Vice Chairman SHELBY. It didn't exist on September 11 or before then?

FBI HEADQUARTERS AGENT. I do not believe so, no.

Vice Chairman SHELBY. Okay. Thank you, Mr. Chairman.

Chairman GOSS. Okay. Thank you.

There is light at the end of the tunnel, and it is going very bright. There are a couple of administrative matters, and a couple of members who had to leave asked me to do some sweep-up questions. Frankly, they have been pretty well taken care of by Senator Shelby and Senator Graham.

I had a couple of observations I would like to make briefly.

The first question was to the headquarters supervisor. You have people sitting on either side of you who brought forward to you, presumably one dot at one time, two dots that could have been connected by you, and the question was were you able to connect those dots and take them outside of their individual case areas and see there was something bigger here? And if not, is there some procedural change or systemic change or some other way that that kind of thing can be accelerated in the future?

FBI HEADQUARTERS AGENT. I think the connecting the dots issue, we could what-if it to death. I think, clearly, the connected dots issue comes down to analytical resources and technology. I don't think one individual could keep this all in his head, could not possibly be aware of it, all the various threats that were out there, all of the ongoing investigations. It is just impossible for any individual to deal with that. So I think, in terms of the future, I think it goes right to the systemic problems that this committee is fully aware of, sufficient strategic analysts and technology fixes.

Chairman GOSS. And a certainty that all this material will flow to those resources?

FBI HEADQUARTERS AGENT. Absolutely. And that is multiagency in nature, not just the Bureau.

Chairman GOSS. Absolutely. I think it is multiagency, and I think it is multilevel government these days, too. That is another subject of the vertical integration down to the local and State level as well, which I think is a factor. Do you disagree with that?

FBI HEADQUARTERS AGENT. No, I do not.

Chairman GOSS. Another question I had from Mr. Boehlert. He had two. The first was—and I think it has been answered—the routine aspect of the memo from Phoenix was primarily because of no immediate urgency, I take it. It was a matter of concern, but routineness connotes this is not an urgency, not an immediate matter. This is a matter that deserves deliberation but in the normal course of events. Is that your assessment?

FBI PHOENIX AGENT. Yes, sir.

Chairman GOSS. Is that a fair description?

FBI PHOENIX AGENT. Yes, it is.

Chairman GOSS. There was nothing in your background or any other dots that you could connect at the time that raised anything beyond the level of routine. You created an innovative approach. You did something others had not done, but you did not think it had any further urgency than just this is where it is looking at?

FBI PHOENIX AGENT. That's correct.

Chairman GOSS. Thank you, sir.

With regard to the Moussaoui matter—and if this is getting into an area that we shouldn't go, Mr. Nahmias, please say so—Mr. Boehlert wanted to know why, if it was understood that Mr. Moussaoui was out of status, he wasn't deported in mid-August.

FBI MINNEAPOLIS AGENT. Because we were working with the Immigration and Naturalization Service and had one of their agents assigned to our task force, we had a little more latitude in what we could do, given the circumstances of the case. As we came to understand it, there was no mandate by the INS for immediate deportation. There was the opportunity to do so, but there was no mandate, and they agreed to defer deportation while we conducted our investigation to determine whether or not this was part of a larger conspiracy or whether or not this was a single actor who was just up to some sort of curious activity.

Chairman GOSS. Well, I think that is a very good answer. It is one I would have encouraged. I am looking at it from the intelligence point of view. As long as there is no immediate danger from this guy if he is under some kind of surveillance, it seems to me that the right thing to do is to determine whether or not he is going to lead you somewhere and the right kind of investigative technique. If he has already broken a law, however, and is a threat, then it seems to me that some kind of enforcement ought to take place. I am glad that those calculations seem to go on. Have I described that accurately?

FBI MINNEAPOLIS AGENT. Absolutely.

Chairman GOSS. Thank you.

On the administrative side—Mr. Nahmias, you should listen to this—I understand that the press has given us a number of requests for the staff statement that we originally had, which we suppressed till we got this matter sorted out. Now that we have different instructions from the court on what we can and cannot do, staff will be going through the appropriate vetting procedures with the Department of Justice and the prosecution and so forth to make sure that the statement is okay. The press needs to be advised that these are normal vetting procedures, and we will therefore not have that material for them today.

The next issue is administrative. The committee will convene again at 10:00 a.m. on Thursday this week to hear testimony in open session from a senior FBI and a senior CIA counterterrorist official, one each.

It is the intent at this time to consider a closed session in the afternoon, witnesses being available, and it appears some of those witnesses may be before us now. We will ask staff to work that out to see if we can accommodate your schedules, because, as you have

heard, some of the questions and indeed some of your answers have suggested that we go into closed session.

I tend to believe, following up on the gentleman dealing with the Moussaoui matter, that there is an opportunity there, and it is worth the time, because I feel there is a very good learning curve for us on what your problems are in closed session if we get into these details. So if you can be available, I think it will be helpful.

The last thing I wanted to say—I do want to associate myself with Senator Roberts' remarks, and I feel that in a particular way. I say that as a person who has been looking very closely at world events and trying to understand your capabilities to deal with threats and the nature of threats in our country for eight years, and I will tell you I didn't do any better on September 11, 2001, than anybody else.

So I have a little concern about how clear hindsight actually is when we get into some of these things, when we tend to focus back, because we, of course, have the advantage of knowing what happened. Now we can figure out what went wrong. That is a very different circumstance. So I accept Senator Roberts' remarks.

I want to go back to the gentleman who was representing the Phoenix matter here. And I am quoting from your statement and your concern about your publicity, and I believe your statement is: I believe al-Qa'ida would consider me a terrorist target and want to kill me. I accept that, and that adds a lot of extra burden I think on us up here who have a responsibility to deal with these things properly. But I need to also tell you something that we all have to understand in this country, in my view, is that just being American is enough for al-Qa'ida to kill you. I don't think we understand that lesson yet in this country. I think it is up to all of us here to make sure that we, A, understand it here and, B, never let it happen; and we want to join you in that fight.

I think your words—and I am quoting you—"I feel in this regard Congress has personally failed me as an FBI special agent and as an American." That is an extraordinarily harsh indictment. I think that is very understandable from your position, and certainly it is something that we take to heart. I think it is an area that calls for further consideration down the road, and I believe it will get it in a follow-on of some type to this commission's work.

I am relatively sure that there will be a follow-on, and I think a strong reason for that follow-on is exactly the oversight of Congress, how did Congress do in its oversight responsibilities, because that is a big function that we have.

So I think that that statement that you have made is not going to go unnoticed, not only by this group, because we certainly have noticed it, but by the next group to come. And I think it is a very important observation of how Congress can do its advocacy and oversight as wisely as possible on behalf of the American people and all of the things we are trying to do.

The last point I wanted to make was with regard to the supervisor's statement, which is to me a very chilling statement. I have also witnessed firsthand a dedicated group of counterterrorism professionals that have been routinely overwhelmed with large caseloads on a continual crisis management. They also confront the daily frustrations posed by limited resources, especially within our

analytical ranks and inadequate technology. That is just about everything. So if we haven't gotten the message up here and your leadership hasn't got the message that we have got these kinds of problems, then we have a disconnect that needs attention, and I urge you to do everything you can with your leadership—and I include the gentlemen outside the screen as well—to make sure the needs are known.

I have heard so many times the frustration of—the scream of OMB and so forth and that we can't really tell you what we want. We do this with the Defense Department, with the generals and the admirals who would like to tell us what they can but can only tell us what they are allowed to tell us. It doesn't do us any good if we don't understand the problem.

You are helping us to understand the problem. I urge you to make your case to leadership, for them to make their case to OMB so we all get on the same track and have a greater capability.

Having said all that, I thank you very much. You are great Americans, and God bless you all. We are adjourned.

Now, before you move, the room has to be cleared. I want to thank all our guests and visitors and press for being here. They will clear the room, and then we will be finished.

[Whereupon, at 5:00 p.m., the hearing was adjourned.]

SECRET

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 07/10/2001

To: Counterterrorism Attn: RFU
SSA [redacted]
IRS [redacted]

New York

From: Phoenix
[redacted]
Contact: SA [redacted]

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: (S) [redacted] (Pending)

Title: (S) [ZAKARIA MUSTAPHA SOUBRA;
IT-OTHER [redacted]]

Synopsis: (S) UBL [redacted] supporters attending civil aviation universities/colleges in the State of Arizona.

(S) Derived From : G-3
Declassify On: X1

(S) Full Field Investigation Instituted: 04/17/2000 (NONUSPER)

Details: (S) [The purpose of this communication is to advise the Bureau and New York of the possibility of a coordinated effort by USAMA BIN LADEN (UBL) to send students to the United States to attend civil aviation universities and colleges. Phoenix has observed an inordinate number of individuals of investigative interest who are attending or who have attended civil aviation universities and colleges in the State of Arizona. The inordinate number of these individuals attending these type of schools and fatwas [redacted]

SECRET

SECRET

To: Counterterrorism From: Phoenix
Re: [redacted] 07/10/2001

(S) [redacted] gives reason to believe that a coordinated effort is underway to establish a cadre of individuals who will one day be working in the civil aviation community around the world. These individuals will be in a position in the future to conduct terror activity against civil aviation targets.

(S) Phoenix believes that the FBI should accumulate a listing of civil aviation universities/colleges around the country. FBI field offices with these types of schools in their area should establish appropriate liaison. FBIHQ should discuss this matter with other elements of the U.S. intelligence community and task the community for any information that supports Phoenix's suspicions. FBIHQ should consider seeking the necessary authority to obtain visa information from the USDOS on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility.

(S) Phoenix has drawn the above conclusion from several Phoenix investigations to include captioned investigation and the following investigations: [redacted], a Saudi Arabian national and two Algerian Islamic extremists [redacted]

(S) Investigation of ZAKARIA MUSTAPHA SOUBRA was initiated as the result of information provided by [redacted] a source who has provided reliable information in the past. The source reported during April 2000 that SOUBRA was a supporter of UBL and [redacted]. SOUBRA arrived in Arizona from London, England on 08/27/1999 on an F-1 student visa to attend EMBRY RIDDLE UNIVERSITY (ERU), Prescott, Arizona. ERU only teaches courses related to the field of aviation. SOUBRA is an Aeronautical Engineering student at ERU and has been taking courses in "international security" relating to aviation. SOUBRA, within weeks of his arrival at Prescott, Arizona, [redacted] supporting UBL, at Mosques located throughout Arizona. SOUBRA has also organized anti United States and Israeli demonstrations in the area of ARIZONA STATE UNIVERSITY (ASU), Tempe, Arizona. He has also established and organized an Islamic student association on the ERU campus organizing the Muslim student population on the ERU campus.

(S) Phoenix has identified several associates of SOUBRA at ERU who arrived at the university around the same time that he

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To: Counterterrorism From: Phoenix
Re: (S) [redacted] 07/10/2001

did. These individuals are Sunni Muslims who have the same radical fundamentalists views as SOUBRA. They come from Kenya, Pakistan, United Arab Emirates, India, Saudi Arabia and Jordan. SOUBRA's associates are (S)

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) The above individuals are involved with SOUBRA and regularly participate in meetings with him in Prescott, Arizona.

(S) FBIHQ, IRS [redacted] RFU, wrote an analytical paper on the [redacted] dated 11/09/1999, in support of FBINY investigation captioned: [redacted] research paper can be found in [redacted] The following information was gleaned from IRS [redacted] research paper.

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To: Counterterrorism From: Phoenix
Re: (S) [redacted] 07/10/2001

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) " The Fatwa is jihad against the U.S. and British government, armies, interests, **airports** (emphasis added by FBI Phoenix), and instructions and it has been given because of the U.S. and British aggression against Muslims and the Muslim land of Iraq...we...confirm that the only Islamic Fatwa against this explicit aggression is Jihad. Therefore the message for the British governments or any other government of non-Muslim countries is to stay away from Iraq, Palestine, Pakistan, Arabia, etc...or face full scale war of Jihad which it is the responsibility and the duty of every Muslim around the world to participate in...We...call upon...Muslims around the world including Muslims in the USA and in Britian to confront by all means whether verbally, financially, politically or militarily the U.S. and British aggression and do their Islamic duty in relieving the Iraqi people from the unjust sanctions."

(S) SOUBRA was interviewed by FBI Phoenix on 04/07/2000 and 05/11/2000 at his residence. On 04/07/2000, interviewing Agents observed photocopied photographs of UBL, IBN KHATTAB and wounded Chechnyan Mujahadin tacked to his livingroom wall. SOUBRA admitted to [redacted] in the State of Arizona. SOUBRA stated that he considers the United States Government and U.S. Military forces in the Gulf as "legitimate military targets of Islam." He also stated that the targeting of the U.S. Embassies in Africa was "legitimate." SOUBRA denied having received any military training. However, Phoenix believes that SOUBRA was being less than truthful in this

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To: Counterterrorism From: Phoenix
Re: [redacted] 07/10/2001

regard. SOUBRA was defiant towards interviewing Agents and it was clear that he was not intimidated by the FBI presence. It is obvious that he is a hardcore Islamic extremist who views the U.S. as an enemy of Islam. Investigation of SOUBRA is continuing.

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

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SECRET

To: Counterterrorism From: Phoenix
Re: (S) [redacted] 07/10/2001

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) Phoenix believes that it is more than a coincidence that subjects who are supporters of UBL are attending civil aviation universities/colleges in the State of Arizona. As receiving offices are aware, Phoenix has had significant UBL associates/operatives living in the State of Arizona and conducting activity in support of UBL. [WADIH EL-HAGE, a UBL lieutenant recently convicted for his role in the 1998 bombings of U.S. Embassies in Africa, lived in Tucson, Arizona for several years during the 1980s. [redacted]

SECRET

SECRET

To: Counterterrorism From: Phoenix
Re: [redacted] 07/10/2001

[redacted]

This information is being provided to receiving offices for information , analysis and comments.

SECRET

To: Counterterrorism From: Phoenix
Re: (S) [redacted] 07/10/2001

LEAD(s):

Set Lead 1:

COUNTERTERRORISM

AT WASHINGTON, DC

(S) The RFU/UBLU is requested to consider implementing the suggested actions put forth by Phoenix at the beginning of this communication.

Set Lead 2:

NEW YORK

AT NEW YORK, NEW YORK

(S) Read and Clear

♦♦

SECRET

MAY 2 9 2003

ENTIRE Connection - EntireConnection - [1]

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	PHOENIX	[illegible]	04/06/01	04/11/01	C
	PHOENIX	PHOENIX [illegible]	02/20/01	03/01/01	C
	COUNTERTERRORIS	WASHINGTON, DC	12/15/00	01/02/01	C
	COUNTERTERRORIS	WASHINGTON, DC	12/15/00	01/02/01	C
	LONDON	LONDON, ENGLAND	12/15/00	12/19/00	C
	PHOENIX	PHOENIX AZ	06/19/00	06/20/00	C
	COUNTERTERRORIS	WASHINGTON, D.C.	05/01/00	11/27/00	C
	CINCINNATI	COLUMBUS, OHIO	05/01/00	05/16/00	C
	NEW YORK	NEW YORK, NEW YORK	05/01/00	08/18/00	D

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MAY. 3.2002 1:25PM NO.070 P.11

NO. 872 P.10
MAY 29 2003

ENTIRE Connection - [EntireConnection - [1]]

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: 09/25/2001 Time : 0500PM

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MAY. 3.2002 1:23PM

FILED
AUG 29 2002
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	
a/k/a "Shaqil,"	)	
a/k/a "Abu Khalid al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

For the reasons stated from the bench during a closed hearing, the Expedited Motion of the United States for Clarification Regarding the Applicability of the Protective Order for Unclassified But Sensitive Material and Local Rule 57 to Information That May Be Made Public in Congressional Proceedings ("Expedited Motion for Clarification") (Docket #436) is DENIED, and standby counsel's Motion to Unseal the Expedited Motion for Clarification (Docket #455) is GRANTED; and it is hereby

ORDERED that the United States' Expedited Motion for Clarification (#436),[1] standby counsel's Response to the Expedited Motion for Clarification (#454),[2] the Reply on Behalf of the Joint Inquiry of the Senate Select Committee on

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[1] The attachments to this motion will be maintained under seal because they include confidential communications between Joint Inquiry staff and the Department of Justice, and draft testimony of FBI Director Mueller.

[2] This pleading has been redacted to exclude reference to a specific portion of Director Mueller's draft testimony.

08/29/02 THU 14:58 FAX 7035575128 JUDGE L M BRINKEMA 002

Intelligence and the House Permanent Select Committee on Intelligence (#453), the Reply of the United States (#459), standby counsel's Motion to Unseal (#455), and the transcript of the hearing be and are unsealed.

In their Response to the Expedited Motion for Clarification, standby counsel requested that the Court vacate the February 5, 2002 Protective Order. Finding that the Protective Order is too complicated in its present form, the request is GRANTED; and it is hereby

ORDERED that the Court's February 5, 2002 Protective Order will be VACATED once counsel for the United States have submitted a revised version governing the handling of "particularly sensitive discovery materials" for the Court's approval. Counsel for the United States must consult with standby counsel in drafting the revised protective order. Until the revised order is entered, the February 5, 2002 Protective Order remains in full force and effect. To the extent that standby counsel seek relief from Local Rule 57, that request is DENIED; and it is hereby

ORDERED that nothing in this Order is intended to affect the applicability of Local Rule 57 to the participants in this case.

On August 22, 2002, the United States submitted a letter, under seal, requesting that the defendant's pro se pleadings be maintained under seal because they continue to contain extensive inappropriate rhetoric which the Government believes may be

08/29/02 THU 14:59 FAX 7035573129 JUDGE L M BRINKEMA 003

intended "for the purpose of either (1) sending messages to coconspirators or sympathizers, or (2) making public political statements." The defendant, pro se, in opposing this request as an unjust infringement on his First Amendment rights, admitted during the closed hearing, the United States' proposal would frustrate his efforts to convey messages to his "people." (Tr. at 35).

The defendant's pleadings have been replete with irrelevant, inflammatory and insulting rhetoric, which would not be tolerated from an attorney practicing in this court. Because he has been warned numerous times that such writing would have to stop, the defendant may no longer hide behind his pro se status to avoid being held to appropriate pleading practice. Further, we find that the record supports the United States' concern that the defendant, who is charged with conspiracy to commit acts of terrorism transcending national boundaries among other offenses, is attempting to use the court as a vehicle through which to communicate with the outside world in violation of the Special Administrative Measures governing the conditions of his confinement. Accordingly, the request communicated in the United States' August 22, 2002 letter, which we deem to be a motion to maintain the defendant's pro se pleadings under seal, is GRANTED; and it is hereby

ORDERED that the defendant's pro se pleadings docketed as #s

08/28/02 THU 14:38 FAX 7035/3126 JUDGE L M BRINKEMA 004

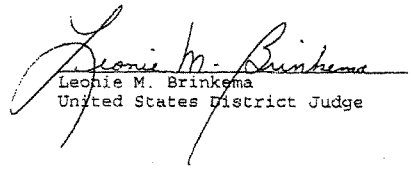
406, 412, 418, 419, 422, 423, 424, 425, 434, 435, 440, 441, 446, 449, 456, 458 and 463 be maintained under seal; and it is further

ORDERED that any future pleadings filed by the defendant, pro se, containing threats, racial slurs, calls to action, or other irrelevant and inappropriate language will be filed and maintained under seal;[3] and it is further

ORDERED that a redacted copy of the August 22, 2002 letter from the United States be docketed as a motion and publicly filed.[4]

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; counsel for the Joint Inquiry; and the Court Security Officer.

Entered this 29th day of August, 2002.



Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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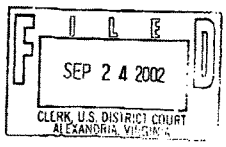
[3] We decline to adopt the defendant's suggestion that we redact inappropriate language from his pleadings because it forces the prosecutors and the Court to waste resources editing the defendant's writings, which predominantly contain inappropriate rhetoric. If he desires his pleadings to be publicly filed, the defendant must limit his writings to appropriate requests for relevant judicial relief.

[4] The language redacted from paragraph 5 includes examples of the rhetoric to which the United States objects.

08/29/02 THU 15:00 FAX 7035575128 JUDGE L M BRINKEMA 005



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	
a/k/a "Shaqil,"	)	
a/k/a "Abu Khalid	)	
al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

On Monday, September 23, 2002, the Court denied the Renewed Expedited Motion of the United States for Clarification Regarding the Applicability of Local Criminal Rule 57 to Information to Be Made Public In Congressional Proceedings ("Renewed Expedited Motion for Clarification")(Docket #541) to which the Joint Inquiry and standby counsel had responded. All of these pleadings were filed under seal. With the exception of the attachments to the Renewed Expedited Motion for Clarification, we find no legitimate reason to maintain these pleadings under seal. Therefore, it is hereby

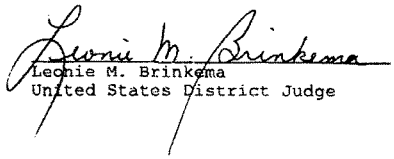
ORDERED that except for its attachments, the Renewed Expedited Motion for Clarification (Docket #541), the entire Reply on behalf of the Joint Inquiry (Docket #545), and standby counsel's entire Response (Docket #550) be and are unsealed.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense

09/24/02 TUE 10:54 FAX 7035575128 JUDGE L M BRINKEMA 002

counsel; the Court Security Officer; and counsel for the Joint Inquiry.

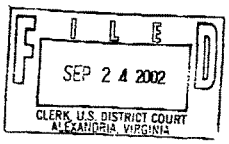
Entered this 24th day of September, 2002.



Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

09/24/02 TUE 10:55 FAX 7035575128 JUDGE L M BRINKEMA 003



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	
a/k/a "Shaqil,"	)	
a/k/a "Abu Khalid al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

In its Renewed Expedited Motion for Clarification Regarding the Applicability of Local Criminal Rule 57 to Information to be Made Public in Congressional Proceedings ("Renewed Expedited Motion for Clarification"), the United States indicated that the motion was filed under seal because the motion itself revealed the type of information the Department of Justice believes is forbidden from public disclosure by Local Rule 57. After denying the United States' motion, the Court, sua sponte, issued an Order unsealing the Renewed Expedited Motion for Clarification (without attachments)(Docket #541), the Reply on behalf of the Joint Inquiry (Docket #545), and Response by standby counsel (Docket #550).

Upon further consideration, we find our Order unsealing these pleadings to be premature because we do not know whether the pro se defendant has had an opportunity to review the pleadings and attachments and consider the implications of their

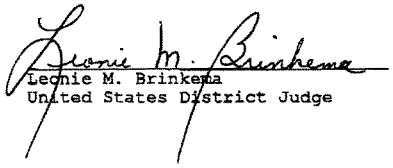
Sep-24-2002 13:20 From-US District Court 703 299 2108 T-201 P.002/008 F-422

placement in the public case file.[1] Therefore, it is hereby

ORDERED that execution of the unsealing Order of September 24, 2002 be and is STAYED until further order of the Court. Any party having an objection to unsealing the pleadings at issue must advise the Court of the objection and the basis for it by 3:00 p.m. on Thursday, September 26, 2002.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; the Court Security Officer; and counsel for the Joint Inquiry.

Entered this 24th day of September, 2002.



Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

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[1] Although the Certificate of Service attached to the United States' motion indicates that a copy of the motion was hand delivered to the defendant via the United States Marshals Service on Friday, September, 20, 2002, as of 6:00 p.m. on Monday, September 23, 2002, the defendant had not filed a response. Because the hearings before the Joint Inquiry were scheduled to begin on September 24, 2002, the Court ruled on the Renewed Expedited Motion for Clarification without input from Mr. Moussaoui. He, nevertheless, has a right to be heard on whether the pleadings should be unsealed.

Sep-24-2002 13:20 From-US District Court 703 299 2108 T-201 P.003/003 F-422

JOINT COMMITTEE HEARING ON THE CENTRAL INTELLIGENCE AGENCY AND THE FEDERAL BUREAU OF INVESTIGATION RESPONSES TO ISSUES RAISED IN OPEN HEARINGS IN REVIEW OF THE EVENTS OF SEPTEMBER 11, 2001

THURSDAY, SEPTEMBER 26, 2002

HOUSE OF REPRESENTATIVES, PERMANENT SELECT COMMITTEE ON INTELLIGENCE AND U.S. SENATE, SELECT COMMITTEE ON INTELLIGENCE,

Washington, DC.

The Committees met, pursuant to notice, at 10:07 a.m., in room SH–216, Hart Senate Office Building, the Honorable Porter Goss, chairman of the House Permanent Select Committee on Intelligence, presiding.

House Permanent Select Committee on Intelligence members present: Representatives Goss, Castle, Boehlert, Gibbons, Hoekstra, Burr, Pelosi, Harman, Roemer, Reyes, and Peterson.

Senate Select Committee on Intelligence members present: Senators Graham, Levin, Rockefeller, Feinstein, Durbin, Bayh, Mikulski, Shelby, Kyl, Roberts and DeWine.

Chairman GOSS. The Joint Inquiry hearing will come to order, please. This is a joint inquiry of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence. I'm advised that Chairman Graham will be here shortly.

This is the fifth open hearing by our Committees as they conduct their joint inquiry into the Intelligence Community performance regarding the September 11 attacks. The Committees have also held ten closed hearings.

Our witnesses this morning will be Cofer Black, former Chief of CIA's Counterterrorist Center, and Dale Watson, former Executive Assistant Director of the FBI's Counterintelligence and Counterterrorism Division. Gentlemen, welcome. We're pleased you came up this morning. Each has been asked to address the evolution of his agency's response to the growing international terrorist threat and how his agency assessed the nature of possible attacks against the United States and U.S. interests.

Before swearing in these witnesses there is one brief business matter I'm advised of. On June 18 the Committees heard in testimony in closed session from the Director of Central Intelligence, the Director of the Federal Bureau of Investigation and the Director of the National Security Agency about what the Intelligence

Community now knows about the September 11 plot. We then asked the Directors to declassify their testimony to the extent consistent with national security.

The Director of the FBI has submitted his declassified statement for the record. I ask unanimous consent that the declassified June 18 statement of the FBI Director now be made part of the open record of these proceedings. Is there objection?

[No response.]

Chairman GOSS. Hearing none, it so ordered.

[The declassified statement of Director Mueller follows:]

SSCI# 2002 - 4088

STATEMENT FOR THE RECORD
FBI DIRECTOR ROBERT S. MUELLER III
JOINT INTELLIGENCE COMMITTEE INQUIRY

INTRODUCTORY REMARKS

Mr. Chairman, members of the Committee, I am pleased to appear before you today with my colleague, George Tenet, to describe the hijackers' activities once they arrived in the United States. Director Tenet has provided you with an overview of how this plot came to fruition, the preparations conducted abroad, and the intelligence available at the time indicating that Usama Bin Ladin and al Qaeda desired to strike the United States.

My testimony will cover what our investigation indicates happened once these terrorists arrived on U.S. soil and how they executed their plans. I have not included a discussion of Zacharias Moussaoui and any connection to the hijackers, and all of my statements should be understood as excepting those topics. That is because of the pending capital case against Moussaoui.

After the September 11 attacks, the FBI and other members of the U.S. and Foreign Intelligence Communities, as well as the Law Enforcement Communities, worked together to find out everything we could about the hijackers and how they succeeded. Our immediate goal was simple, to prevent another attack by fully understanding this one.

As Director Tenet has said, the plans for these attacks were hatched and financed overseas over a several year period. Each of the hijackers, apparently purposely selected to avoid notice, came easily and lawfully from abroad: fifteen were Saudi Arabia nationals, two were United Arab Emirates (UAE) nationals, and one each from Lebanon and Egypt.

While here, the hijackers effectively operated without suspicion, triggering nothing that alerted law enforcement and doing nothing that exposed them to domestic coverage. As far as we know, they contacted no known terrorist sympathizers in the United States. They committed no crimes with the exception of minor traffic violations. They dressed and acted like Americans, shopping and eating at places like Wal-Mart and Pizza Hut. They came into different cities, moved around a lot and did not hold jobs. When three got speeding tickets in the days leading up to September 11, they remained calm and aroused no suspicion. One of the suicide hijackers, Nawaf al-Hazmi, even reported an attempted street robbery on May 1, 2001, to Fairfax, Virginia Police--- he later declined to press charges.

None of the nineteen suicide hijackers are known to have had computers, laptops, or storage media of any kind, although they are known to have used publicly accessible Internet connections at various locations. They used 133 different pre-paid calling cards to call from various pay phones, cell phones, and land lines.

The nineteen suicide hijackers used U.S. checking accounts accessed with debit cards to conduct the majority of financial activity during the course of this conspiracy.

Meetings and communications between the hijackers were done without detection, apparent surveillance flights were taken, and nothing illegal was detected through airport security screening.

In short, the terrorists had managed very effectively to exploit loopholes and vulnerabilities in our systems. To this day we have found no one in the United States except the actual hijackers who knew of the plot and we have found nothing they did while in the United States that triggered a specific response about them.

PRE SEPTEMBER 11

Let me begin by describing the entry of the September 11 Suicide Hijackers into the United States, beginning with the pilot trained hijackers.

Hani Hanjour (American Airlines Flight 77 suspected suicide pilot)

Hani Hanjour is the first of the hijackers to appear on record entering the United States, nearly a decade prior to the attack (there is no evidence to suggest that the plot began that long ago). Hanjour's first recorded entry was on October 3, 1991, when he arrived in New York via a Saudi Arabian flight en route to Tucson, Arizona. Hanjour lived in Arizona until mid-February 1992 and attended the University of Arizona's Center for English as a Second Language (ESL). Financial records indicate that he then returned to Saudi Arabia.

In 1996 Hanjour returned to the United States, residing briefly in Miramar, Florida before attending the English as a Second Language Center at Holy Name College in Oakland, California, during the summer of 1996. After Holy Name he again returned to Arizona and enrolled in pilot training.

Hanjour next appeared on record as arriving in Atlanta, Georgia on November 16, 1997 from abroad. After going briefly to Florida, he again traveled to Phoenix where he rented an apartment with a Bandar al-Hazmi. Hanjour and Bandar al-Hazmi trained together in January 1998 at Arizona Aviation. It was at Arizona Aviation that Hanjour received his commercial pilot rating.

Throughout 1998 and 1999, Hanjour rented various apartments in Phoenix, Mesa and Tempe. He had various roommates as well. Financial records indicate that Hanjour traveled to Las Vegas, Nevada in February 1998 and Ontario, Canada in March 1999. INS records indicate that Hanjour departed the United States from New York on April 28, 1999. However, bank

records indicate withdrawals in Arizona in the first two weeks of May 1999 from an account in his name.

On December 5, 2000 Hanjour opened an account at Citibank in Deira, Dubai and then traveled to San Diego three days later where he met up with hijacker Nawaf al-Hazmi. Al-Hazmi along with Khalid al-Mihdhar had arrived in Los Angeles on January 15, 2000 from Bangkok, Thailand. Hanjour, who already possessed a pilot's license, traveled with al-Hazmi to Arizona where he spent time at Jet Tech taking simulator lessons for a Boeing 737 from February 8, 2001 through March 16, 2001. After Arizona, Hanjour and al-Hazmi continued eastward settling in the Alexandria, Virginia area.

Khalid al-Mihdhar and Nawaf al-Hazmi (American Airlines Flight 77 - pilot-trained, but not believed to have piloted this flight)

Khalid al-Mihdhar and Nawaf al-Hazmi arrived in Los Angeles, California on January 15, 2000. On April 10, 2000, al-Hazmi took a one hour introductory lesson at the National Air College in San Diego. Less than a week later, on April 18, al-Hazmi received a $5,000 wire transfer through a third party from "Ali" (believed to be Ali Abdul Aziz Ali) sent from the UAE. As we discovered later, Aziz sent money from the UAE to other hijackers as well.

On May 5, 2000 and May 10, 2000, al-Mihdhar and al-Hazmi each took introductory flying lessons and bought a Jeppesen flight training kit. During this time frame, al-Hazmi was also enrolled in English classes. On June 10, 2000, al-Mihdhar left the United States en route to Kuwait transiting Frankfurt, Germany. Al-Mihdhar is then believed to have returned to Saudi Arabia. Al-Hazmi, however, remained in the San Diego area.

Khalid al-Mihdhar arrived back in New York from Saudi Arabia on July 4, 2001 after spending over a year out of the country. Al-Mihdhar's role in the September 11 plot between June 2000 and July 2001--before his re-entry into the United States-- may well have been that of the coordinator and organizer of the movements of the non-pilot hijackers. This is supported by his apparent lengthy stay in Saudi Arabia and his arriving back in the United States only after the arrival of all the hijackers.

Mohamed Atta (American Airlines Flight 11 suicide pilot) and *Marwan al-Shehhi* (United Airlines Flight 175 suicide pilot)

Mohamed Atta is known to have inquired about flight training in the United States as early as March 2000, when he made e-mail Internet inquiries from Germany to several flight

schools in the United States. In May of that year Atta was issued an Egyptian passport in Hamburg, Germany, replacing one which he claimed had been lost.

On May 29, 2000, Marwan al-Shehhi arrived in Newark, New Jersey from Brussels, Belgium.

On June 3, 2000, Atta arrived in Newark from Prague, Czechoslovakia and hooked up with al-Shehhi. They remained in the New York area through July 2, 2000. While in New York, al-Shehhi was enrolled in an English language school.

Exactly one month after his arrival in the United States, al-Shehhi received from UAE a $5,000 Western Union transfer from a Isam Mansar, an alias for Ali Abdul Aziz Ali, the same person in UAE who sent funds to Atta and al-Hazmi.

In early July 2000, Atta and al-Shehhi traveled to Norman, Oklahoma ostensibly to evaluate the program offered through the Airman's Flight School. Although they stayed the first night at a hotel paid for by Airman, they did not enroll at the flight school. Instead, they traveled to Venice, Florida and began training at Huffman Aviation. Atta and al-Shehhi both obtained their pilot's licenses, instrument certifications, and commercial pilot certificates in the fall and winter of 2000 at Huffman Aviation.

While in Venice, they also opened a joint bank account at SunTrust Bank. Between July 18 and September 18, 2000, Ali Abdul Aziz Ali, using a variety of aliases, wired approximately $109,500 into this account. All of these wires were sent from the UAE. None triggered suspicious activity reports (SARs). As I mentioned, Aziz is the same person believed to have wired funds to San Diego for Nawaf al-Hazmi.

In September 2000, al-Shehhi and Atta continued their flight training at Jones Aviation in Sarasota, Florida but failed their Stage I flight test. From December 29, 2000 through December 31, 2000, Al-Shehhi and Atta took flight simulator lessons at Sim Center and Pan Am International. Both signed up for time on a Boeing 727 and a Boeing 767 simulator.

In early January 2001, Atta left the United States and traveled to Madrid, Spain. At the same time, al-Shehhi left the country and traveled to Casablanca, Morocco. To date, the purpose of the travel to Spain and Morocco is unknown.

Returning to the United States later that month, on January 25, 2001, Atta and al-Shehhi moved temporarily to Norcross, Georgia, where Atta visited the Advanced Aviation Flight

Training School in Lawrenceville, Georgia. The two performed flight checks at the Advanced Aviation on January 31, and February 6, 2001. It is believed that Atta and al-Shehhi remained in the Atlanta, Georgia, area through February and March 2001. It is during this time period that a crop duster pilot in Belle Glade, Florida, identified Atta as having inquired about the purchase and operation of crop dusters.

Ziad Samir Jarrah (United Airlines Flight 93 suicide pilot)

From abroad, Ziad Jarrah applied to the Florida Flight Training Center in Venice, Florida on March 26, 2000. On May 25, 2000, Jarrah received a B1/B2 multiple entry visa to enter the United States. On June 27, 2000, Jarrah arrived in the country (Atlanta, Georgia) and began his training at the Florida Flight Training Center on June 28, 2000. His training ended in December 2000. From December 15-18, 2000 and again on January 8, 2001, Jarrah took flight simulator lessons at Aeroservice Aviation in Miami, Florida on Boeing 727 and Boeing 737 simulators.

The Florida Flight Training Center is significant for another reason as well. On May 17, 2000, days after the last known flight lessons for al-Mihdhar and al-Hazmi, an individual identified as Ramzi Binalshibh made his first application for a U.S. visa, which was denied. Binalshibh reapplied for a U.S. visa on June 15, 2000, but again was denied. We know that Binalshibh attempted to enroll in the Florida Flight Training Center (FFTC), the facility where Ziad Jarrah was training at the time. In August of 2000, Binalshibh wired $2,200 as a deposit to this flight training center in Florida. Binalshibh tried twice more to obtain a visa to travel into the United States — in Yemen on September 15, 2000, and again on October 25, 2000. However, these requests were also denied. Binalshibh would later become a significant money person.

Possible Surveillance Flights by the Suicide Hijacker Pilots

With their training complete, it appears that the pilots began conducting possible surveillance flights as passengers aboard cross-country flights transiting between the Northeast United States and California. On each flight, the pilots were seated in the First Class section of the plane. The first of these flights occurred on May 24, 2001, when Marwan al-Shehhi flew from JFK Airport to San Francisco.

Ziad Jarrah flew from Baltimore Washington International to Los Angeles in early June 2001. Later that month, Mohammed Atta flew from Boston Logan Airport to San Francisco.

In August 2001, Nawaf al-Hazmi and Hani Hanjour flew from Dulles International Airport to Los Angeles.

Each of the return flights for these hijackers had layovers in Las Vegas. To date, the purpose of these one-to-two day layovers is not known. However, with respect to travel to Las Vegas, we know that at least one hijacker on each of the four hijacked airplanes traveled to Las Vegas, Nevada sometime between May and August of 2001. This travel consisted of an initial transcontinental trip from an east-coast city to a west-coast city, and a connection in that west-coast city to a Las Vegas-bound flight.

Arrival of Non-Pilots into the United States

Now, let me turn to the remaining hijackers, the individuals we believe were the "muscle" on the flights, responsible for keeping the passengers under control.

These hijackers arrived in the United States within a fairly short window. As I indicated, their travel may have been coordinated from abroad by al-Mihdhar. The first pair arrived on April 23, 2001 and the last pair arrived on June 29, 2001. Each of these hijackers traveled with at least one other hijacker and each transited through the UAE prior to arriving in the United States.

- Waleed al Shehri (AA#11) and Satam Alsuqami (AA#11) arrived on April 23, 2001 at Orlando, Florida.
- Majed Moqed (AA#77) and Ahmed Alghamdi (UA#175) arrived on May 2, 2001 at Dulles International Airport.
- Mohand Alshehri (UA#175), Hamza Alghamdi (UA#175), and Ahmed Alnami (UA#93) arrived on May 28, 2001 in Miami, Florida.
- Ahmed al Haznawi (UA#93) and Wail al Shehri (AA#11) also arrived in Miami but on June 8, 2001.
- Fayez Banihammad (UA#175) and Saeed Alghamdi (UA#93) arrived on June 27, 2001 at Orlando.
- Salem al Hazmi (AA#77) and Abdul Aziz al Omari (AA#11) arrived in New York on June 29, 2001 .

The hijackers arriving at Miami and Orlando airports settled in the Fort Lauderdale, Florida area along with Mohammed Atta, Marwan al-Shehhi, and Ziad Jarrah. The hijackers arriving in New York and Virginia, settled in the Paterson, New Jersey area along with Nawaf al-Hazmi and Hani Hanjour.

During the summer of 2001, some of the hijackers, specifically Mohamed Atta and Nawaf al-Hazmi appear to have met face-to-face on a monthly basis to discuss the status of the operation, and ultimately the final preparations for the attack.

In July 2001, Mohamed Atta, Abdul Aziz al Omari, Nawaf al-Hazmi, Salem al-Hazmi, Khalid al-Mihdhar, Ahmed Alghamdi, and Majed Moqed purchased personal identification cards at Apollo Travel in Paterson, New Jersey. Atta purchased a Florida identification card, while the others purchased New Jersey identification cards.

In the weeks immediately preceding September 11, the suicide hijackers of Flight 77 stayed in various motels in the area of Laurel, Maryland, and used publicly available computers to gain Internet access from the local Kinko's. During this time period, numerous interactions occurred in the areas of Laurel and College Park, Maryland, among the Flight 77 hijackers and the hijackers of the other flights.

In August, the hijackers began purchasing tickets for the flights they intended to hijack. On August 24, 2001, Khalid al-Mihdhar and Majed Moqed attempted to purchase their tickets through American Airlines' website, but were unsuccessful because the address they gave could not be verified by the airlines. Al-Mihdhar and Moqed ultimately purchased their tickets with cash on September 5 at the American Airlines counter at Baltimore/Washington International Airport.

On August 28, Marwan al-Shehhi purchased his ticket for Flight 175 at the Miami International Airport. He was accompanied to the ticket counter by at least one unidentified Middle Eastern male. [To date, investigation has not positively identified the individual(s) who accompanied al-Shehhi to the ticket counter.] The next day, Mohand Alshehri and Fayez Banihammad bought two one-way first class tickets for Flight 175. The tickets, which cost $4464.50, were purchased with Banihammad's Visa card.

On August 27, 2001, Nawaf al-Hazmi and Salem al-Hazmi purchased their tickets through the web site Travelocity.com using a VISA debit card in name of Nawaf M. al-Hazmi.

A few days later, Hani Hanjour attempted to purchase his ticket with a VISA debit card at

Advanced Travel Services, in Totowa, New Jersey. After the card was rejected because the cost of the ticket exceeded the card's credit limit, Hanjour paid for the ticket with cash.

Hamza Alghamdi purchased his ticket for Flight 175 through the Internet on August 29, 2001, using his Florida SunTrust Visa debit card. He also purchased an E-ticket for United Airlines Flight 7950, flying from Los Angeles to San Francisco, at the same time. Hamza Alghamdi's SunTrust Visa debit card was also used the following day to purchase a Business Class E-ticket for Ahmed Alghamdi for Flight 175. Also that day, Hamza Alghamdi purchased two one-way tickets for himself and Ahmed Alghamdi to fly AirTran from Fort Lauderdale, Florida, to Boston, Massachusetts, on September 7.

Just days before the attacks, the hijackers began arranging to assemble in their final departure cities. On September 5, 2001, Mohamed Atta and Marwan al-Shehhi booked airline flights at a travel agency in Boca Raton, Florida. Atta booked a U.S. Airways flight from Fort Lauderdale, Florida, to Baltimore/Washington International Airport, and al-Shehhi booked a reservation on Delta Airlines from Fort Lauderdale, Florida, to Boston, Massachusetts. That same day, al Shehri and Banihammad made their reservations for September 8, 2001, to travel from Fort Lauderdale, Florida, to Boston, Massachusetts, on AirTran.

In the days just prior to the September 11 attacks, several of the suicide hijackers of American Airlines Flight 11 and United Airlines Flight 175 were in Boston.Once they arrived in that city, the hijackers stayed in their established groups, lodging in different hotels. Hamza Alghamdi and Ahmed Alghamdi stayed at the Charles Hotel. On September 8, the two checked out of the Charles Hotel and moved to the Days Hotel in Boston.

Flight 11 hijackers Waleed al Shehri, Satam al Suqami, and Wail al Shehri are believed to have shared a room at the Park Inn in Newton, Massachusetts beginning on September 5. The room was registered to Waleed al Shehri. Abdul Aziz al Omari is also believed to have stayed at this same hotel.

Flight 175 hijackers Mohand al Shehri, Fayez Ahmed (Banihammad), and Marwan al-Shehhi stayed at the Milner Hotel in Boston. On September 9, Mohamed Atta also checked into the Milner Hotel, staying that night where he met with Marwan al-Shehhi. A telephonic message on that same day recovered from Atta's cellular telephone has Ziad Jarrah referring to Atta as "boss."

Shortly after noon on the day before the attacks, Mohamed Atta left the Milner Hotel, picked up Abdul Aziz al Omari at the Park Inn, and drove to Portland, Maine. They checked into the Comfort Inn in South Portland. Atta and al Omari were seen together on several occasions in

the Portland area later that evening but their reason for going there, to date, remains unclear.

That same day in Maryland, Flight 77 hijackers Majed Moqed and Hani Hanjour checked out of the Budget Host Valencia Hotel in Laurel, Maryland. Earlier that week, Hanjour, Moqed, Salem al-Hazmi, and Khalid al-Mihdhar had visited a Gold's Gym in Laurel, Maryland on a visitor's pass.

Finally, on September 7, Saeed Alghamdi, Ziad Jarrah, Ahmad al Haznawi, and Ahmed Alnami, the four Flight 93 hijackers, arrived in New Jersey on a Spirit Airlines flight from Fort Lauderdale, Florida.

September 11–suicide hijackers activities hours preceding the attacks

On September 11, at 6:00 AM, Mohamed Atta and Abdul Aziz al Omari boarded a U.S. Airways flight leaving Portland, Maine en route to Boston's Logan Airport. They were both carrying black shoulder bags when they passed through security. When Atta arrived at Logan Airport, he received a telephone call on his cellular telephone from a pay phone located inside Terminal "C". This call is believed to have originated from one of the Flight 175 hijackers who were waiting to board Flight 175 which was boarding in Terminal "C".

Early that same morning, Hamza Alghamdi checked out of the Days Hotel in Boston and with Ahmed Alghamdi took a taxi to the airport.

Fayez Banihammad and Mohand al Shehri, also booked on Flight 175, checked out of the Milner Hotel in the Boston area and drove a rental car to the airport, where they returned the car to the rental company.

Marwan al-Shehhi, who had received a cell phone call from Ziad Jarrah in the morning, also arrived at the airport, resulting in the Boston teams being in-place.

On September 11, Nawaf al-Hazmi, along with three others [believed to have been three of the other Flight 77 hijackers], left the Marriott Residence Inn in Herndon, Virginia and was later seen with Salem al-Hazmi approaching the American Airlines ticket counter at Dulles.

EXECUTION OF THE ATTACKS

AMERICAN AIRLINES FLIGHT 11

At approximately 7:59 AM, American Airlines Flight 11, a Boeing 767, left Logan International Airport, Boston, Massachusetts, bound for Los Angeles, California, with 81 passengers and 11 crew members on board. Five hijackers, apparently using commonly available box cutters, hijacked the aircraft approximately 14 minutes into the flight. The five hijackers aboard Flight 11 were Mohamed Atta; Abdul Aziz al Omari; Satam al Suqami; Waleed al Shehri; and Wail al Shehri.

The hijackers from Flight 11 all purchased one-way tickets in either First Class or Business Class. Each of their seats on the plane had a direct line of sight of one another and with the cockpit door. Brothers Waleed al Shehri and Wail al Shehri sat in the first two seats in First Class---the cockpit doors were easily accessible from these seats. Atta, who we believe was the pilot (he is the only hijacker on this flight known to have formally received flight training), and al Omari occupied the two middle seats of the second row in Business Class. Al Suqami sat in the aisle seat in the next to last row in Business Class.

Flight 11 was cleared for takeoff at 7:59 AM and diverted course at 8:13 AM. Twenty-two minutes later, the flight crashed into the North Tower of the World Trade Center.

As you will recall, earlier that morning, Atta and al Omari had flown from Portland, Maine, to Logan Airport. Following the crash of Flight 11, authorities recovered two pieces of luggage in the name of Mohamed Atta that had not been loaded onto that flight. A search of this baggage revealed a three page letter handwritten in Arabic which, upon translation, was found to contain instructions on how to prepare for a mission applicable, but not specific, to the September 11 operation. Copies of this letter were also recovered at the crash site of Flight 93 and in the car registered to Nawaf al-Hazmi that was found at Dulles International Airport.

UNITED AIRLINES FLIGHT 175

At approximately 7:58 AM, United Airlines (UA) Flight 175, a Boeing 767, left Logan International Airport, Boston, Massachusetts, bound for Los Angeles, California, with 61 passengers and 11 crew members on board. Shortly after takeoff, the plane was hijacked by Marwan al-Shehhi; Fayez Ahmed (Banihammad); Ahmed Alghamdi; Hamza Alghamdi; and Mohand Alshehri. Two of the hijackers on this flight sat in First Class, two others sat in Economy Class, while Marwan al-Shehhi sat in Business Class.

Marwan al-Shehhi, who was flight trained, is believed to have been the suicide pilot on this hijacked flight.

At 9:05 AM, Flight 175 crashed into the South Tower of the World Trade Center.

AMERICAN AIRLINES FLIGHT 77

American Airlines Flight 77, a Boeing 757, left Dulles International Airport at 8:20 AM en route to Los Angeles with 58 passengers and 6 crew members on board. At 8:50 AM, the last routine radio contact with the aircraft was made. Four minutes later, the aircraft began an unauthorized turn to the south and shortly thereafter, radar contact was lost. At 9:39 AM, Flight 77 crashed into the southwest side of the Pentagon, Arlington, Virginia.

Flight 77 was hijacked by five individuals---Khalid al-Mihdhar; Nawaf al-Hazmi; Hani Hanjour; Salem al-Hazmi; and Majed Moqed. Three of the hijackers were seated in First Class and two were seated in Economy class.

The lengthy and extensive flight training obtained by Hani Hanjour throughout his years in the United States makes it reasonable to believe that he was the pilot of Flight 77 on September 11. We know that Hanjour was seated in Seat 1B, the first row aisle seat of the First Class section. The other hijackers on this flight were seated in pairs further back in the airplane.

On September 12, 2001, a 1988 Toyota Corolla registered to Nawaf al-Hazmi was found in a parking lot at Dulles International Airport. A subsequent search of this vehicle revealed many documents and other items associated with the hijackers, including a three page letter handwritten in Arabic. This letter was identical to those found in luggage belonging to Atta and at the crash site of United Airlines Flight 93 in Pennsylvania.

UNITED AIRLINES FLIGHT 93

At approximately 8:42 AM, United Airlines (UA) Flight 93, a Boeing 757, left Newark International Airport en route to San Francisco with 37 passengers and 7 crew members on board. At approximately 10:03 AM, the plane hit the ground in Stoney Creek Township, in southwestern Pennsylvania. Flight data recovered from the "black box" indicated that Flight 93 was heading east at the time of the crash.

The hijackers of this flight, Ziad Samir Jarrah, Saeed Alghamdi, Ahmad Ibrahim A. al Haznawi, and Ahmed Alnami were all seated in First Class and sat in rows one, three and six, respectively. Jarrah is the presumed suicide pilot of this flight since he was the only hijacker known to have a pilot's license and flight simulator time.

SUICIDE HIJACKERS FINANCIAL ACTIVITY

In the aftermath of these attacks and the ensuing investigation, we have developed considerable information with respect to how this operation was funded. Specifically, the funding mechanism behind the conspiracy appears to center around Marwan al-Shehhi and individuals providing financial support primarily from the UAE.

Al- Shehhi received substantial funding while he resided in Hamburg, Germany. From at least March 1998, al-Shehhi received wire transfers into his Dresdner, Germany bank accounts from an individual identified only as Mohamed Yousef Mohamed Alqusaidi (believed to be al-Shehhi's brother).

In July 1999, al-Shehhi opened a checking account at HSBC in the UAE and shortly thereafter granted a power of attorney over this account to Alqusaidi. Alqusaidi continued to wire funds to Al-Shehhi from this account until approximately November 2000. After this time, the remaining funds were withdrawn from the HSBC account in the form of cash. Approximately $100,000 flowed through this account from July 1999 to November 2000.

While in Germany, Marwan al-Shehhi, at times, transferred monies to Mohamed Atta.

On April 18, 2000, Nawaf al-Hazmi received a wire transfer in the amount of $5,000 from Ali Abdul Aziz Ali. The funds were sent from the UAE by Ali to Adel Rafeea in San Diego, California who has said that al-Hazmi asked him to accept the funds into his account on his (al-Hazmi's) behalf. According to Rafeea, he then gave the funds to al-Hazmi.

On June 29, 2000, Ali Abdul Aziz Ali (using the alias Isam Mansur) wired $5,000.00 to Marwan al-Shehhi. The funds were sent via Western Union from the UAE to al-Shehhi in New York, New York.

In July 2000, Marwan al-Shehhi opened a joint checking account with Mohamed Atta at SunTrust Bank in Florida. From July 2000 through September 2000 this account received what appears to be the primary funding for the conspiracy: four money transfers totaling $109,500 from Ali Abdul Aziz Ali who used the aliases "Isam Mansur," "Isam Mansour," "Mr. Ali," and "Hani (Fawaz Trdng)." The transfers were sent from the UAE Exchange Centre located in Bur Dubai, UAE.

Some of the hijackers maintained joint bank accounts with one another or shared funds amongst each other to include for purchasing of airline tickets. In total, the hijackers opened 24 bank accounts at four different U.S. banks. Several of the hijackers, including Hani Hanjour, Fayez Banihammad, Abdul Aziz al Omari, and Khalid al-Mihdhar, supplemented their financing by opening foreign checking accounts and credit card accounts at banks located in the UAE and in Saudi Arabia. Other hijackers, including Majed Moqed, Saeed Alghamdi, Hamza Alghamdi, Ahmed Alnami, Ahmed al Haznawi, and Wail al Shehri purchased travelers checks in the UAE, presumably with funds given them when they transited the UAE. Marwan al-Shehhi, Mohammed Atta, and Ziad Jarrah continued to maintain their bank accounts in Germany.

Al-Shehhi and Atta each had credit cards issued by German banks. Khalid al-Mihdhar, Hani Hanjour, and Abdul Aziz al Omari used credit cards drawn on Saudi Arabian banks to supplement their financing. While in the United States, both Hani Hanjour and Fayez Banihammad had deposits made on their behalf by unknown individuals into their UAE accounts.

In the days leading up to September 11, several of the hijackers sent funds back to the UAE. Mohamed Atta, Marwan al-Shehhi, and Waleed al Shehri sent funds totaling approximately $18,000 via Western Union to an individual identified as Mustafa Ahmed Alhawsawi in Sharjah, UAE. Additionally, Nawaf al-Hazmi sent an Express Mail package addressed to a Post Office box in Sharjah, UAE (rented in the name Alhawsawi) which contained the debit card for the First Union Bank account of Khalid al-Mihdhar. At the time, this account contained approximately $10,000. [Note: This package was intercepted and returned to the United States subsequent to September 11.]

Mustafa Ahmed Alhawsawi had power of attorney over the UAE account for Fayez Banihammad, aka Fayez Ahmed. Banihammad sent $8,000 from his U.S. account to his UAE account where the funds were withdrawn by Alhawsawi in the UAE.

Alhawsawi also maintained an account in the UAE that was opened at the same time and at the same location as the account for Banihammad. From June 25, 2001, through September 11, 2001 approximately $102,000 was deposited to this account.

On July 18, 2001, Alhawsawi was granted power of attorney over Banihammad's Standard Chartered Bank account and was given Banihammad's VISA credit card and ATM card for his account as well. On July 23, 2001, it is believed that Alhawsawi, using the alias Hashim, sent the VISA credit card to Banihammad in Florida, via Skycom Express, an affiliate of DHL.

On August 25, 2001, a supplemental VISA card on the Standard Chartered Bank account

of Mustafa Alhawsawi was issued in the name of Abdulrahman A. A. Al-Ghamdi, who has subsequently been identified as Khalid Sheikh Mohammed, a co-conspirator, along with Ramzi Yousef, Wali Khan Amin Shah, and Abdul Hakim Murad, in the 1995 plot to bomb U.S. civilian airliners transiting the Pacific Ocean.

Mustafa Alhawsawi was in the UAE each time the hijackers were transiting. It is believed that Alhawsawi was providing the funds necessary for the hijackers to purchase travelers checks. Also, hours before the September 11 attack, Mustafa Alhawsawi withdrew most of the money from Banihammad's account using a check and an ATM card. Alhawsawi deposited these funds, as well as those received from the other hijackers, into his Standard Chartered Bank account in the UAE. Alhawsawi then transferred approximately $42,000 from this bank account to his Standard Chartered Bank Visa Card. Once all of this had been completed, Alhawsawi left the UAE to Karachi, Pakistan. His current whereabouts are unknown.

CONCLUSION

What I have just provided is an overview of what we have learned about the U.S. activities of the hijackers before and during the attacks.

Clearly, these 19 terrorists were not supermen using extraordinarily sophisticated techniques. They came armed with simple box cutters. But they also came armed with sophisticated knowledge about how to plan these attacks abroad without discovery, how to finance their activities from overseas without alarm, how to communicate both here and abroad without detection, and how to exploit the vulnerabilities inherent in our free society.

There were no slip ups. Discipline never broke down. They gave no hint to those around them what they were about. They came lawfully. They lived lawfully. They trained lawfully. They boarded the aircraft lawfully. They simply relied upon everything from the vastness of the Internet to the openness of our society to do what they wanted to do without detection.

And just like the CIA, we do not think the threat has subsided. Those who masterminded and financed these attacks are still capable of doing so. Capturing a number of important operatives has been a huge victory but there are others, still loosely connected and still a potent threat. Nor should we forget that thousands of "foot soldiers" -- those who trained in the camps -- remain disbursed. And there are those who, without direction or control, are compelled for ideological reasons to pursue jihad and kill Americans.

These realities to me mean we need a different FBI, one that does not just think in terms of cases and prosecutions. We need new structures, new training, new levels of cooperation, new technologies, more analytical capacity, and a different mind set. All of these things are being put

in place. Nothing can be paramount to preventing the next attack.

When we looked back, there were clearly things we should have done better or differently. But there are also many things we have done quite well and things we should do more of.

Since September 11 we have taken dozens of significant steps to improve the FBI. Some of those allowed us to unravel what happened on September 11. And even though more needs to be done, especially with technology, I am extraordinarily proud of the men and women of the FBI, CIA and NSA who made sacrifices and did the work that led us to knowing those responsible and who have kept us safe in the post-September 11 environment. We are working hand-in-hand towards that goal every minute of every day, seven days a week.

Chairman GOSS. If there's any question that either witness determines would be best answered by other than CIA or FBI personnel who are present, we would welcome being informed of that.

Our goal is to have the best possible information. So that we don't need to interrupt the flow of questioning by administering oaths to other personnel who are called upon to speak, would anyone who might be called upon to speak now identify himself or herself for the record and take the oath together with Mr. Black and Watson? And, Mr. Black and Mr. Watson, do you have anybody with you particularly you anticipate will be assisting you?

Mr. BLACK. No, sir.

Chairman GOSS. The answer being no in both cases, is there anybody else from either agency that is intending to speak?

Seeing none, each of our Committees has adopted a supplemental rule for this joint inquiry that all witnesses shall be sworn. I'll ask our witnesses to rise at this time and raise your right hand.

Do you solemnly swear the testimony you will give before these Committees will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BLACK. I do.

Mr. WATSON. I do.

Chairman GOSS. Thank you, gentlemen.

The full prepared statements of the witnesses will be placed in the record of these proceedings. I'll now call on Mr. Black first and then Mr. Watson, as I understand that was the selected order.

Mr. WATSON. That's agreeable.

Chairman GOSS. Mr. Black, welcome. The floor is yours, sir.

[The prepared statement of Mr. Black follows:]

TESTIMONY OF COFER BLACK

Mr. Chairman, I am honored to be here. I appreciate your offer for me to speak from behind a screen in order to protect me. Normally, I would have accepted. This hearing is more important. I do not want to be only a voice. The American people need to see my face. I want to look the American people in the eye.

Introduction

My name is Cofer Black. I served as the Director of the CIA's Counterterrorist Center from 1999 until May of 2002. I hope these proceedings provide the relatives and loved ones of those lost some of the answers they seek. We are meeting here today because of the murder of more than 3,000 innocents on 9/11. We provided strategic warning. Despite our intense efforts we were unable to provide tactical warning on 9/11.

CTC

Everything we do in this global war and the very real risks of our work have only one objective: to protect America, to protect innocent people. In this long fight, my CIA colleagues operating with me in Khartoum, Sudan in 1995 preempted preparations of Usama bin Ladin's thugs to kill me. The same Usama bin Ladin and his Al-Qa'ida are the killers of 9/11.

When you look at our counterterrorism programs, you need to fully appreciate choices in three areas. These were choices made for us. Made for the CIA and made for my counterterrorism center. These involved numbers of people, finances, and operational flexibility.

People: Before 9/11, the CIA's Counterterrorism Center had as many people as three infantry companies. Three infantry companies can be expected to cover a front of a few kilometers. Our counterterrorism center has worldwide responsibilities for all terrorist threats. It was not only Al-Qa'ida we had to engage. Until 9/11 Hizbollah had killed more Americans than any other terrorist group. Hizbollah is our responsibility among all the others. We work through the Directorate of Operations which is deployed overseas. The Head of the Operations Directorate would tell you that he had 25 per cent less covert operations officers

at the end of the 1990's than he had at the start. The Director of Central Intelligence did all he could. We had the highest priority. Prior to my arrival the Director had increased our personnel nearly 100 per cent. The DCI and the Deputy Director of Operations struggled with real shortages. While all the other operating components were being cut, counterterrorism received what small increases were available.

Cash: This is what we use to pay for operations. At the beginning of each of my three fiscal years as Chief, the counterterrorism center had enough money to purchase about two modern jet fighter aircraft. When I became Chief in 1999 I faced a fiscal reality. We had less money with which to support operations than we had the year before. As a result, I cut all my subordinate units except one at least 30 per cent. We survived because of my leaderships' relentless support and "supplemental" funding in order to simply make it out of each year.

Operational flexibility: This is a highly classified area. All I want to say is that there was "before" 9/11 and "after" 9/11. After 9/11 the gloves come off.

Nearly three thousand al-Qa'ida terrorists and their supporters have been detained. In Afghanistan the al-Qa'ida who refused to surrender have been killed. The hunt is on.

At your hearing last Friday my colleague (referred to only as' CIA Officer) was a witness before you and spoke from behind a screen. The significant point of his remarks was the unprepared statement that he had been 'overwhelmed' by the limitless work of counterterrorism and the lack of resources. We can now see why he said this. However even a fully staffed and supported effort will not provide 100 per cent defense. We must go on the offense and stay there.

Working with the FBI

I am very concerned that your hearings last week left you with a substantial misunderstanding about communications between the CIA and the FBI during the investigation of the attack on the USS Cole. In that case, we were supporting the FBI's investigation. Both agencies wanted to find out who killed our sailors. Both agencies were working to bring those terrorists to justice. We were in the business of providing information to the FBI, not withholding it.

I want to be as clear as I can be that FBI agents and analysts had full access to information we acquired about the Cole attack. For example, we ran a joint operation with the FBI to determine if a Cole suspect was in a Kuala Lumpur surveillance photo. I want to repeat—it was a joint operation. The FBI had access to that information from the beginning. More specifically, our records establish that the Special Agents from the FBI's New York Field Office who were investigating the USS Cole attack reviewed the information about the Kuala Lumpur photo in late January 2001.

I also want to be clear that, according the CTC analyst who attended the June 2001 FBI-CIA meeting in New York City, an FBI employee brought the photos to New York and showed them to FBI agents at the meeting. I want to repeat that. An FBI employee brought the photos to New York. Furthermore, the CIA analyst was not able to provide all of the information FBI criminal investigators wanted because of laws and rules against contaminating criminal investigators with intelligence information. As your staff has pointed out, there are laws that complicate our work.

My statement for the record will provide more details about Kuala Lumpur.

Successes

We learned of some of al-Qa'ida's plots in time to provide the warning law enforcement and intelligence

services needed to stop them. Examples of the many successful operations would include:

-1998: Plans to attack the US Embassy in Albania were thwarted when we identified the plotters.

-1999/2000: Millennium Plot. Al-Qa'ida efforts to blow up hotels and other tourist sites in Jordan would have resulted in hundreds of casualties. Our global effort was the largest operation in the history of counterterrorism.

-2000: Ramadan threat

-Summer 2001 Threat: This also included planned attacks on US Embassies in Yemen and France which saved lives. In addition, we rendered scores of terrorists to law enforcement.

The men and women of CTC and those in CIA who work counterterrorism are the finest Americans this country can produce. They are highly professional, smart, hard working, brave and have an unbelievable work ethic working 14-18 hour days, seven days a week, month after month for my entire three years.

Our people fought with what we provided them and turned back and defeated constant terrorist attacks saving hundreds and perhaps thousands of lives. Leading up to 9/11, CTC conducted intense intelligence war measured by constant threats emerging, engaged, and defeated. We also were the first on the ground in Afghanistan by late September 2001 and played a key intelligence and paramilitary role in supporting our armed forces.

I want to thank all in the Intelligence Community and in CIA who work counterterrorism particularly our field personnel.

I will submit the remainder of my statement for your record.

Early Years

(U) My experience with Bin Ladin goes back to my service in Khartoum, Sudan from 1993 to 1995. I will provide an overview of counter terrorist programs and address issues that you have raised in your letter of invitation to this hearing. While we collectively seek to ensure that flaws in our procedures are identified and corrected, I want to again thank you for your continued care in ensuring that we not educate our enemies.

(U) We knew of Bin Ladin since his early days in Afghanistan. We had no relationship with him but we watched a 22 year old rich kid from a prominent Saudi family, change from frontline mujahedin fighter to a financier for road construction and hospitals. Then we watched him found something we learned was called al Qa'ida.

Growing Threat

(U) By the time bin Ladin arrived in the Sudan in 1991, we learned he had used his fortune to train hundreds of Arab veterans of the war in Afghanistan for a worldwide jihad. Bin Ladin was developing into a significant sponsor of Sunni extremism.

- In December 1992, bin Ladin financed Islamic extremists who attacked a hotel in Yemen housing US military personnel.
- In 1993, we learned that bin Ladin was channeling funds to Egyptian extremists.
- In 1994, al-Qa'ida was financing at least three terrorist training camps in northern Sudan.

Growing Knowledge

(U) By the mid 1990's, bin Ladin was becoming a more important terrorist target for CIA. We learned about his commercial and terrorist activities, including his connection to the assassination attempt against Egyptian President Mubarak.

(U) Our reporting provided additional information about bin Ladin's commercial holdings and related activities. An al-Qa'ida defector laid out for us bin Ladin's role as a head of a global terrorist network.

(U) When I served in the Sudan from 1993 to 1995 we were certainly well aware of bin Ladin. We watched him closely, his people and his facilities. Some believe that he was enough of a threat by the time he was leaving the Sudan that we should have picked him up. However, the US did not have a warrant. No other country would accept him before he left the country and then he fled to Afghanistan. As an aside, I will note that speculation suggesting that bilateral political relations could have provided us bin Ladin from the Sudan are simply mistaken.

Bin Ladin Declares War

(U) From 1996 on, bin Ladin's threats against Americans increased dramatically.

- In 1996 his allies issued a fatwa authorizing attacks against Western military targets on the Arabian Peninsula.

  In 1998, just before the East Africa Embassy bombings, his clerics issued another fatwa stating that Muslims have a religious obligation to kill military and civilian Americans worldwide.

  Also in 1998, bin Ladin said that acquisition of chemical, biological and nuclear weapons was a religious obligation and that "How we would use them was up to us." We also knew from our

reporting that he was actively trying to acquire weapons of mass destruction.

(U) By 1998, we developed substantial intelligence about bin Ladin, Mullah Omar, other terrorist leaders and on their training camps. Our efforts to capture him and disrupt al-Qa'ida grew increasingly intense from 1998 to the present.

Kuala Lumpur

(U) The January 2000 operation to learn what a group of suspected al-Qa'ida associated men were doing in Kuala Lumpur is a case where our procedures were - inadequate. The first part of that operation was successful. We picked up on intelligence developed during the FBI's investigation of the 1998 Nairobi attack to identify two suspected al-Qa'ida men. We tracked them to a meeting in Kuala Lumpur where they met with other terrorist operatives. We were not able to learn what the men did during that meeting, but we were able to identify other participants. That information continues to be operationally useful today.

(U) While the meeting was in progress, CTC officers detailed to the FBI kept the FBI updated through verbal briefings. Where we fell short was in our not informing the Department of State that we had identified two al-Qa'ida men so that the Department could decide whether to place them on the watchlist. Nearly two years later, those two men, al-Mihdhar and al-Hazmi, were hijackers on Flight 77.

(U) Last week, you discussed that issue at length so I won't repeat the details. In my judgment, we should have watchlisted both. That we did not do so was, in part, the result of insufficient training for our officers. But mainly, it was due to the extraordinary pace of our operations during that period. We worked on high numbers of operations simultaneously constantly adding ever more operations - all with the objective of defeating terrorist attacks and defending our country.

(U) I identified the source of the problem and moved to fix it. We improved training for our officers and

established a more comprehensive program for using intelligence to support watchlists.

Counterterrorism Scope

(U) I want to digress for a moment from our focus on Bin Ladin. To fully understand the CIA's counterterrorism program, you need to appreciate its scope. During the early and mid 1990's, al-Qa'ida was not our principal counterterrorism target. Until September 11, Hizballah had killed more Americans than any terrorist group. The Egyptian Islamic Jihad, Hamas, Shining Path in Peru, Abu Saayef in the Philippines, 17 November in Greece, were all threats to Americans or American interests. Personnel and financial resources, management attention, policymaker interest were spread among these groups.

Threats in 2001

(U) I want to turn to the period leading up to the September 11 attacks. During the spring and summer of 2001, I became convinced that al-Qa'ida was going to strike hard. We did not know where but the Arabian peninsula and Israel were the most likely targets. By late summer, I was growing more concerned about a potential attack on the United States. However, I knew that we needed very specific information about an attack if anyone was going to pay attention to us and facilitate action. Warning is one of our most important functions, translating warning into effective, specific homeland defense defensive action is hard. As an example, I concluded my briefing of 15 August 2001 to the Department of Defense's Annual Convention on Counterterrorism that "…we are going to be struck soon, many Americans are going to die, and it could be in the U.S." However, the DCI and the President of the United States need exacting intelligence in order to take effective, selective defensive action. They need to know such things as -- the attack is coming within the next few days and here is what they are going to hit. I regret that we did not have specific, actionable intelligence before the September 11, 2001 attacks as we had provided many times before.

Partnerships

(U) I want to emphasize that our work against al-Qa'ida and other terrorist groups was a partnership with our colleagues in the Intelligence Community and law enforcement. Law enforcement agencies in the US and other countries put terrorists in jail and the courts keep them there.

(U) I am not going to tell you that all relationships among our partners were as effective as we wanted them to be. Varying missions, interests, and capabilities affected the effort. Personal relationships also affected our work—overwhelmingly they are positive but sometimes they are not. I will tell you that when we had problems with our colleagues we worked to fix them.

(U) I want to focus on our relationship with the FBI, in part because so much misinformation has been published about our relationship with the FBI. My colleague, and good friend, Dale Watson is at the table. He was a key champion of the close relations between CIA and FBI.

(U) The Counterterrorist Center at CIA has had FBI officers assigned to it for years. A senior FBI special agent served as my deputy. Other senior FBI special agents served at the supervisory and working levels in CTC. CIA officers were supervised by FBI agents and vice versa. FBI special agents were full partners in our war against terrorism long before September 11.

(U) Furthermore, in Washington, CIA officers were assigned to FBI Headquarters and worked on counterterrorist issues. Last week, one of those officers testified in your hearing. In the field, CIA and FBI officers have worked on Joint Terrorism Task Forces and in operations abroad. Despite what you have heard in the media, since the beginning of CTC in 1986, the relationship between the FBI and CIA is evolving into an increasingly effective, productive partnership.

Pre Attack Capabilities

(U) You have asked for an assessment of our capabilities before and after the September 11 attacks.

While the DCI and the Intelligence Committees worked hard to provide additional resources - we had to deal with ten years of decline in the Directorate of Operations generally, and in our overseas capabilities in particular. At the most fundamental level, the answer to both questions is simple—before September 11, we did not have enough people, money, or sufficiently flexible rules of engagement. After September 11, we did.

(U) After September 11, we jumped to a whole new level of effectiveness. We had the resources we needed to do the job. The proof of the value of those resources lies recognizable to the American people for example in the end of the Taliban regime, the end of al-Qa'ida's sanctuary in Afghanistan and in prison cells and graves around the world.

(U) You have asked for my recommendations to improve the Intelligence Community's counterterrorism efforts. We will be in this war against terrorism for the foreseeable future. My central recommendation is to support the war with people and money and appropriate operational authorities. We can't win the war on the cheap. Lurching from supplemental funding to supplemental funding is not a very effective way to support a global counterterrorist intelligence war. Provide multiyear funds so that we can manage and plan our programs effectively. Resources won't solve all of our problems—but resources will solve the majority of them.

Final Thoughts

(U) As the committee conducts its work, I want to reflect for a moment on my service as Chief of CTC. We are at WAR. We in CTC were aware of this fact. We gave it all we had. We, CIA, are this country's primary offense abroad against the terrorist threat. We willingly accept this tough job. I know that some Americans are alive today because of our efforts. And the same for citizens of other countries.

Nobody regrets more, that we did not stop the attacks on September 11, than the officers of CTC or their former Chief. Frankly from an intelligence perspective, in order to

have a fighting chance to protect this country from al-Qa'ida, we needed to attack the Afghan terrorist sanctuary protected by the Taliban. CIA appreciated this all too well. That is also why on 11 September we were ready and prepared to be the first boots on the ground in Afghanistan in late September.

I know that we are on the right track today and as a result we are safer as a nation. "No Limits" aggressive, relentless, worldwide pursuit of any terrorist who threatens us is the only way to go and is the bottom line. What we have managed to achieve abroad has been due in large part to the extraordinary professionalism of our men and women in CTC and those CIA operatives overseas who do the risky, hard work of counterterrorism. Lastly, I was proud of them then, am now, and will be until I die.

STATEMENT OF COFER BLACK, FORMER CHIEF, DCI'S COUNTERTERRORIST CENTER, CENTRAL INTELLIGENCE AGENCY

Mr. BLACK. Thank you very much. Can you hear me, Mr. Chairman?

CHAIRMAN GOSS. I can hear you very well.

Mr. BLACK. Mr. Chairman, I am honored to be here. I'd like to express my appreciation to you and to the Committee offering me a screen to protect my identity and to enhance my security. Good security is always a very good idea. And if this were normal circumstances I would accept your offer.

The work of this Committee and this hearing is just too important. I don't want to be just a voice behind a screen. When I speak, I think the American people need to look into my face. And I want to look the American people in the eye.

My name is Cofer Black. I'm a case officer of the Directorate of Operations of the Central Intelligence Agency. I served as the Director of the Counterterrorism Center from the 29th of July 1999 until May 2002.

Mr. Chairman, I hope that these proceedings provide the relatives and the loved ones of those lost in the horrific act of 9/11 the information that they're seeking. But we are meeting here today because of the loss of over 3,000 innocents. We provided strategic warning. Our intense efforts were unable to provide tactical warning on 9/11. We all share a profound and horrible sense of loss.

Everything we do in this global war and the very real risks that we take have only one objective, and that's to defend America and to defend innocents. In this long fight, my CIA colleagues operating with me in Khartoum, Sudan, in 1995 preempted preparations of Usama bin Ladin's thugs to kill me.

Six years later, Usama bin Ladin and his al-Qa'ida are the killers of 9/11. You need to appreciate fully three factors. There were choices made for us. These choices were made for the Central Intelligence Agency and they were made for the Counterterrorism Center. These involve the numbers of people, money and operational flexibility.

I'd like to talk about people for a minute. Before 9/11, the CIA Counterterrorism Center had as many people as maybe three Army infantry companies. Three infantry companies can be expected to cover a front of a few kilometers. Our Counterterrorism Center is responsible for the entire world and all the terrorist threats. It was not only al-Qa'ida that we engaged. Until 9/11, Hizbollah had killed more Americans than any other terrorist group. Hizbollah is also our responsibility as are all the others. We work through the Directorate of Operations, which is deployed overseas.

The head of the Operations Directorate will tell you, Mr. Chairman, that at the end of the 1990s, he had 25 percent less covert operations officers than he had at the beginning.

The Director of Central Intelligence, George Tenet, did all that he could to help us out. We, of all his interests, had the highest priority. Prior to my arrival there had been a substantial increase in our personnel. We still struggled. While all the other operating

components were being cut, the Counterterrorism Center received what small increases were available.

My second point, cash. This is what we use to pay for operations. At the beginning of each of my three fiscal years as chief, the Counterterrorism Center had enough money to purchase about two modern jet fighter aircraft. When I became the chief in 1999, I had a fiscal reality. We had less money to support operations than we had the year before. As a result, I cut all of my subordinate units, except for one, more than 30 percent. We survived because of the Director of Central Intelligence's support and the supplemental fundings that we received.

My third point, operational flexibility. This is a very highly classified area, but I have to say that all you need to know is that there was a before 9/11 and there was an after 9/11. After 9/11 the gloves come off. Nearly 3,000 al-Qa'ida and their supporters have been arrested or detained.

In Afghanistan the al-Qa'ida who refused to surrender have been killed. The hunt is on. At your hearing last Friday my colleague, referred to only as CIA Officer behind the screen, was a witness before you and spoke. I think the significant point that he raised was an unprepared remark saying that he was overwhelmed. He was overwhelmed by limitless work and he was overwhelmed by a lack of resources. Perhaps now we can say why he said this instinctively.

However, even a fully staffed and supported intelligence effort will not provide comprehensive, 100 percent defense. We must constantly intensify our offensive while at the same time supporting law enforcement and its work.

I'll leave you again with the three points—resources, people, operational flexibility.

I'd like to talk a little bit about working with the FBI. Mr. Chairman, I am very concerned that your hearings last week left you with a substantial misunderstanding about communications between the CIA and the FBI regarding investigation of the attack on the USS *Cole.* In that case we were supporting the FBI's investigation. The two agencies wanted to find out who killed our sailors and bring these terrorists to justice.

We are an intelligence organization. We are in the business of collecting and providing intelligence. We are not in the business of withholding intelligence information. I want to be clear that FBI agents and analysts had access to information we acquired about the *Cole* attack. For example, we ran a joint operation with the FBI to determine if a *Cole* suspect was in a Kuala Lumpur surveillance photo. Joint means together.

The FBI had access to the information from the beginning. Our records establish that. The special agents from the FBI's New York field office who were investigating the USS *Cole* attack reviewed the information about the Kuala Lumpur photo in late January 2001. I also want to be clear that, according to the CTC analyst who attended the June 2001 FBI/CIA meeting in New York City, the FBI analyst brought the photos to New York and showed them to the FBI.

I want to repeat that. An FBI analyst brought the photos to New York. Furthermore, the CIA analyst was not permitted to provide

all of the information FBI criminal investigators wanted because of laws and rules against contaminating criminal investigators with intelligence information. My statement for the record will provide more details about Kuala Lumpur.

We learned of some of al-Qa'ida's plots in time to provide the warning that law enforcement and intelligence services needed to stop them. Examples of many of the successful operations would include: 1998, plans to attack the U.S. Embassy in Tirana, Albania, were thwarted when we identified the plotters. 1999–2000 millennium plot. Al-Qa'ida efforts to blow up hotels and other terrorist sites in Jordan would have resulted in hundreds of casualties. Our global effort was the largest operation in the history of counterterrorism.

2000, Ramadan threat, defeated. Summer, 2001 threat, this also included planned attacks on U.S. Embassies in Yemen and France, saved lives. In addition, we rendered scores of terrorists to law enforcement.

Mr. Chairman, it would be my greatest wish to bring classified holdings of our successes and use them in an open format. There are sources to protect, there are methods to protect and there are foreign relationships to protect. The complete list of our successes was reported in closed session to oversight committees. We're happy to meet with you at any time and I must leave it at that.

How do we get successes? The men and women of the Counterterrorism Center and those in the CIA who work counterterrorism are the finest Americans this country can produce. They are smart. They are quick. They are patriotic. They are loyal. They are brave and they are hardworking—14,16, 18, 24–hours a day, six, seven days a week, week after week, month after month for the entire time that I was there.

Our people fought with what we provided them and turned back defeat. Leading up to 9/11, CTC conducted intense intelligence war measured by constant threats, emerging, engaged and defeated. We were also the first on the ground in Afghanistan before the month of September of 2001 was out. We're able to support the military and their success.

I would like to take this opportunity, because these days you never can really tell who is going to speak for the people that do their best and do the work. I want to thank all the people in the Intelligence Community and in law enforcement and in CIA, those that do counterterrorism, and particularly, in the CIA case, our field personnel.

Now, I want to speak to each man and woman in the Counterterrorist Center. I want their families, their neighbors and the American people to hear this. I was proud of them when I led them. I'm proud of them now, and I will be proud of them as long as I live.

Mr. Chairman, I'll submit the remainder of my statement for your record. Thank you, sir.

Chairman GOSS. Thank you very much, Mr. Black, for, I think, a very compelling and obviously heartfelt bit of testimony, which I think helps us all understand a little better just what does go on behind the veil that we don't see. I appreciate that.

Mr. Watson.

[The prepared statement of Mr. Watson follows:]

STATEMENT FOR THE RECORD OF
DALE L. WATSON
EXECUTIVE ASSISTANT DIRECTOR
COUNTERTERRORISM AND COUNTERINTELLIGENCE
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

AND THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2002

Introduction:

Good morning Messrs. Chairmen and members of the Committees. I am Dale Watson, the FBI's Executive Assistant Director for Counterterrorism and Counterintelligence and I am pleased to appear before you today with my colleague Cofer Black from the CIA. I plan to describe to you the FBI's counterterrorism role within the Intelligence Community prior to September 11, 2001, and to provide my observations of the changes made since then to better enable the Intelligence Community to detect and prevent future attacks. Late last week and earlier this week, the Committees heard, in great detail, about the FBI's actions relating to two of the September 11 hijackers - Khalid al-Mihdhar and Nawaf al-Hazmi; about Zacarias Moussaoui, and a July 2001 communication from our Phoenix FBI Office. While I will be glad to provide my perspective on those matters, in response to your questions, the majority of my testimony will highlight the FBI's interagency coordination and collaboration of counterterrorism activities within the Intelligence Community, the evolution of the FBI's response to the growing

international threat, and the FBI's future role in the war on terrorism.

History of the FBI Counterterrorism Program:

Before I can address where the FBI is today, I need to give you a short history of the FBI's Counterterrorism Program beginning in 1993.

In February 1993, an explosion occurred in the garage area beneath the Vista Hotel, located at the World Trade Center complex in New York City, New York, resulting in massive destruction, the death of six individuals and injuring a thousand others. Within the FBI and across the United States, this was a wake-up call that there were individuals in the United States who sought to do us great harm.

It was the April 1995, bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, resulting in the death of 168 persons, that provided further confirmation that a terrorist strike could be committed on U.S. soil. Prior to this time, terrorism was perceived as an overseas problem, as indicated in the 1988 bombing of Pan Am 103 where all 259 passengers, mostly Americans, died.

The overseas trend continued in November1995, with the bombing of the Office of Personnel Management, Saudi Arabian National Guard, resulting in the deaths of five servicemen. In 1996, the bombing of Khobar Towers resulted in the deaths of 19 servicemen.

In 1998, the Embassy bombings in Kenya and Tanzania resulted in the deaths of 12 Americans in Nairobi, Kenya. In November 2000, the *U.S.S. Cole* bombing resulted in the death of 17 Navy seamen. Then September 11, 2001, the mostly deadly terrorist attacks against the United States - which resulted in over 3,000 deaths.

In the early years, the FBI's Counterterrorism Program was a relatively low-priority

Program as demonstrated by its size, with approximately 50 people at FBI Headquarters, working on all aspects of terrorism. In May 1998, the FBI made Counterterrorism a Tier One priority and began focusing additional attention and resources. Throughout this period and as a result of our investigations of these above mentioned incidents, professionals in the FBI's Counterterrorism Program became aware of the threat posed by UBL and others like him. Subsequently, in 1999, the FBI created a separate operational unit focusing completely on UBL matters.

In1998, when I became Deputy Assistant Director of the Counterterrorism Division after the East Africa bombings, I realized the FBI was reacting to these terrorist acts with no forward thinking to prevent them. In late 1998, it became clear that no matter how many resources the FBI put into the program, we were never going to stop every act of terrorism. The solution would be to position ourselves in the best proactive stance to counter this threat.

Beginning in late 1999, I began working on a initiative designed to get the FBI at its maximum capacity to address the Counterterrorism threat by the year 2005 (MAXCAP05). I convened a working group of Special Agents in Charge (SAC) to create a system to evaluate Counterterrorism capacity in the field offices and build that capacity to encompass prevention, as well as reaction. The main focus of this initiative was not cases, which are by definition reactive, but rather about knowing the environment. One of the by-products of this process was a report designed to aid decision-makers, fostering accountability, consistency and accuracy among FBI Executive Management regarding understanding and countering the terrorist threat. This initiative was a work-in-progress and I recognized it would take several years to achieve maximum capacity. It is important to note that we were in the midst of that process on

September 11, 2001, however, as a result of the work we had done, we had developed a management tool that attempted to quantify weaknesses based on a standard which was intentionally set fairly high. (i.e., maximum capacity)

FBI Relationship with the CIA:

Much has been made during these hearings about the relationship between the FBI and the CIA, and not without cause. There is a long history between these two proud organizations and I am pleased to be seated with Cofer Black during this hearing today to discuss the changes which have occurred from my perspective.

In 1996, as a result of an exchange program initiated by FBI Director Freeh and Director of Central Intelligence Deutch, I was the first Bureau official to participate in an exchange of senior personnel between the FBI and CIA in the Counter Terrorism arena. I was assigned as the Deputy Chief with line authority to the Counter Terrorism Center (CTC), and a senior CIA officer was assigned as the Deputy Section Chief in the Counterterrorism Section at FBIHQ. This exchange provided a foundation to solidify our future coordinated efforts and was extremely beneficial as it was top-down-driven.

Since that time and continuing today, the interaction between and the exchange of personnel, both agent and analytical, has increased significantly, particularly since September 11, 2001. This continues to contribute in a decisive way to the Intelligence Community's mission directed at the obtaining, analyzing and sharing of intelligence information, thereby enhancing the United States Government's efforts to identify, target and prevent terrorist activities.

During this period, the FBI initiated a training program in which new CIA Chiefs of Station are introduced to the FBI perspectives and capabilities on terrorism matters, and new FBI

Legats are provided the same training regarding the CIA. Overseas, communication and coordination are the hallmark of our relationship with other U.S. agencies.

While there might be individual examples where information was not shared, institutionally the barriers have come down and we are currently exchanging information daily, if not hourly, with our colleagues at the CIA.

Other Initiatives Supporting Counterterrorism Efforts:

During the 1990s, the changing perspectives at FBI Headquarters regarding the growing threat of international terrorism prompted then Director Freeh to expand the FBI's Legat Program. When Mr. Freeh became FBI Director in 1992, there were 16 Legats; when he left, there were 44. This expansion has put more people on the ground in more places, contributing to better investigations of terrorist acts abroad, and better coverage of leads generated in domestic investigations. Legats working with colleagues in the Departments of Justice, Defense and State have also facilitated extraditions of terrorists wanted for killing Americans, which must be the absolute cornerstone of America's message to foreign terrorists: anyone targeting American citizens and/or interests will face justice---no matter where that attack takes place or where that terrorist might hide.

The Legat Program's value became even more apparent with their tireless efforts during the investigation of the terrorist attacks of September 11, 2001. Their investigative efforts played a significant part in the FBI's understanding of the September 11, 2001 conspiracy, and will continue to pay dividends for years to come in identifying key terrorists and preventing future attacks.

The FBI is taking a leadership role in enhancing interagency cooperation and

communication through utilization of a proactive threat warning system. The National Threat Warning System (NTWS) ensures vital information regarding terrorism reaches those in the U.S. Intelligence and Law Enforcement Communities responsible for countering terrorist threats. The NTWS provides warnings to U.S. Government components and law enforcement agencies in the United States and Canada via the National Law Enforcement Telecommunications System. The FBI also provides Warnings to private security personnel via the "Awareness of National Security Issues and Response" Program.

The FBI continues to assess threats and issue warnings and advisories to the Intelligence and Law Enforcement Communities, and are still leading the multi-agency National Infrastructure Protection Center, a key force in protecting our nation's critical physical and electronic infrastructures.

There are currently over 56 established Joint Terrorism Task Forces (JTTFs) in operation, an increase of 45 since 1996. By integrating the investigative abilities of the FBI and local law enforcement agencies these JTTFs represent an effective response to the threats posed to U.S. communities by domestic and international terrorists.

Within the FBI, the FBI's Counterterrorism Center was established in 1996 and is designed to combat terrorism on three fronts: International terrorism operations, within the United States and in support of extraterritorial investigations; Domestic terrorism operations; and Countermeasures, pertaining to both international and domestic terrorism. Through the FBI's Counterterrorism Center, the FBI has enhanced cooperation with other US Government agencies. An exchange of working level personnel and senior managers at the headquarters level has also strengthened cooperation between the FBI and other agencies.

Prior to September 11, 2001, the FBI worked closely with all of the US Government through efforts of the National Security Counsel. Regular, if not daily meetings were held to discuss Counterterrorism matters. The core group participating in these meetings were the CIA, Department of Defense, Department of State, Department of Justice and other Federal agencies as needed to discuss and coordinate counterterrorism issues in the US Government.

Conclusion:

The continuing threat and the ever present reminder of the events since September 11, 2001, have reconfirmed my belief that the FBI and our partners in the Intelligence Community must continue to aggressively develop the capacity to identify, penetrate and prevent terrorist activities worldwide.

The FBI must be ready, in concert with our Intelligence Community partners and foreign services to respond to terrorism issues as they present themselves. In order to do this, we must 1) develop a strategic analysis program to recognize trends aimed at identifying and preventing terrorists activities; 2) develop a coordination program within the United States Intelligence Community and foreign services to identify persons who have attended the terrorist training camps in Afghanistan; 3) improve information sharing capabilities with State and local law enforcement; 4) improve methods and capabilities to track and remove terrorists from within our borders; 5) increase and improve the technology to obtain and analyze information; and 6) increase the number of analysts assigned and trained in terrorism matters.

In closing, let me stress-terrorism matters are the number one priority of the FBI. The FBI, along with the CIA and other members of the Intelligence Community, are working to coordinate multi-divisional and multi-agency investigations to establish a robust intelligence

base, with adequate and on-going analysis to identify and stop any future terrorist acts and strengthen our abilities to safeguard the American people and our interests, both at home and abroad.

I thank you for the opportunity to come before you today and am available to answer your questions.

STATEMENT OF DALE WATSON, FORMER ASSISTANT DIRECTOR, COUNTERINTELLIGENCE AND COUNTERTERRORISM DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr.WATSON. Thank you, Mr. Chairman.

I would like to also say that I'm honored to be here this morning. I'm very honored to be next to my friend and colleague, Cofer Black. On behalf of the men and women of the FBI, we certainly extend our sympathy and our prayers to the victims of this horrible act on 9/11, as well as to all American victims that have been victimized by terrorism over the years, as well as our foreign citizens overseas.

What I thought I would do this morning with you, since I have my prepared statement that's introduced, is to hit some highlights of some areas not specifically covered in that statement but some issues that need to be talked about this morning.

And the first is I'd like to talk briefly, real briefly, and most of you Senators and intelligence committee members have heard some of this before, but I think it's worth bringing up, what the FBI was doing in counterterrorism since 1996.

I would also like to briefly discuss the relationship that we've had with the CIA over the years, particularly since 1996. Thirdly, discuss briefly the budget request, particularly the budget years 2000, 2001, and 2002. This is not a budget hearing, but there's some numbers that need to be put out so you clearly understand where we were coming from in the process. And, then, lastly, make some general observations about some perceptions that I think need to be clarified for the record. Were we doing everything we could on the aircraft or civil aviation threats? Was the FBI assuring the Administration that an Al-Qa'ida could not attack us inside the United States? I'd like to clarify those points.

And then, thirdly, talk about the concept of being reactive and proactive and how that has become popular post–9/11 and that we were certainly making headway in the proactive area long before 9/11. And I think you need to hear those statements. And, as well as Cofer, about the dedication of the men and women of the FBI.

Let's start off with the history real briefly and I will not go into a lot of detail about this. Starting in 1993 with the World Trade Center, I think everyone's realized the first World Trade Center killed six U.S. citizens. The 1993 followed that up with the attempt to bomb landmarks in New York City. The whole list of terrorist cases that we focused on as the FBI, along with all the other matters in counterterrorism that were going on—the Manila air plot in 1994, the Oklahoma City matter in 1995 where 168 of our citizens were killed inside the United States as a result of a domestic terrorist group, OPMSANG in November of 1995 in Saudi Arabia, which killed five American military personnel. June '96, Khobar towers, wherein 19 U.S. Air Force personnel were killed. Following up with that, in 1998 we had the East African bombings where 12 U.S. citizens were killed, followed up by the millennium threat where Ressam was arrested coming across the border in the State of Washington prior to the millennium, where we charged him and other individuals in New York City. October of '00 the USS *Cole* resulted in the death of 17 U.S. sailors, and, then, most importantly, 9/11.

To take you back where we were with the counterterrorism program at the time, way back when in 1993 and prior to that, it was a high profile program within the FBI but had very few people working it. We had less when I was in the—working counterterrorism in 1991, we had less than 50 people total in the section, which was responsible for all of counterterrorism—domestic, international, as well as special events.

Over a period of time, as you well know, and particularly starting in 1996 with the 1996 anti-terrorism effective death penalty, here's what the FBI was doing. And, sometimes we get lost in the shuffle here looking at what we've done since 9/11 as opposed to prior to 1996.

Over a period of time we've expanded the Legat programs and we started out with a small number of Legat programs. I think the number was 16. We're now up to 44. Opening new Legat programs since 1996 was a clear indication of our focus on counterterrorism and the problems we were having. Those Legat offices were not opened in areas where the major concern was in organized crime or drugs. They were opened in Tel Aviv and Riyadh and Islamabad, Cairo, and I could go with the list.

So, it was a clear focus by us understanding the expanded jurisdiction, which the congressional passed legislation for expanding our jurisdiction of about U.S. citizens and Americans being attacked overseas, that clearly we recognized the need to have a closer and stronger and a larger presence overseas, not in any way responsible or trying to do what the CIA does, but to look at it from a law enforcement perspective.

In addition to that, we expanded our JTTFs inside the United States. And I'm happy to report that at present we have over 56. Prior to 9/11 we had 34 on the books and those are law enforcement people assigned to FBI field offices along with our federal partners. I think there's been a lot of discussion about the JTTF's. I think you understand that. What that does for us is not only incorporate the information sharing that we need, but it's also a force multiplier for the agents and the number of people working counterterrorism within the United States, a very worthwhile and beneficial program.

Since '96 we've expanded and improved our threat warning system. And without saying much further about that, I think you understand that we have the ability to electronically communicate with our federal, state and local partners on threat information instantaneously. We established a counterterrorism center at FBI headquarters. And basically what that was was bringing in 19 federal partners actually working within the FBI headquarters to look at counterterrorism cases and try to figure out what we're trying to do and where we're going.

We expanded our SIOC operations in order to be able to cover more and bring in more partners during a time of crisis. And we improved our relationship with the CIA. Being the first deputy chief over at the counterterrorism center in 1996, it was an exchange program that you've all heard about before and it's proved very beneficial and very helpful to us.

After the East Africa bombings we expanded the five rapid deployment teams, teams that were formed in our field offices to be

able to rapidly deploy in an overseas environment in order to investigate and bring responsible individuals for those acts to justice.

One of the main points, though, I need to tell you about is, starting in 1998 the light basically came on for us as to what we were trying to do in counterterrorism. I came to the conclusion, being promoted to deputy assistant director in charge of counterterrorism, that if you looked across the board and you go back and you look specifically at counterterrorism issues, you realize that from a starting point that one, we will never be able to stop all acts of terrorists.

We could have 100,000 FBI agents and the CIA could have 10,000 more DO officers and our probability of stopping every act of terrorism is probably not going to happen. And once you realize and take that concept for what it is, then you have to ask yourself what does that leave you. Do you throw your hands up and you say well, we'll just wait and react to somebody bombing us or killing American citizens and we'll have the FBI investigate it and will tell us post-event who the people were that were responsible for doing that.

Well, the answer is, that's not the answer. And the answer, if you look at it from a strategic standpoint, and we started doing that in 1998, what you come up with is the idea that if you can't prevent all acts, then you better be at the highest capacity that you can possibly be. This led us into strategic thinking about what does that mean for our 56 field offices? What does that mean for the FBI at FBI headquarters? And through a long process called maximum capability by '05, Max Cap 5, we started down that road to look at it and to say that the FBI does a tremendous job in the area of investigations after a crime has been committed.

We put 1,000 agents or more in East Africa. Oklahoma City, we mobilized probably 35 different operation centers throughout the country. But, if you look at it from a logical standpoint, those things will never get you in the prevention business. They will tell you who did it and how they did it, but it's always post event.

So, we started out in a process of trying to develop our capability in our field offices and understanding what the threat is over the horizon. And it's the hardest thing ever tried to do in a bureaucracy as large as ours. We have great people, but great people sometimes have an understanding that change is very disruptive and change is hard.

So we started in '98 to look at this. And the only way we could do it was to look at how capable our field offices were. And if our field offices were not capable of responding, investigating, doing everything they can, to include resources, technology, then we would be vulnerable for attack again at the level inside the United States.

In addition to looking at our field offices, and we started a specific process to do that with several reports coming back to me that evaluated where we were in all our field offices and what capabilities they had and had a very simple color system, red, yellow and green, that we were able to take that.

But, it's not fair to just evaluate our field offices. We also looked internally within ourselves at FBI headquarters. And we looked at how well are we doing in the intelligence business of sharing information, obtaining information, processing information, and what

does intelligence mean. And intelligence to law enforcement is different than intelligence to the CIA. And how do you process intelligence? And our thinking of intelligence was tell us what's happened in post cases. And that's never going to get you into the prevention business if you continue to look post. So we evaluated ourselves and said we needed great help in the intelligence arena.

The third area we looked at at headquarters on the criteria was the technology piece. And I think you've all been briefed on those areas of concern. And we realized we were well short of what we needed in technology, the ability to share information and pass information back and forth electronically, not only with our federal partners, but with our state and local partners as well.

And then fourth we looked internally and evaluated ourselves internally, not on reactive stuff but on being proactive on the liaison side. How well we're sharing information, what are our relationships with our foreign partners, what are our relationships with our federal partners? And there were areas of improvement that we needed in all those areas.

And once you identify what your capabilities are and have a standard to be able to measure it and say we're at this percentage and this is where we need to go, it helps you formulate budget requests. It helps you formulate what you need in technology. It helps you to formulate exactly from a national program of what you're trying to do.

In 1998 we declared Usama bin Ladin the number one priority and the al-Qa'ida organization within the FBI. In early spring of '99 he was placed on our top ten list. And, so, we hear things all the time that the FBI wasn't focused on counterterrorism.

In addition, to that in November 1999, at no one's request but an internal review by the FBI, we created the counterterrorism division in addition to that, with our investigative services division. And so we were singularly focused on that and trying to run a national program and being able to raise our capability in order to prevent acts of terrorism as the number one thing.

We will never ever move away from being reactive. We understand that. And that's what people want to talk about most of the time is how's that case going in East Africa, or how's the USS *Cole* investigation going? But, if you step back and look at it strategically you need to have people thinking beyond the horizon and that's very difficult for all of us. And it's particularly difficult for law enforcement people. And it's very easy post-event to figure how the kidnapping occurred. I won't say it's very easy, but you have a lot more leads post-9/11 as to how they did this, as opposed to prior to 9/11. And there were red flags in the ocean out there. There were a lot of red flags prior to 9/11.

And once 9/11 occurred it's real easy to go back and pick out the red flag in the ocean of red flags and say you should have done this or you should have seen this. And a threat to aviation is certainly one of the areas that we receive threat reporting on. It was not the only area. They had threats to malls, threats to power plants, threats to assassination; across the board, we had threats coming in every day.

And if something happened today concerning a small boat attacking somewhere in one of our harbors in the U.S., we'd probably

have information about that. So it's a mass of information and it's a sea of threats. And it's like working against a maze. And if you know where the end point of a maze is, it's certainly easier to work your way back to the starting point than being trying to go through the maze and sort out all the red flags.

I'm not defensive whatsoever. I encourage you look back look. I encourage people to ask us questions and said why didn't you do this or why didn't you do that? But the men and women of the FBI that were working this in conjunction with Cofer's folks were working full-time. We were not sitting on our hands. We were not asleep over there thinking that well, this can't possibly happen inside the United States. We were aware of that.

Just a couple of other quick points I need to make. We also realized prior to 9/11 that information sharing with our state and locals is a key piece. We have 600,000 law enforcement people in the United States, and as result of October of '00 we initiated a pilot project in St. Louis where we would actually load, hopefully if we get all the kinks worked out, federal information, as well as all state and local information in order to electronically be able to use that information to connect the smallest dots in the terrorism program.

An individual stopped in St. Louis County might be the key to unraveling a terrorist plot, and that requires time and effort and technology to do that. It's not a technology issue, but it's a project that needs to be done. Post-9/11 we initiated a similar project in San Diego. We also have one going in the Northwest with three states—Oregon, Washington and Idaho. We do not have all the correct answers on those projects yet. But as we continue to work our information sharing will get better.

Just a couple of other key points over a period of time since the early '90s is the renditions. The renditions are key in law enforcement, but at the same time it is a very difficult task to render people back to the United States. We were successful in Shirasaki coming out of Nepal and several key East African fugitives that were able to get out, working not only with the CIA but the State Department, as well as our DOD.

The key point here is the FBI was a law enforcement effort, trying to investigate, bring to justice under our rules, our Constitution, crimes that were committed against American citizens. And a key point to remember in this war in terrorism, and particularly al-Qa'ida and Usama bin Liden, is the fact that sometimes the idea that not only is it law enforcement issue, it is also a national security issue. We can lock up 15 people for bombing us in East Africa. We can indict and charge individuals in the USS *Cole* or we can indict and charge individuals in whatever terrorist act that goes on, but this will not stop this.

This is a national security issue. And I'm not advocating passing the mantle from law enforcement into a national security issue, but as, Senator Shelby, you well remember on a briefing that we had with you, me and the Director of the FBI, where we talked about a very sensitive matter where we were close to getting indictment, former Senator Kerrey from Nebraska said—turned to my Director and said I'd really like to thank you for this effort that the FBI's put into this. But actually this is a national security issue. This

matter should be taken to the Administration and taken to DOD because we're never going to stop it just solely through the law enforcement side.

And, so, that's a key point I think we should remember and talk about. The other things that, real briefly, are the resources and budget. This is not in any way a criticism. This is not any way a reflection upon what we were trying to do and what we ended up getting or an excuse of what happened about 9/11. But I would turn your attention to our request, the FBI Director's request in the '00 budget. I'm not going to talk about what made it actually up here, the numbers, but I can tell you what I, head of the Counterterrorism Division, requested. And I'll be real brief about this and I only have a couple of more points.

In '00 the FBI requested 180 agents and 680 for support in the '00 budget. What comes out the other end approved by Congress is five support people. In the '01 budget we asked for 30 agents, 397 support people. And what comes out the other end is 0–0. In the '02 budget we asked for 203 agents, 104 support, and what comes out the other end is 8 agents and 56 support people.

If you add those figures up for just three years you come up with close to 2,000 individuals that we asked for, a breakdown of that of about 430 agents and 1,482 support people. And what we got on the other end was 69. That begs the question and I'm not here to answer that question, is would this have made a difference prior to 9/11? Would we be here talking about the Phoenix memo or something else if the identification and the recognition of the resources we needed?

And I know Congress had other issues. And I'm a realist. We had other programs going. We had a drug program. We had a gang problem. But yet at the same time it comes down to resources. And what we asked for and what we received was the figures.

Does that explain why—and we can discuss these figures—why we only had one strategic analyst looking at UBL? Does it explain the number of people that we had working UBL? I'll leave that for further discussion.

Mr. Chairman, I think Congress recognized the need that we needed resources because in the '02 supplemental, right after 9/11, we received 297 agents and 823 support people. I'll leave that at that.

The last area, in closing, is we've heard some talk, some perceptions that we didn't do enough about the airlines threats. And I think I've covered that. The airlines threats were out there, as well as the mall threats, as well as the suicide bomber in 1997, as you recall, that attempted to go into the New York subway and blow himself up, as well as other things. Continued, continued, you know, repeated threats that we received in working with the Agency.

I'm not here to say that there were not clues or red flags that we should have picked on. But it is a sea of red flags. The other thing is that there's a perception that we, the FBI, never briefed the Administration that al-Qa'ida could attack us in the United States. I will tell you that perception is absolutely incorrect. If you looked at just the fact that we had been attacked in the World Trade Center in '93, if you looked at Oklahoma City, if you looked

at the Ressam individual who was going to set off a bomb in LAX, you understand clearly that we were vulnerable in the United States.

Looking at the pattern before 9/11, of all the pattern, I was convinced we were going to be attacked. As a matter of fact, we had a discussion with the Director about this prior to, long before September 11 about pre-positioning people overseas, FBI agents. And I was convinced at that time that the probability of an attack against us was great, but I was also, the majority of my thought process was that it would be overseas. But we had never at any time told anyone that we could not be attacked inside the United States.

The last two points is it continues to be that we're all reactive. And if you've heard some of this, and I'll be glad to explain this more, we were moving in the right direction in being proactive. We were trying to look over the horizon. We will always be reactive because of the crimes we do, but we also have people that look and think about where is the next threat and how's it coming and what we should do about it.

And, in closing, I guess the best thing is that somehow or another people think that we were asleep at the switch. We have dedicated men and women. We have individuals, field agents, support people, professional staff that have absolutely worked themselves almost to death over this problem. And just as Cofer said, I'm extremely proud of those individuals. And I'm extremely proud of what the work of the FBI has done since the early '90s in the counterterrorism program. And we don't do everything always right. But, in the realm of counterterrorism that's a judgment that we're based up or evaluated on.

I've used this analogy before. We're like a soccer goalkeeper. We can block 99 shots and no one wants to talk about any of those. And the only thing anyone wants to talk about is the one that gets through. And I understand that. I'm not asking for sympathy on that, but I'm telling you what reality is. And so our folks are very dedicated and work very hard about this.

The last point is somehow or another word's out that somehow that the FBI and CIA conspired or had information prior to 9/11 that could have prevented this and that we were not interested in pursuing that. I can't tell you how I wish we could have prevented this. I worry about. And over the period of time, even prior to 9/11, it was always the thought process of what have we missed, what are we doing that we need to do better. But I'm not responsible for the individuals, the 19 individuals that got on those planes and the al-Qa'ida organization that pulled this plan off.

However, I think it's important to remember that we did the best we absolutely could with the resources we had. I wish we would have had technology that could have instantaneously evaluated all the documents. I wished we had had 150 analysts assigned to FBI headquarters. We didn't. But we did the best we could. And that's not being defensive at all, Mr. Chairman; that's being very honest with you.

I thank you for this opportunity. I'll be glad to answer any questions you might have.

Chairman GOSS. Thank you, Mr. Watson. That also was compelling testimony and very helpful to us.

Our procedure is now that we assign 20 minutes each to pre-selected, designated lead questioners and for today's hearings our questioners are Representative Gibbons, Senator Durbin, Representative Reyes, and Senator DeWine, in that order. And after they've completed their questioning then we'll proceed with the list of the other members using the Senate system, which is in front of me.

The order of arrival we have is Representative Peterson, Representative Roemer, Senator Levin, Representative Hoekstra, Senator Bayh, Representative Castle, Senator Feinstein, Senator Roberts, Representative Boehlert, Representative Harman, Representative Burr, Senator Mikulski.

What is going to happen, I am advised, is the House is going to have a series of votes starting about 11:00 and so I would suggest that we can probably get in Mr. Gibbons' questions before that and if you can continue in that case while we go over there we can keep the questioning going.

Thank you very much, gentlemen.

Mr. Gibbons, the floor is yours, sir, for 20 minutes.

Mr. GIBBONS. Thank you very, very much, Mr. Chairman.

I appreciate this opportunity and I do want to welcome our witnesses this morning, Mr. Watson and Mr. Black. Thank you for being here before this Committee to enlighten us. And also thank you for your service to our country.

Not often, I'm sure, do you hear people tell you thank you enough for what you do and the commitment that you've got. I want to say at the outset of this hearing that I believe that your experience, your dedication and the time you've spent in the jobs that you've held, both in CIA and the FBI, in counterterrorism have made you the proper witnesses to be here. I think your knowledge level and experience bring what we need to hear on this Committee. And we look forward to that.

Let me say that the purpose of this hearing and the purpose of my questioning is to identify the systemic problems at the foundation of our Intelligence Community. This is not a finger-pointing exercise and this certainly is not a witch-hunt. This problem is larger than any one individual and it's what we are out to do, is to find solutions to making sure that tomorrow's attacks and tomorrow's problems are solved today.

The issue before us is whether we had not just the right people or the number of people but whether we had the right skill sets and whether we had the right operational attitude in some of our agencies to allow us to get to the critical information that would be necessary to fight this.

May I say to both of you that if I do probe or ask a question that requires a consideration of national security for clearance, please note the question and we will be happy to receive your answer in the closed session that we have this afternoon.

Mr. Black, I would like to start with you, if I may. And, again, welcome to our Committee. And let me say that you've always been a staunch advocate before our Committee. This is my sixth year on the Intelligence Committee and I can say to those watching that

you have come before our Committee time and time again as a staunch reporter of terrorist activities, what this country was facing, what we needed to do. My question would be, was there an articulation of your interest in the terrorist activity and the needs of our agencies dealing with terrorism communicated to superiors and how was that received?

Mr. BLACK. Well, my superiors, of course, are the Director of Operations, Jim Pavitt, and the Director of Central Intelligence, George Tenet. And I would tell you, sir, that there is one person who has been more frenetic in his actions and more concerned about counterterrorism than I, and that's the Director of Central Intelligence. My leadership certainly understood the threat. They were consumed with it. They were fixated on it. They attempted to allocate resources. As I recall from my statement, I did say that we were the first among equals, the entity not to be cut. I think that from a resource pie we certainly got our share and a bit more.

I think the concern was that this is a long war. My Director declared it, declared the intelligence war in 1998. He took them very seriously. We hire people against it. We train for it. But I think the issue before you for your consideration would be this is going to be a long struggle. And it's certainly going to see a lot of us out in terms of longevity. We need to build a base so that we can move forward without people like Mr. Watson's special agents getting burned out or our personnel running on empty year after year. This is no way to run a system, sir.

If you're going to fight, you want to get the right number of troops. And so more is not necessarily the only answer, but certainly more is required. But, I think we also have to look for the resource base to move forward. Thank you.

Mr. GIBBONS. So what you're telling our Committee is that your advocacy of the threat posed by the terrorists was communicated to your leadership in a need for more resources in the application of the war against terrorism beginning in 1998.

Mr. BLACK. I actually came to this job in 1999. But——

Mr. GIBBONS. Beginning in 1999.

Mr. BLACK [continuing]. The answer to that is yes, they were certainly aware of my concerns. They were as equally concerned and, being by their side, their actions conformed to their concerns.

Mr. GIBBONS. Now you also mentioned that budget reductions in 1999 saw or forced an approximate 30 percent cut in Agency operations. This is in opposition to what we're hearing in terms of the rise in the advocacy of the threat. Can you explain why administrative cuts were requested to the Agency when there was an increase in the level of threat knowledge?

Mr. BLACK. Well, I'm only going to speak for the Counterterrorism Center. But I will tell you that the Counterterrorism Center essentially was able to perform at the level or was resourced at the level that we achieved as a result of supplemental funding. The one-year monies I thought were for, in terms of the mission, again as I stated in my testimony, was relatively modest. That appeared to be how we conduct affairs in the government. We are the recipients of this type of action, sir.

Mr. GIBBONS. Let me go back to something you've indicated, that during your time as the head of the CTC, chief of the DCI portion

for CTC, personnel numbers. Oftentimes we hear that you had the equivalent of three infantry companies on the line fighting this war. My question to you is, did the numbers of people you had have the right skill mix with regard to language capability, with regard to operational capability and skills needed to be able to gather the appropriate information?

Mr. BLACK. I think that we had a very good skill mix. We hire towards this. We emphasize those attributes that are going to be effective overseas. That's what we do.

Mr. GIBBONS. Well, let me ask the question then. Did you have the right numbers of people that could speak Arabic, Pashtu, Urdu, Farsi?

Mr. BLACK. You always need more speakers in those languages. We have gone out of our way, increasingly over the time, to specifically target these types of individuals with these language skills. In fact, I can tell you that the Counterterrorism Center even advanced through the appropriate offices its own hiring campaign where we advertise in newspapers specifically looking for people interested in counterterrorism and that had the right language qualifications.

Mr. GIBBONS. Okay. Many times in our intelligence gathering overseas we often use liaison type operations. When is it essential to use liaison operations? And when is it or when should we use efforts for unilateral type operations?

Mr. BLACK. I appreciate that question. It's a very important one. This is a global war and we are involved in essentially intelligence combat. When you go to war it's usually a good idea to have as many allies on your side as you can. There's a commonality of interest here. Most countries are against terrorism and we in the CIA have developed a constellation of allies that certainly, as I speak right now, is extremely effective. When you need to do it yourself is when there is no friend to help you, there is no alternative besides taking high-risk actions on your own.

I must say we conduct the normal business of intelligence operations at all times, but counterterrorism is a little special in that we all need to cooperate, and we do. But, there's no reluctance to, as you say, unilateral operations. This is what I do for a living. And there is no hesitation certainly under the leadership of this Director. We launch very quickly whenever it's appropriate.

Mr. GIBBONS. Do you feel there was an under-reliance on unilateral operations between the periods of 1999 and 2001?

Mr. BLACK. No, I do not. I believe that with the resource base that we had that we maximized our operational product with exactly how we did it, which was a good mix, an appropriate mix at the right time.

Mr. GIBBONS. So you don't believe that we could have used more unilateral operations in that time period?

Mr. BLACK. Well, we could absolutely. We would need the people to do them.

Mr. GIBBONS. So the issue was then we go back to if you had the people with the right skill mix to gather that information and to do those operations.

Mr. BLACK. Yes, sir. If you had the right number of people with the right skill mix.

Mr. GIBBONS. Well, that's the issue.

Mr. BLACK. Yes, sir. There you go.

Mr. GIBBONS. That's the bottom foundation issues. No matter how many people we have, we've got to have the right skill mix, whether it's language skills. And I'll ask you again do you feel that we had the right number of language-skilled people to conduct the right kind of operations in a war against terrorism?

Mr. BLACK. We always need more. My opening testimony stated that we need additional personnel to be as effective as possible overseas.

Mr. GIBBONS. So I guess the answer is, no, we didn't have the right numbers of language-skilled people. We needed more.

Mr. BLACK. Yes, correct.

Mr. GIBBONS. Okay.

Mr. Watson, I want to turn the question to you in the time I have. Do you feel that the FBI was overly focused on gathering information for prosecution purposes rather than focusing on terrorism prevention prior to 2001?

Mr. WATSON. I think, as I've indicated, in 1998 that the light really came on for me personally, as well as an organization that we were going to be involved in the collection of evidence. We were going to be involved in investigating post events. But we also realized in 1998 the need to be proactive. And there's a blending of that. And that's a cultural change within the FBI. And in order to figure that out that's why it was so important to be able to evaluate and have an understanding of exactly where you were.

So the answer to your question is 1998—starting in '98—and this was a very difficult process because of what we had always done. And then you try to talk to individuals or even outside the Bureau about well, what do we think might happen across the horizon. And you look at the cyber arena, and I'm trying to answer your question very specifically.

We looked at that in '98 because NIPC, the National Infrastructure Protection Center, was under the counterterrorism program at the time. What in the world are we going to do to try to get to where we need to be by '05 in just the cyber arena? And people started thinking about it and I started thinking it, that if we don't do it we'll be here in '05 and we won't be able to figure out cyber issues and they'll probably be no crime or no criminal act committed that doesn't involve cyber.

So, to answer your question, heavy, heavy on the collection of evidence and investigative side. But starting in '98 it was very clear to me that you had to have a vision and you had to look beyond cases. And if we were just running out and investigating cases, that's all we would ever be doing. And so some smart people got together and we decided what is the threat and how do we address it.

Mr. GIBBONS. Let me ask both of you to answer this question because I think it's clear that both of you have definite and distinct approaches to counterterrorism in America. I would ask each of you to identify how you measure success in your fields with regard to what you've done since 1999 or '98, whenever you came to those. What are your success measurements and benchmarks that you es-

tablished to allow you to identify whether what you were doing was correct?

Mr. WATSON. Do you want to go first or you want me—who?

Mr. GIBBONS. Mr. Watson, if you want to go first, that's fine.

Mr. WATSON. Okay. That is a very fair question and I'll be happy to answer that. I think in order to evaluate the counterterrorism program with the FBI and if you look at prior to '98 and even post-'98 you had to have very specific criteria. And if you rely upon the number of arrests, number of convictions, or the number of acts of terrorism prevented, I think you might get a faulty representation of how well you're doing.

And so the idea was, starting in 1998, was to see how well and at what criteria. So we developed specific criteria to measure and evaluate ourselves at every field office. And it was no longer acceptable for a special agent in charge to be assigned to some field office that had worked drugs all his life who is now responsible for counterterrorism in a certain state or area. He needs help with that or she needs help. So we developed specific measurable criteria to say this is what we want you to do in Little Rock, or whatever city it was, and we're going to measure that. And I'm going to hold you accountable for that action.

And this is where, when you put all that together, is a huge management success to be able to say exactly where you were in the process and exactly what resources for the first time we needed and what were the technology problems. And do all our field offices have enough analysts? And you measure that and we measured that through a series of reports every six months provided to the Director.

Did that answer your specific question?

Mr. GIBBONS. Yes.

Mr. Black.

Mr. BLACK. Sir, essentially in my business you're looking at a global counterterrorism program. There are a lot of criterias of success or measurements towards success. There are things such as the number and the quality of foreign relationships that you have overseas, the number and quality of assets that are providing you insightful counterterrorist information, also the support and development measurements, the selection of appropriate officers, as you mentioned before, of language criteria, the training given and assignment to specific regions to maximize the qualities and skills of that officer against specific targets.

In the end, it is my personal view that a programmatical approach is a good one in counterterrorism because this fight's going to be long. It's going to be very difficult. It's going to consume the time of a lot of our officers, as well as resources and be looking at relationships. You're looking at your own people conducting these operations, as well as the product, which is the reporting from assets to be analyzed by analysts and the end result objective, which is very difficult, but which we do achieve and we attempt to achieve always, is to develop that tactical detailed intelligence so that can be passed over to law enforcement or other intelligence services so that we can preempt and disrupt specific attacks and save lives.

Mr. WATSON. Congressman, may I add just one other thought that I would like to, referring to your question? I think Senator Shelby and Congressman Goss are good examples. I'll use both of you in this. I mean when I would come up and appear before you I think the question would be for the FBI, Mr. Watson, what's your budget and the numbers were so and so. Well, last year how many acts of terrorism did you prevent? What did we get with that money? And my mind would race real rapidly. We had the case in Sacramento. We had the guy down in Tampa, Florida. Well, if we cut your budget in half, would we get half that many? If we doubled your budget would we get double the number of preventions?

And the answer is no. The answer is you have to be working at the highest capability, the maximum things that the FBI could do. So the measurement is how well are you doing on the capacity? And if you're there, then that's all you can do. But if you're not there, that's the measure of standard in a counterterrorism program. It has not anything to do—well, it does, and I don't want to downgrade that—by a specific number of statistics. And we've long been driven by statistics. It's being able to project and it's being able to understand what you're capacities are. And we were hurting. We were hurting in the areas of training and analysts, those things. I just wanted to make that point.

Mr. GIBBONS. Thank you.

Mr. Black, I want to go back to something you indicated. The product of your measurement was reporting, increased reporting as part of that product. It seems to me that there was a dramatic rise in the number of reports that were presented to the Agency from the field with regard to terrorism over this period of time.

My question is, do you feel that the threshold of reporting was low enough or so low that it presented you with a flood of information that could not be properly analyzed, it could not be properly disseminated to the Intelligence Community, that would have been able to be verified and substantiated and corroborated because of the sort of frantic pace that we were under to get information and any information that we could? Did that have that effect—in other words, preventing it from being properly analyzed, properly disseminated and distributed to our Intelligence Community?

Mr. BLACK. We're obviously in the business of collecting intelligence and disseminating intelligence. When we collect intelligence information that is new and it's considered at the time to be accurate, then that is passed along, with the appropriate review and processing, and that would go to our analysts. I seem to always return or come back to the same thing, and that is that the people are the most important part of all of this. All the intelligence we collect is reviewed and processed. It is disseminated. We're not going to be in the business of withholding intelligence information from a validated customer. There is a little secrecy involved in this, but if it is caveated, if we feel and essentially think it's necessarily completely true, we may say that.

Mr. GIBBONS. Mr. Chairman, I see that my time has expired. I want to thank you for the opportunity.

Chairman GRAHAM [presiding]. Thank you, Mr. Gibbons.

Senator Durbin.

Senator DURBIN. Thank you very much, Chairman Graham, and I want to thank our two witnesses for joining us today. And let me say by way of preface to these remarks that, as I'm sure you would not question the commitment of Congress, the House and the Senate to the security of the United States, we certainly don't question your individual commitment nor the commitment of the fine men and women who work in your agencies. You are truly on the front line of protecting this great nation. And many of your colleagues risk their lives every single day in that pursuit.

We should never minimize that, nor ignore it in any of these hearings. And I think we should make a point of saying that the purpose of this joint inquiry is not only to raise questions about your agencies and the Intelligence Community and the law enforcement community across America, but to raise questions about Congress itself and what we did or failed to do that might have had an impact on September 11, 2001. Some of these will be hard and embarrassing questions, but they have to be asked and answered.

At times judgments are made, and in retrospect they might not have been proper. The same can be said of Congress as can be said of your agencies. And I think it's those judgments that we are exploring in the course of these hearings. So I hope with that caveat and with that understanding that you'll bear with me as I ask a few questions that will try to get into some detail about issues which still remain unresolved in my own mind.

There's so much of this that we are discussing that is subjective—decisions made by men and women at a given time in history based on information they had before them, based on what they believe to be a threat to the United States and what they believe we should do to respond. There are some things, though, that are objective and I think we should start there. Because I think, Mr. Black, that's where your testimony started.

And the objective element here relates to the number of personnel who were dedicated to the war against al-Qa'ida, a war declared in December of 1998 by DCI George Tenet. In a closed hearing on September 12, 2002, Mr. Black, you testified about not having enough people in CTC. In a public hearing on September 20 we heard from a CIA officer who talked about, "misses that happen when people, even very competent, dedicated people, are simply overwhelmed" by their workload.

Then, shortly thereafter, a press release was issued by the Central Intelligence Agency. This press release of September 19, 2002, really raised a question as to whether or not the Joint Inquiry was correct in saying that the CIA was inadequately staffed to meet this challenge. I guess the nature of my first question to you relates to these staffing levels.

And I'd like it if you could clarify this point, if you can. First, did you, Mr. Black, play any role in the preparation of that September 19, 2002 press release by the CIA?

Mr. BLACK. No, I did not. You know, press business is not my affair.

Senator DURBIN. So, you weren't called on to provide information about facts or experiences that related to their——

Mr. BLACK. I believe that information came from the Counterterrorism Center. As I did testify, I left the Counterterrorism Center

in May. And there's a new chief and I am confident that this information came from there.

Senator DURBIN. Let me ask you this. The CIA press statement indicates that prior to September 11, 2001, there were 115 analysts throughout the CIA working terrorism-related issues. You said before our Committee earlier that the CTC didn't have enough people. I really have to ask you which version we should stand by.

Mr. BLACK. Right.

Senator DURBIN. Your conclusion or the conclusion to the CIA press release?

Mr. BLACK. Unfortunately, in my view, probably both. There is a difference between the analysts that are assigned within the CTC, as well as analysts that are outside CTC and other components in the CIA that do provide analytical support. If you're looking at things such as specific terrorist equipment or sort of regional analysis of terrorist trends, things like that, these personnel spend a considerable amount of their time on counterterrorism issues.

So I will say this is a dangerous area. Counterterrorism, as a center, does specifically and only counterterrorism. There's a tremendous amount of support to this effort that comes from outside. And we work, generally, through others.

Senator DURBIN. The CIA press statement referenced 115 analysts. Is it fair for me to conclude from what you've just said that that does not mean full-time analysts dedicated to this war against al-Qa'ida?

Mr. BLACK. I have not read the press release. And we use analysts in a lot of different ways. I would have to check and look at the numbers. I'm not familiar with it. We have—our analytical personnel do a lot of things. They do operational support. They do targeting. They do only analytical work. So I would have to check and I'd have to take that for the record and get back to you.

Senator DURBIN. Thank you. I wish you would. And also, the CIA press statement says that the CIA's special UBL unit tasked and directed 200 agency offices worldwide to work the counterterrorism target. The same question applies. How many of these were really full-time dedicated people working on it? How many of them may have been tasked to do only part of their work related to UBL? So if you would be kind enough to provide that information as well.

You also raised in your opening statement a question about cash resources. And I read it carefully, just having been given it this morning, but I read it carefully. And it indicated, I think, some serious problems that you face when you became chief in 1999 which resulted in an effort to cut subordinate units except one at least 30 percent. Let me ask you this question.

This Committee prepared the fiscal year 2002 authorization bill last summer, in 2001, prior to September 11, 2001. We were told that the CIA had excess money for counterterrorism left over from the supplemental appropriation. The CIA explained that they did not intend to spend that money in fiscal year 2002 but wanted to hold it for use at some future time. Are you able to testify as to whether or not there was excess money unspent on counterterrorism during that period of time before September 11, 2001?

Mr. BLACK. No. Frankly, I don't recall. This is a very complex issue that's three years. Generally, if there is money at the end of the year it becomes an issue of what to do with it. I do not recall ever having excess funds that I was—of which I had control that was excess. We were generally always looking for more money to keep our machine going.

Senator DURBIN. Thank you for that.

Let me address, if I can, the issue that's been raised about the cooperation between your two agencies, the CIA and the FBI. One of the questions relates to this now famous June 11, 2001 meeting, which you've made reference to, Mr. Black, in your testimony. And you allowed as to how the FBI presented photos at that meeting for the CIA to consider.

The Joint Inquiry staff statement noted that a CIA analyst who attended that meeting of CIA and FBI personnel would not share information with the FBI unless he was specifically authorized to do so, when, in fact, that was the purpose of the meeting, to share information. Why wouldn't a CIA analyst be more forthcoming with information of value to the FBI? Is this analyst's attitude typical of personnel at your agency or the relationship with the FBI?

Mr. BLACK. It could not be—first of all, I don't believe this happened. The CIA is in the business of collecting and disseminating intelligence. And, in this case, the CIA analyst had been briefed that it was the laws and regulations of the land that prevented this information being passed over to a criminal Bureau agent. I'd have to defer to Mr. Watson on the difference between intelligence and criminal matters inside the FBI. But, the guidance, as I understand it, comes from the FBI.

Senator DURBIN. I need you to clarify your answer. First you said you didn't believe it happened. And, second, you believed that if it happened it was because of laws and rules that prohibited the exchange of information. Which conclusion are you giving us?

Mr. BLACK. What I'm saying is that the CIA analyst from CTC was told that, by the FBI, was told that this was an intelligence matter and that the criminal people should not be tainted by this because there could be prosecution involved.

Senator DURBIN. That certainly raises, I think, an interesting policy question which we have circled so many times in the course of this Joint Inquiry about whether existing laws, policies or, let me just say, the culture of different agencies creates obstacles to the sharing of information necessary for national security.

Mr. Watson, one of the things that came to our attention with the arrest of Mr. Moussaoui in Minneapolis was the statement by the FBI agent that because of her frustration in dealing with FBI headquarters she decided to take a bold, and somewhat dangerous, move by suggesting that the CIA be contacted directly so that information could be found about Moussaoui's background to justify arrest and detainment. Are you aware of that statement by the FBI agent that's been given to this Committee?

Mr. WATSON. I know this is pending prosecution, so I'll be very limited. But I'll try my best to answer that question. What you have in a situation like that, without being absolutely specific about it, is that this relationship with the CIA that we have is top-down driven. There are always—and it doesn't matter what pro-

gram you're looking at—there are always bumps in the road. But the value is that you can get it to the top. And there's confusion about what can be shared and what can't be shared, what's taken out for FISA or what's developed in a criminal case.

I'm not sure that everybody understands all those rules. But if it's a hindrance, they certainly have the opportunity to raise that up the highest levels of the FBI. And if someone would have told me that or if someone would have called Cofer about any of these problems, particularly the Moussaoui deal or whatever, then those matters would have been resolved.

Now I don't know if that was your specific question about Moussaoui or not, but I'll come back on that.

Senator DURBIN. I understand what you're saying.

Mr. WATSON. Okay.

Senator DURBIN. And frankly that is the solution. It has to start at the top.

Mr. WATSON. That's right and if it's not top-driven, it's not going to work.

Senator DURBIN. But the most important element is that it reaches the bottom so that the agent in the district office understands what his or her authority is and how far they can go in cooperation with other agencies.

Mr. WATSON. But if you look at, though, post-98 and what we were trying to do in building capacity, one of the criteria for the Minneapolis office is do you meet with your NR-counterparts on a regular basis. Do you have a working group with all your federal folks about counterterrorism? And so if there's an inference there, oh, who are these people in Minnesota from the CIA, that's their problem and that's a performance issue that has to be addressed from my perspective. And that's what we're trying to do.

Senator DURBIN. Thank you. Let me move from staff performance to the performance of technology. I have paid close attention now for over a year to what I consider to be the sad state of technology in your agency. I don't know who has to shoulder the responsibility for the current state of affairs, but it is a fact. And testimony that we received here as well as in the Judiciary Committee suggests that information technology is primitive in the Federal Bureau of Investigation. It is improving because of the TRILOGY project and others.

But let me ask you specifically, Mr. Watson, if we can overcome any cultural obstacles to sharing information, how close are we to the point where we actually have computers in communication?

I mean we have received testimony, for example, at a hearing on Tuesday, the FBI confirmed that there are currently 68,000 outstanding unassigned counterterrorism-related leads at the FBI dating back to 1995. How much of this is attributable to the current state of the FBI's information technology? And let me also add at the same hearing an agent stated that due to technological limitations there are probably, in his words, hundreds of communications with his name on it that he's never seen.

Tell me how bad is it and how much of an obstacle is this to really winning this war on terrorism?

Mr. WATSON. I think that's a fair question. And I think some of those numbers there are a little distorted. I probably need to clarify

that. From a technological standpoint, I'm not a technocrat. What I am is an operator. And we have been very specific about what technology we need to fight the war on terrorism. I can't address exactly, you know, do we need this type of device or technology? I think we're moving in that direction. Do we have that capability? We recognize we did not have that capability way back even before 1998.

Senator DURBIN. Do you currently have the capability?

Mr. WATSON. To do what?

Senator DURBIN. To deal with terrorism with the most modern information technology available.

Mr. WATSON. With the most modern, the answer is no.

Senator DURBIN. And how far away is the FBI from having at its beck and call the information technology resources which will make us effective in dealing with law enforcement in the war on terrorism?

Mr. WATSON. If you're asking me for a timeline for the TRILOGY project, I do not know the answer to that. I know money's been appropriated for it. I know we're moving as fast as we can in that direction. Is it a problem for us? Has it been? You're absolutely right.

Senator DURBIN. I can tell you that before the Judiciary Committee the person who is in charge of this now tells us that she is hopeful that by mid-2004 we will reach that point. That, I think, is a sobering analysis of the lack of progress at your agency. And I have tried mightily, even in the Department of Homeland Security bill currently pending on the floor, to make this a higher priority. Once we have the right culture, once we have the dedicated men and women, for goodness sakes, they need the weapons in their arsenal to fight. And the FBI now has one hand tied behind its back, and it's using primitive equipment.

Let me at least ask you a question related to the same thing. When the FBI receives new names during the course of a terrorism investigation, its standard practice is to run the names through your database to determine whether there's any information about the individual. Arabic names are often spelled many different ways in English. I've seen that in the press. Given the state of the FBI's information system, what kind of problems does this present for the FBI in the war on terrorism?

Mr. WATSON. The spelling of the names and the ability to run data in there? A good answer to that is to say do we have an analytical software on top of our ACS database. The answer is no. Is that technology available off the shelf? Yes, it is. You know, and I'm not smart enough on the TRILOGY issue to talk about that. But our information-sharing project in St. Louis is exactly that.

We take all the Illinois State Police records. We take all the St. Louis Police records. We take our data and load it in there. And then if we have a bit of information that says tattoo on left arm it can immediately read those documents and it's not a point and click system where you get a 1,000 documents Xeroxed back where you have to go look at them. It analyzes those documents. It is a tremendous weapon and I hope we get there.

And I hope we get there before '04.

Senator DURBIN. It's a weapon that is available from most computer stores?

Mr. WATSON. I should not have said, probably, that it's off the shelf stuff. But, I know what we're trying to utilize in St. Louis and I don't know the security aspects of how to protect that. I mean they are probably reasons why you can't walk down to some technology place and buy that and put it on the FBI's equipment. I understand that.

But I'm saying, though, that is a tremendous weapon that will be, particularly with the information sharing to the state and locals and the 600,000 locals.

Senator DURBIN. I just want to be as candid about this.

Mr. WATSON. I do too.

Senator DURBIN. This is an issue—and I thank you for your candor. This is an issue which has been raised repeatedly by myself and others to the highest levels of this government, and still the answer is so unsatisfying—to be told that there is computer technology available in most computer stores across America that is not available in the premier law enforcement agency in America to search databases for names of dangerous would-be terrorists. And I won't dwell on it because it isn't your particular responsibility.

Mr. WATSON. Well, I'm glad that you're frustrated by it, but from an operational standpoint, I'm doubly frustrated by that.

Senator DURBIN. Well, let me ask you if I can, to—let me just conclude by saying I think it is fair to say that if you can't search for the information within your agency——

Mr. WATSON. Well, we can. We can search for our information.

Senator DURBIN. We were told that word search in the FBI computer system requires eight screens today, eight screens before you can search.

Mr. WATSON. I don't know who told you that, but if you're talking about being able to search ACS, we can do that. We have that capability and we can link words up with that. We don't have the ability for it to read all the documents and say six foot one man, Abu whatever and spelling of that or John Smith in Birmingham, Alabama.

Senator DURBIN. Or flight training school. If you're looking for——

Mr. WATSON. We have some capability of word association now currently, but it's not where we need to be.

Senator DURBIN. I agree.

Mr. WATSON. We should be able to say flight training schools and we should be able to say I–94s. I mean, you're right. We're talking about the same thing.

Senator DURBIN. I'm not going to quarrel with that. Let me ask you then——

Mr. WATSON. No.

Senator DURBIN. About questions raised by General Scowcroft and Mr. Berger about some of the priorities within the FBI in terms of what is viewed as good performance in the FBI and what is not. And I think those questions kind of go to some of the earlier observations you made as to whether or not when it comes to evaluating the work of the FBI whether or not, as General Scowcroft told us, that the best FBI agents do criminal investigations, not terrorism. Was that a mindset or is that a mindset within the agency today?

Mr. WATSON. And he was basing that upon what?

Senator DURBIN. Basing it on his experience.

Mr. WATSON. I think you might could draw that association 20 years ago. Counterterrorism work is extremely difficult. It is not easy. General criminal investigative work is a lot less—I need to probably be careful with my words here, is probably not easier, what's the word I'm looking for, Michael? Easier. Man, I talked around in a circle on that one.

Is it somebody that culturally—in the 1960s and '70s we hired people through the—even into the '80s—to come into the FBI and the image was that was chasing bank robbers in Tuscaloosa, Alabama or solving a kidnapping or working white collar crime or whatever. Yes, that's why we need to look at the skill sets of agents.

I take exception to the fact that somebody says that the better agents are working criminal matters. Those are difficult cases. You have to be extremely organized and you have to be, particularly in counterterrorism and counterintelligence field, to outthink your opponent. And it's easy to react on criminal matters.

Someone calls up, the bank's been robbed. Someone calls and says that somebody scammed me out of $100,000, as opposed to where will al-Qa'ida attack us next. And I take exception to that statement and I take exception with the understanding that he's probably looking years past. That's not the case. The men and women we have in the FBI working counterterrorism are the absolute best we have.

Senator DURBIN. I think that's a very fair conclusion on your part, too, that it is more difficult to be analytical in perspective in terms of the threat than to deal with the specific crimes that have traditionally been assigned to the FBI.

Thank you very much, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator Durbin.

Our House colleagues are still in a series of votes. So our next questioner will be Senator DeWine.

Senator DEWINE. Thank you very much, Mr. Chairman.

Let me first thank Mr. Black and Mr. Watson for your service to this country, and please convey to people back at headquarters and the field our thanks. You both articulated very well the pride that you have in your men and women, and we have that same pride. If you can convey that to them, we would appreciate it very much.

To Mr. Watson, let me say a special thanks to you for your many years of service as you begin your retirement. We certainly wish you well.

I know that to our witnesses today and the witnesses that we've had during these hearings, to them and to you, this committee must look like 37 Monday morning quarterbacks. And we all know how much players and coaches dislike Monday morning quarterbacking. But I guess to some extent that is the nature of inquiries such as this.

In my 20 minutes today I want to focus on the future. Because, as we all know, no amount of Monday morning quarterbacking will change the tragedy of September 11. I think it's only useful to look

at past mistakes so that we can learn from them, so that we can take steps to prevent a future September 11.

What has been unspoken, Mr. Chairman, members of the Committee, what has been unspoken in this room throughout these public hearings is this. Whatever intelligence failure there was was a failure not just of the intelligence agencies, not just of the FBI, but also a failure of Congress and a failure of Presidents. There's been a failure to prioritize. It's been a failure to have enough vision. It's been a failure of resources.

In the 1970s many public hearings were held and I happen to believe there were some good reforms that were made, but I also happen to believe that there was a chilling impact made on our intelligence operations. And the value of covert operations and the value of good human intelligence was certainly de-emphasized. At the end of the Cold War, the peace dividend, that term was used. That peace dividend was taken out of the hide not only of the defense of this country but also out of our intelligence agencies. And sometimes we forget that.

We simply did not understand the new world that we lived in. We didn't understand that the world that we were living in was just as dangerous as what we all grew up in. We grew up in the Cold War. The enemy was communism, the Soviet Union. We understood it. We fought it. We won. We didn't understand that there were other enemies out there. We understood it, but we just didn't, I guess, react.

We didn't understand the need for covert action, the need for human intelligence. They were just as important now as they had ever been. I guess in a sense we thought that the long twilight struggle that John Kennedy talked about was over. But the danger to freedom does, in fact, continue. It is out there.

We simply did not provide the resources. I have gone back. I've gone back to 1990, 1988 and looked at the budget figures. And I'm not going to talk about those budget figures in specifics today obviously. But simply what you find when you looked at what the President proposed and what Congress did, what was enacted into law, you find that frankly there is enough blame to go around for both Congress and the President, the Presidents. None of us really got it. You know, we just didn't provide the resources.

Let me ask, if I could, Mr. Watson, you talked about resources. Let me ask actually both of you, both Mr. Watson and Mr. Black, a specific question and that is how much bigger should the counterterrorism units be if we're serious about providing defense. Mr. Watson's made a very good point; there are no guarantees. We understand that. We can't guarantee we're going to stop every terrorist attack. But, we've grown. We've reacted. But if we look at this the way we ought to be looking at it in Congress and the way your departments, agencies should be looking at it, where should we be two years from now, five years from now? What kind of growth should we expect to see?

Mr. Black.

Mr. BLACK. Yes, sir. The key point, at least from my agency's end, is that I need to underscore that it is more than just the Counterterrorism Center. The Counterterrorism Center essentially is a resource provider. We provide expertise. We provide people

with special languages, special skills. When the going gets tough, we get called in, things like that.

We operate essentially through others, through the Operations Directorate and our field stations. So the answer actually is that we need to increase the base for the long haul. We need more resources for the Operations Directorate upon which CTC can achieve its objectives. I would say everything at that—just me personally talking, I'd say the organization could easily absorb a 100 percent increase in terms of personnel and resources.

Senator DEWINE. Where you are today.

Mr. BLACK. Where we are today. And that should not be—I know you're very interested in this, sir, but that should not necessarily be considered the end. That is a good beginning and that's an absorption rate and that could take us for the next three to five years.

Senator DEWINE. I think your point is very interesting. And you've made this point to me in private before, that we're not just talking about the Counterterrorism Center itself, that you have to operate with support around the world.

You've also made the point to me, Mr. Black—and I won't belabor it—that you cannot increase your spending without increasing what surrounds you, but also vice versa.

Mr. BLACK. Also. We are dependent on each other, us being the smaller partner.

Senator DEWINE. So when we examine your budget we need to keep that in mind?

Mr. BLACK. If you would, sir, that would be good.

Senator DeWINE. Mr. Watson, do you want to comment on that at all? I know you don't like to get into a lot of speculation.

Mr. WATSON. Sure, Senator. Something in your introduction though I would like to reflect back on real quick. And I think a lot of times we lose sight of the fact. During this period of time if you look at it and we used to talk about it, Mike Rolince and I used to talk about this, is that we're pushing a program where we get up and actually admit that more Americans were probably, you know, murdered in Chicago than killed as a result of terrorist acts against Americans. And so, that perspective is a lot of where we were in the process. Because the political will was we've got gang problems here in D.C. and in Detroit, I mean whatever that situation is.

So no one really looked at this and they looked at the numbers and I in no way want to talk that the numbers aren't important of the number of Americans killed. But if you look at the numbers compared to what else was going on, there was nobody sitting there saying, holy smokes, when someone attacks and kills 3,000 Americans the gloves come off and that's it.

But, let me go back to your——

Senator DeWINE. Both your agencies have big priorities.

Mr. WATSON. Yes.

Senator DeWINE. Mr. Black has other priorities at his agency and there are other priorities.

Mr. WATSON. All right. Let me answer your question real quick. A typical bureaucratic answer is we need a thousand times more than what we have. I think the answer to your specific question is

where do we need to be in two years. I think it's an accountability piece that you should hold our organization accountable for. And when it's time for budget to say we need 150 analysts we should articulate to you what they're going to be doing and we need an additional 400, rather than the normal process of saying we need 400 agents. And there's nothing wrong with that.

What we need to do is look beyond the horizon over the next two to three years out, to include the cyber arena.

Senator DeWINE. Mr. Black, talk to me a little bit about the strategic long-term thinkers and what that ratio should be to the tactical side. Analysts, I'm talking about.

Mr. BLACK. We have under-invested in the strategic only because we've had such near-term threats. The trend is always towards the tactical. We need to put additional resources; units have been established doing this now. The tactical is where the lives are saved. And it is not necessarily a commonly accepted, but strategic analysis does not—is not the compelling entity that gets you to saving lives. I would say a good ratio to be worked towards with increased resources would be something in the ratio like one to four, one to five.

Senator DeWINE. Is that where we are today?

Mr. BLACK. No. The ratio is greatly imbalanced. We are something like one to eight, something like that.

Senator DeWINE. All right. Let me ask both of you. The impression that I think the public would get and people watching this would get or listening to this or reading about these hearings, would be that there were a lot of facts out there. And this investigation has brought all those facts together, things going on here, things going on there.

And the impression is that if they had all been brought together by the Intelligence Community, by the FBI, if they had been brought in together into one place and one person had looked at them that September 11 could have been prevented. And I want to know if you can address that perception, whether that is, in your opinion, based on what we now know, whether that is true or not.

Mr. Black.

Mr. BLACK. That is a question, certainly, that we all need to look at very closely.

Senator DeWINE. If it can be answered.

Mr. BLACK. It's difficult. We always try to—it's very popular to use the term connect the dots. It means a lot of things to a lot of different people. The object here is to get the tactical warning. And tactical warning is very difficult. Tactical warning requires specific details. Analysis can give you strategic warning. It is specific intelligence information that is actionable for my colleague in the FBI so he can do something about it, take specific action.

The strategic is essentially related to infrastructure support, if you want to put more emphasis on the protection of containers or an aircraft or trucks. I think the emphasis on strategic will continue, but I would say that the tactical is where the lives are saved, sir.

Senator DeWINE. But what should the public take away from this? That is the perception out there. I wanted your opinion about it. Reasonable minds can differ. I'm curious to know what yours is.

Mr. WATSON. That's a difficult question. And I come out on the side with the status of the resources we had at the time and the technology we had at the time and the ability to analyze and process information, I come out tactically we couldn't have prevented it.

Senator DEWINE. Is there one place——

Mr. WATSON. Now——

Senator DEWINE. Go ahead.

Mr. WATSON. I'm sorry, Senator.

Senator DEWINE. No, no, you finish.

Mr. WATSON. If we had 10,000 analysts I might come out a different way in this thinking. But again, as I mentioned earlier, looking specifically, hindsight 20/20, after an event it's pretty easy to draw the lines. It's pretty easy to say you guys should have done this. But if you're looking in a sea of red flags of 1,000 things—and I hope that answers your question.

Senator DEWINE. Thank you very much.

Mr. WATSON. Yes, sir.

Senator DEWINE. As you both know, Senator Kyl and Senator Schumer have proposed a modification of the FISA law to allow surveillance of terrorists who are not explicitly connected to a foreign group. I very much support that fix. I think it is the correct thing to do. I'd like to know if either one of you have looked at that.

Mr. WATSON. I fully support that idea.

Senator DEWINE. All right.

Mr. BLACK. Absolutely.

Senator DEWINE. Mr. Black, have you looked at it or not. I'm sorry.

Mr. BLACK. I support it, the little that I know of it. I've not made a detailed study of it.

Senator DEWINE. Thank you very much.

We've heard testimony this week, Mr. Watson, from our joint investigation committee that during the months prior to September 9, the counterterrorism section at the FBI headquarters sent out a request to 24 field offices asking them to investigate information that headquarters had received about a terrorist organization which was planning to send students to the U.S. for aviation training. But the request received little or no action.

Further, the joint investigation committee found that such a lack of—or the staff found that such a lack of response was not uncommon because the field offices have a great deal of control over what they do and often ignore headquarters' requests. I want to know if you could comment on that. Is that true? And, if so, what are we doing to assert more control with regard to national priorities such as terrorism?

Mr. WATSON. Specifically if you're referring to what's been, I'm sure, testified up here before about the specific facts of that request that came in, my answer is that is I'm glad the agent sent it in. But if you look at what he was saying in that information, there was nothing in there that would have caused us to open a specific case and go after that specific group of individuals at that time.

And the idea that someone says that the field ignores headquarters, that's not totally accurate. There is requirements that the field report to headquarters. They have reporting requirements. We

have reporting requirements to the Department of Justice. Where the office of origin is gives a lot of latitude to that office. But if it's a counterterrorism matter it also has a lot of focus from FBI headquarters. Granted, a stolen car ring case is totally different and if it's in Knoxville, Knoxville can handle that. But a counterterrorism case in Little Rock requires input from headquarters. And I don't know—that's where we come out with that.

Senator DEWINE. We heard testimony last week from Secretary Armitage and Secretary Wolfowitz that both of them believe one of the biggest problems with our intelligence analysis is that the agencies strive for consensus and don't always encourage dissemination of dissident views.

Mr. Black, do you agree with that or not? Do you have a comment on that?

Mr. BLACK. I think in theory it's, of course, a concern. We work towards that. We do have a system in place which we developed where we encourage innovative thinking. We use red teams. And when analysis cannot be coordinated and is compelling, that lack of coordination is so indicated. So I think we have a reasonable balance at this point. I looked to the Counterterrorism Center where we have a lot of new analysts coming onboard there and we absolutely encourage unusual analysis, unusual out-of-the-box thinking. So I think if anything we're heading in a good direct in that area.

Senator DEWINE. Mr. Watson, any comment?

Mr. WATSON. We don't produce a lot of analytical reports. So——

Senator DEWINE. Should you be producing more?

Mr. WATSON. Yes, we should, absolutely. Should we have reports officers out in the field offices, you know, absolutely.

Senator DEWINE. I mean isn't that part of the problem, that we're still understandably in a case mode and that, you know, the long-term analysis, even the short-term analysis sometimes no one's got time to do it.

Mr. WATSON. That's correct.

Senator DEWINE. It's not a priority.

Mr. WATSON. I think it's a priority. I think we're getting to there in the priorities.

Senator DEWINE. We're getting there.

Mr. WATSON. Yes, sir.

Senator DEWINE. Okay. All right.

Mr. WATSON. Remember, this is a large bureaucracy and it's hard to steer the ship in a different way.

Senator DEWINE. Right. We just want to make sure we're moving in that direction.

My last question. Gentlemen, we hear a lot of discussion since September 11 about sharing of information, not just between agencies of the federal government but down to the local level. How do we deal with the conflicting tug and pull of wanting to share information, get back information, being able to allow people in the field to access that while at the same time keeping the secrecy that you need to keep? We have, you know, hundreds of thousands of law enforcement agencies in this country who do a great job and who are out there and who are our eyes and ears and who are the first ones on the scene. How do we do that? And is one of the ways we do it with more sophisticated technology?

Let me just say with what Mr. Durbin said, before you answer that, you know, I have been a proponent for more technology at the FBI. You know, it is shameful where we are. The position we have put you in, Mr. Watson, is wrong. The position the FBI is in is wrong. It's wrong for the agents. And I'm not satisfied with where we are going.

You can answer my question.

Mr. WATSON. The information-sharing piece is very important. And let me just briefly discuss how we're trying to do it in St. Louis. There is a need in any information-sharing for the local police to understand what—they all want to get into the fight us in counterterrorism and help the U.S. Government. You hear that all the time. The probability of something coming up at a local police department that might prevent an act of terrorism is probably a very small percentage but at the same time probably the most important thing that needs to be reported and retrieved.

And what we basically designed starting back in '00 with the information-sharing, particularly through the International Association of Chiefs of Police is to have this data warehouse. And the way, not the way you get around it, but the way you access it is through the JTTFs. And the JTTFs have officers, police officers, from state and local jurisdictions there that have security clearances. And you can design technology so that there are different levels of information that you can ping into.

But, the key to information-sharing is everyone loading up into that warehouse. And there are 1,000 reasons that you can be talked out of not doing that. Well, how dare you to think that some police officer might have access to FBI information. Well, how dare we not give him access to that if he stopped somebody that's at an apartment complex that has some interest in us that we would have no way to knowing about that.

And then the last piece, the most critical piece, is you've got to have the technology to be able to analyze that and read that and not be a point and click system.

Senator DEWINE. Well, let me thank both of you very much, Mr. Black, Mr. Watson, for your service to our country.

Thank you, Mr. Chairman.

Mr. GIBBONS [presiding]. Thank you, Senator DeWine.

I'll turn to Representative Reyes for 20 minutes.

Mr. REYES. Thank you very much, Mr. Chairman.

And, gentlemen, I, too, appreciate the hard work that both the CIA and the FBI do on behalf of our nation. And I know from firsthand experience, first as a border patrol agent and then as a chief of sectors along the U.S.-Mexican border, I always prioritize working with my colleagues, in particular the FBI, and the CIA on a more infrequent basis. But we always considered that we were tentacles of intelligence out there. If I had 1,000 agents out there, there were 1,000 potential eyes and ears for the Intelligence Community. And so I was always happy to do that.

I want to start off my questions by asking both of you an opinion. And that is does the way that Congress conducts its oversight hearings, in your opinion, does that make a difference? Our ability to do oversight, is that something that you feel is beneficial?

I have my own opinion; that's why I'm asking you.

Mr. BLACK. Well, I certainly have enjoyed and welcomed the opportunity to address oversight committees, but particularly in closed sessions. I must say the reason that I'm here, truly, is to represent my people who have worked so hard and try and give a face to the Central Intelligence Agency's counterterrorism effort.

My own personal observation would be that in this interaction that we could achieve the resources that we're looking for. And I believe that when we've met on this subject before—and I know, Congressman, you've come out and had access to a lot of the things that we do—I think that is very informative to both sides, where you get to have a closer appreciation from your oversight committee role into what I do, which is classified hard things. So I think this interaction can be very good. In our case it certainly has been.

Mr. REYES. Mr. Watson.

Mr. WATSON. I think the oversight is appropriate. We welcome that, believe it or not. I've been up here a lot. Some sessions are a lot easier than other sessions. But at the same time I think there's an obligation on our part for us to explain to you what's going on because, let's face it, I mean resources and budget and you're representatives of the American people. You need to understand what we're doing and try to do. I welcome that. And I have no problem with that even in times when it becomes in closed sessions, not as comfortable as other times. But, that's okay.

Mr. REYES. The reason I ask that question is because I was, particularly as a field chief, at times frustrated because more often than not we didn't get the opportunity to testify about issues that we thought Congress needed to know, including resources, staffing plans and those kinds of things that are—you know, they're the bread and butter of our ability to carry out our mission, regardless of what that is, whether it's monitoring the border or doing intelligence work or prosecutions or whatever that is.

So, in that context, let me ask, when the declaration of war back in 1998 was issued against Usama bin Ladin as the number one target, it seems to me, based on my experience as a field chief, there are two things that are critical that you do. First of all, you've got to understand what the challenge is and how you can meet it with the resources that you have.

But secondly and most importantly is understanding the challenge and recognizing what it is that the director or the commissioner or whoever is prioritizing the issue for you, is what do you need to make sure that you are successful in carrying out that mission or that task.

So my question is, first and foremost, in your respective agencies did we, in your opinion, understand the scope of the challenge of going to war against Usama bin Ladin and what he was capable of doing against this country?

And secondly, did you put a plan in place to carry out that? And, more importantly—and Mr. Watson, you talked about the request for additional positions and funds for the agency that came to Congress—was there a comprehensive staffing plan put together that we can look at that says here is the declaration of war, here is what we have and how we will carry that out based on what we

have now and here is what we need. Is there such a document that we can have?

Mr. WATSON. The declaration of war was issued by the DCI. We were well aware of the threat posed by Usama bin Ladin and al-Qa'ida in 1998. As a matter of fact, he was indicted in November of 1998 for his crimes. From December '98 forward, that was the number one priority for the counterterrorism program in the FBI. That crossed many fronts. One is where is he and working with our colleagues and maybe—and I don't want to go into this, I mean we actively pursued with our colleagues from the Agency and probably more so with the Agency, what are we going to do about this. And so that's going on.

Mr. REYES. So there is a plan?

Mr. WATSON. Yes.

Mr. REYES. There's a plan that we can see that you developed when the declaration was issued? Because I asked the staff if anything had been——

Mr. WATSON. No, I don't think—I'm sorry.

Mr. REYES. Well, because I asked the staff did we, across all the pages of information that they've reviewed, and they inform me that they had not seen anything like that. That's why I'm asking.

Mr. WATSON. Did we have a war plan, a five-paragraph ops order issued on Usama bin Ladin and al-Qa'ida? Absolutely, we did not at that time.

Mr. REYES. If not, why not? It seems to me like if you're going to issue up a directive——

Mr. WATSON. It was the number one priority that was addressed through each field office through discussions with the SAC in relationship to their annual report that they sent in and in our guidance that we gave back as to what we were trying to do with al-Qa'ida. There were other priorities as well. I mean it was one——

Mr. REYES. And I understand that.

Mr. WATSON. All right. Yes.

To answer your question specifically, can I give you a document, here's what we're going to do, those types of issues came up in the Director's report as to exactly specifically what we were going to try to accomplish in the next 120 days or the next 180 days across the board, Usama bin Ladin, al-Qa'ida, PIJ, Hamas, you know, those sort of things. That's where that is found.

Mr. REYES. And what about the second part? Did we identify resources that were going to be needed in order to be successful in carrying out this mission or this tactic?

Mr. WATSON. Specifically directed at that mission, probably not broken down that way. Specifically directed at raising the capability of each of our field offices of what we needed to get there? Absolutely.

Mr. REYES. But, given——

Mr. WATSON. And budget formula—I'm sorry.

Mr. REYES. But that was given all the priorities that you've mentioned, so nothing was actually put together that would zero in? Again what I'm trying to get at is making sure that we understood the potential threat that Usama bin Ladin meant to this country and, therefore, the priority of making him the number one target. And I believe you said he was put on the top 10 list.

Mr. WATSON. Yes, in the spring of '99. I'm not dancing around on your question, but to understand and to know what the threat was, absolutely. Did we have a flip chart that shows exactly this week this is what we're going to do, next week, we were working in that—you know, toward a specific document like that. We don't have a specific war document. That's the answer to your question. But, we had plans.

Mr. REYES. Okay.

Mr. Black.

Mr. BLACK. After 1998, with the declaration of war from the Director, we certainly carried Usama bin Ladin and his al-Qa'ida organization as our number one priority threat. We did indeed develop plans. It is indeed a document. And it is indeed very classified. But it was comprehensive, exacting and it was a global engagement strategy.

Mr. REYES. And by being very classified it's not available for us to review or is it?

Mr. BLACK. It's classified before the oversight committee. I believe you're on the oversight committee.

Mr. REYES. Right.

Mr. BLACK. Yes, sir.

Mr. REYES. Okay. And earlier or last week we had General Scowcroft, who testified before the committee that said that the safest place in the world for a terrorist was to be in the United States. And one of the FBI witnesses supported that by saying that we know that terrorists are among us and they're poised to strike, and that, in his opinion, we hadn't yet devised a—and I think he specifically said we don't yet have the best system designed to ferret them out.

What do we have today, both from the FBI and also, auxiliary to that, support from the CIA to identify those that are here and to ferret them out? I don't want specifics. I just want to know what kind of plans we have either to come up with a system or——

Mr. WATSON. Let me comment on that statement. We have a Constitution here and our form of government is the freest in the world. And if you're talking about a safe harbor for people, we have a safe harbor here for justice and fairness. Do we want to become a country or become a society that ignores that?

And so I think—I mean it's easy to generalize and make statements like that. But it's also we're vulnerable because of our freedoms. And I don't think any of us ever want to change those freedoms of what we represent, not only inside the United States but to the world.

What we were doing to identify those people is very clearly when we have specific information that we can open a case on, we do that and we try to identify that, working with the CIA, working with pocket litter, working with document exploitation, working with individuals arrested. And arrested becomes a prevention because they provide information that you wouldn't get anywhere else.

And a good example of that is the individual Wadi al-Haj that was convicted in the East Africa bombings, a U.S. citizen who wouldn't tell us anything until he was later prosecuted and was facing the bar of justice.

So I think there's a blend here between the intelligence work and the law enforcement work. As to how do we get those people out, it's a difficult process. It's not something the FBI can do by itself. And the process here and the threat is of those individuals that have gone through those training camps since 1996 that have scattered around the world, where are those people. Are they living in Texas? Are they living in Montana? I don't know the answer to that. But that's why we have to join forces and try to identify those people.

Mr. REYES. Okay. But, putting it in context, Director Mueller has told the joint committee that the FBI's number one priority is now prevention of terrorist attacks. So obviously the issue here transfers from prosecution to prevention. At this point, what is the FBI doing to——

Mr. WATSON. Prevent it?

Mr. REYES. Yes, have this change in strategy or this change in direction.

Mr. WATSON. That's a fair question.

Mr. REYES. In the context of what you said.

Mr. WATSON. I'm sorry?

Mr. REYES. In the context of what you said.

Mr. WATSON. Okay. I think that's a fair question and that what we're doing is any threat information or any thread of information that comes in, regardless. If it's an address or if it's a phone number overseas that pertains to the United States, it's run down absolutely fast as we can, as quick as we can. Don't lose sight of the fact that prosecutions are an aid in preventions.

And so, are we abandoning prosecution? Absolutely not. But prevention is the number one priority. And prevention might mean that we take individuals and charge them with credit card fraud as opposed to the only way that we can deal with them. Or take them if they're out of status and they're illegal immigrants, take them off and arrest them or charge them for being out of status. That would be, in fact, a prevention.

Mr. REYES. Can we assume that somebody in the FBI is working on a plan that will tie this change in strategy that will come to Congress with this is the challenge that we're facing, these are the things that we want to accomplish and this is what we need in order to accomplish that? Is that being worked on now?

Mr. WATSON. That's absolutely right. But remember also that we were moving toward prevention in '98. And so this whole process has been started. And certainly we can do that.

Mr. REYES. Yes, and I would—and, you know, I say this with all due respect——

Mr. WATSON. Sure.

Mr. REYES [continuing]. Based on my experience when we were tasked by the commissioner of what resources it would take to control the border or to manage the border, we were all charged with coming up with staffing surveys that we had to justify at what level we could expect to maintain control. And without that, frankly, coming to Congress asking for more people and more money, it's not going to happen, especially in an environment like there is today. So that's why I'm pursuing this line of questions.

Mr. WATSON. Yes, and I think that was Senator DeWine's point for budget justification. Absolutely.

Mr. REYES. Mr. Black, again getting back to the global plan that you were talking about that you developed against Usama bin Ladin, as part of that plan was there an assessment made of the plan's potential for success to either capture or eliminate Usama bin Ladin? And also, in following up with what I was discussing with Mr. Watson, is a component of that plan additional resources—in other words, identifying the challenge and telling either the Director or Congress in order for us to be successful here, these are the additional resources that we'll need by way of support from Congress. Is that part of that, those two things?

Mr. BLACK. Yes. What I'd like to do on this is that—I've already stated that this particular plan is available to you. Because of the classified nature of it, I would suggest that at your soonest convenience that this be provided to you as a member of the oversight committee and hopefully it'll answer your questions.

Mr. REYES. Is there an assessment in there of the potential success upon implementation of the plan?

Mr. BLACK. There are various aspects of the plan. And the plan is essentially a global effort. So—I don't have the plan in front of me, so I don't know which aspect and geographical area and function.

Mr. REYES. Okay. How about does a component of that also address resources, additional resources to be able to successfully carry out that plan?

Mr. BLACK. I believe I recall as of a few years ago, I believe it did. I believe it did. I'm not absolutely sure because I don't have it in front of me.

Mr. REYES. Thank you.

Mr. Watson, one other issue that I'm curious about. And I'm curious about it because the comment was made in prior testimony by one of the FBI agents that in the context of the requests for FISA authorization that come up here to headquarters that it was my impression, based on his testimony, that you have these requests come up to headquarters. And then there's, to some extent, some lobbying going on to rise the individual FISAs from different offices up to the top of the ladder in order to be considered.

So, given the fact that we have seen that al-Qa'ida can carry out very well-coordinated attacks against this country and it's not beyond the realm of possibility that simultaneously they could be planning operations in the northeast, the southeast, the northwest, the midwest, wherever, is there an analytical component that looks at these FISA requests that would connect those kinds of threats, number one?

And number two, in that system that evaluates the FISAs, I want to make sure that we're not in a situation where one is considered at the expense of others. So can you describe what takes place when a FISA request comes up here?

Mr. WATSON. There are a large number of FISA requests that are processed through FBI headquarters. Once a month, a meeting is held with OIPR, the Department of Justice office that handles and processes those requests that eventually get to the judge with

an FBI agent. Those are prioritized, they are discussed, which priority first in the FISA process, which one.

If Detroit comes in with one—and I'll make this up—that involves FARC or 17 November or whatever, one of the 30 terrorist organizations on the list, and the same time Kansas City has a request for al-Qa'ida, those things are prioritized. And they're prioritized on the basis of what our priorities are within the division. But you also have to understand that on emergency basis those FISAs can be approved within a very short period of time, probably less than two hours. Michael? Two hours that we run FISAs on emergency basis.

Mr. REYES. So was it a fair statement to make that there is some effort or lobby to get your FISA up based on what the priority is for that prospective—or is there somebody looking at the whole——

Mr. WATSON. They're prioritized by the section chief in conjunction with OGC, who understands what our priorities are in the counterterrorism arena. And so if you have limited resources, unless it's an emergency and those go through. If you have limited resources within the prioritization, that's where they end up.

Mr. REYES. All right.

Mr. WATSON. They're prioritized. And so, you know, the JRA or Tamil Tigers, you know, I mean, not saying they're not important.

Mr. REYES. But there is somebody that's looking at the big picture——

Mr. WATSON. Yes. Yes, sir.

Mr. REYES [continuing]. When those things come in?

Mr. WATSON. That's the process.

Mr. REYES. Very good.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, Mr. Reyes.

We've completed the original designated questioning round. We'll turn now to those Members who have questions, with each Member limited to five minutes each. And we will proceed in the order of their arrival here. I'd like to turn now to Senator Shelby.

Vice Chairman SHELBY. Thank you. Thank you, Mr. Chairman. Five minutes is not a lot.

Mr. Watson, Mr. Black, I want to join the chorus that I appreciate what you've done and what you will do. Mr. Watson and I go back a while. He referenced my home state. He spent some time there as a young FBI agent. He even mentioned my home town of Tuscaloosa, Alabama. He knows a lot about that area. He knows a lot of those agents. I was a U.S. magistrate before he got here.

I'm a little older, you know, Dale. But, to both of you, we do appreciate what you do. And we appreciate the CIA and the FBI. What we're trying to do is find out how we can help you to function better and if you put it in that context, with more funds, with maybe more oversight, but not micromanagement.

Mr. Watson, a few questions first to you. You said the light—and I believe this is the phrase—the light came on for me in 1998. Why didn't the light come on in 1993? When did you go and become head of the terrorism section of the FBI?

Mr. WATSON. In the section, it's 1997.

Vice Chairman SHELBY. '97. So, you were not there in '93.

Mr. WATSON. In '93, I was——

Vice Chairman SHELBY. Well, you were at the FBI, but you were not the head?

Mr. WATSON. Yes. I was within the Iranian unit at the time.

Vice Chairman SHELBY. Yes, sir.

Mr. WATSON. And then left and went to Kansas City in '94.

Vice Chairman SHELBY. Yes, sir. But what's troubling to me and perhaps others is we had the first hit on the World Trade Tower in '93.

Mr. WATSON. Right.

Vice Chairman SHELBY. You were involved, all of you were——

Mr. WATSON. Yes, sir.

Vice Chairman SHELBY [continuing]. In the investigation. And then, in, was it '96, we had the Prince Sultan Barracks were hit. And then the Khobar Towers. We worked with you on that at that time.

Mr. WATSON. That's right.

Vice Chairman SHELBY. And then in '98 our embassies were hit simultaneously in Tanzania and Kenya.

Mr. WATSON. Right.

Vice Chairman SHELBY. You worked on that.

Mr. WATSON. Yes, sir.

Vice Chairman SHELBY. And then, in late 2000, the USS *Cole*——

Mr. WATSON. October——

Vice Chairman SHELBY [continuing]. Which my colleague, Senator Roberts, has spent a lot of time on and all of us have, too. So it was '98, you'd been in your present job as the head of that, what, a few months?

Mr. WATSON. Yes, sir. A year and a half.

Vice Chairman SHELBY. So you became aware this was a serious, serious——

Mr. WATSON. No, sir. That's not what the light came on about.

Vice Chairman SHELBY. Okay. Tell us. Explain it to me.

Mr. WATSON. Okay. I'll be glad to and I hope—I'm sorry if you were confused about it.

Vice Chairman SHELBY. Okay.

Mr. WATSON. What the light came on was——

Vice Chairman SHELBY. No, they were your words.

Mr. WATSON. Maybe my words without the proper explanation.

Vice Chairman SHELBY. Yes, go ahead.

Mr. WATSON. What came on as a light came on to me was that we were very reactive. And it was clear that the FBI was being very reactive. It had nothing to do with was Usama bin Ladin a threat or was Hizbollah a threat. We all knew that. We were all working in that.

Vice Chairman SHELBY. Okay.

Mr. WATSON. But our mentality was pointed at being very reactive. And the crucial piece was I came to realize that we probably will never stop all acts of terrorists. And the only way we could look at this and feel good about ourselves, if that's a right term to use, is to raise our capacity. That's what I meant when the light came on.

Vice Chairman SHELBY. Okay.

Mr. WATSON. Not the fact that there were threats out there.

Vice Chairman SHELBY. My colleague just a few minutes ago, I believe he used the phrase—I'm trying to dig it out—scope. I think he used the scope of the challenge presented by the terrorists. Was that really comprehended by the FBI and the CIA at that time? Because I think that is a very, very good question he's asked. Was the scope of the terrorist threat appreciated early on or prior to September the 11?

Mr. WATSON. Absolutely. And there were a few people that got it, so to speak. We knew within the FBI and particularly Mike Rollins, the section chief that worked for me, we knew exactly what the scope of the problem was. And if you talked to the folks at the CIA, they knew exactly what the scope of the problem was. And if you talked to representatives up at the NSC, they understood what the scope of the problem was. If there was a breakdown, it's not with those three individuals. But if there was a breakdown, it was where we were at, U.S. Government-wise, policy-wise, will of the American people. Did they understand the scope? Did you, you know, I mean, that's—I'll leave it at that.

Vice Chairman SHELBY. If the FBI understood the scope and the CIA understood the scope, did everybody else understood the scope of what the terrorists presented as a threat and what we were up against? Is that what you're saying?

Mr. WATSON. Yes, sir. Well, I don't want to speak for the Agency. But that was my impression. They understood it clearly.

Vice Chairman SHELBY. Quickly, Mr. Watson, my time's up, but could you describe your role either here or you can do it in a closed session if you prefer, in the internal FBI debates over whether to share FISA-obtained information with the CIA and other agencies? Did you support such sharing or oppose it?

Mr. WATSON. I fully supported that position. And as a matter of fact——

Vice Chairman SHELBY. What was your role in that? Do you have a central role?

Mr. WATSON. If you're talking about a specific incident, we need to talk about that in closed session.

Vice Chairman SHELBY. In closed session.

Mr. WATSON. If you're talking generically, we had a pilot——

Vice Chairman SHELBY. Speak generically first.

Mr. WATSON. Okay.

Vice Chairman SHELBY. Then we'll get into specifics later.

Mr. WATSON. We had a pilot project probably back to 1999 and I think that's the right time where we were offering raw FISA data to CIA folks to come in and look at because they could probably mine intelligence bits of information out.

Vice Chairman SHELBY. Sure.

Mr. WATSON. There was a lot of resistance from that.

Vice Chairman SHELBY. But it's very important that you share that with them, was it?

Mr. WATSON. Yes. Oh, absolutely. Yes, sir.

Vice Chairman SHELBY. All right.

Mr. Chairman, thank you for your indulgence.

Mr. GIBBONS. Thank you, Senator.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

Gentlemen, I want to talk about the hijackers a little. When did it become known that the Sunni extremist terrorists were possibly going to hijack planes and use them as missiles? Do you remember when that became known?

Mr. BLACK. For me? This is a subject that goes back a long way. You'd need exactly a specific example of, you know, which particular group was involved. I mean, it goes back I can recall 1994.

Mr. PETERSON. And did the FBI or the CIA ever warn the commercial aviation section about this specific threat?

Mr. BLACK. About the aviation threat?

Mr. PETERSON. Airplanes being used as missiles.

Mr. BLACK. Hijacking of aircraft and the potential for, in the time frame, yes.

Mr. PETERSON. They were, the commercial aviation section was warned?

Mr. BLACK. Yes.

Mr. PETERSON. Was it in a forum where they would have been able to actually do something about it, where they could change their security practices?

Mr. BLACK. We disseminate——

Mr. PETERSON. Apparently they didn't.

Mr. BLACK. Well, we disseminate, we collect intelligence, we analyze it and we disseminate it. And the actions that they wish to take obviously are their responsibility.

Mr. PETERSON. So you think it was of sufficient alarm that they should have taken some action?

Mr. BLACK. I think there was significant—they have to analyze it according to their own criteria.

Mr. PETERSON. On this—following up on Congress Reyes on this FISA situation in Minneapolis, you say that this group meets once a month, this OIPR——

Mr. WATSON. This is a headquarters prioritization of all the FISAs.

Mr. PETERSON. So some of these sit around for a month before they actually get considered to the point where they can get past this process?

Mr. WATSON. It all depends, Congressman, on the priority of what you're talking about on a FISA. If you're talking about——

Mr. PETERSON. Apparently the one in Minneapolis maybe never even got to that point.

Mr. WATSON. Well, I'd be glad to discuss that with you probably in closed session.

Mr. PETERSON. Okay. And apparently you testified that when you came in that you were making a priority of adding staff into the field offices to try to beef up this area. And when the Minneapolis agent was here Friday, I think he said that the Minneapolis office had a couple of positions open and that there were folks in that, acting in those open positions. And that was one of the reasons why they were having problems there, from what I can remember him saying. So if you were beefing up this situation, you know, why was the situation like that in Minneapolis? Why were those positions open?

Mr. WATSON. Probably through a process of career development, those slots were—I'm not sure exactly which positions you're talk-

ing about. But those routinely—not routinely occur, but occur within the Bureau. If you look at it from strategically Minneapolis had an opening and maybe Houston was evaluated by us as being very vulnerable. And the list of priorities that I considered, I would consider what I considered where the threat was most vulnerable to try to fix first.

During my deposition, I was asked about an Omaha EC where Omaha said they were desperate to get two agents to work—or three agents to work counterterrorism. At the same time, you had a big vacancy in Los Angeles or you had a vacancy in New York. Where, in the scheme of things, do you fit that out? I'm not downgrading Omaha, but it was an effective and efficient way to determine where you're going to put your resources in and what priority.

Mr. PETERSON. So what was going on then at the time in Minneapolis, they had these openings, but there was probably other areas that——

Mr. WATSON. I don't know specifically about those openings.

Mr. PETERSON. It gets back to this whole resources issue. Is that part of the reason why this happens because there wasn't enough resources?

Mr. WATSON. I don't know what the agent testified to. But if he was talking about an acting SAC in a period of time between, that's fairly normal when a vacancy occurs. It doesn't, you know——

Mr. PETERSON. I think it was more than just one position that was in an acting capacity, if I recall. And I think it did have some impact on what they were trying to do there.

Mr. WATSON. I will only say that—okay, we can probably talk about that.

Mr. PETERSON. Yes. I think it had some impact on, you know, how many people knew how this whole FISA thing worked.

Mr. WATSON. That is absolutely correct. And if you deal with one FISA in your career, if you deal with 500, you certainly have a better understanding.

Mr. PETERSON. Yes. I guess my time is out, but maybe we can talk about the training process in this FISA, too, because I still have some questions about that.

Mr. WATSON. That's fine. Yes, Congressman.

Mr. PETERSON. Thank you.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, Mr. Peterson.

Mr. ROEMER.

Mr. ROEMER. Thank you, Mr. Chairman.

And I want to thank Mr. Black and Mr. Watson both for their testimony and their service.

My question comes back to trying to change the culture in your respective organizations. Mr. Black, in your testimony you used some interesting words. You said after September 11, and I quote, "the gloves came off and the hunt was on". Was it extremely difficult to do the hunt and take the gloves off even after the DCI had declared war and even after Usama bin Ladin had declared war on us?

Mr. BLACK. I think there was an evolutionary or escalatory approach to the issue key to the intelligence that was acquired and

driven. You know, one can recall that Usama bin Ladin essentially came into the '90s as a financier and, in some areas, a doer of good works that required very close study to be able to concretely identify that he was a supporter of terrorists, a financier of terrorists. By the mid '90s, he became more active and then, as we know, shortly after that went to Afghanistan.

So what I would say is yes, that the approach kept pace with the common view at the time that was driven by the intelligence. And as it was not perhaps preemptive, but it was certainly keeping up with the pace of the status of this guy as a threat to the United States.

Mr. ROEMER. Let me ask you a question of resources. And I want to keep trying to come back to this. The hunt for Usama bin Ladin keeps getting escalated, as you said, but the gloves don't come off until after September 11. The resource issue is one that you considered to be an important one in your testimony. You say you're overwhelmed. The CTC budget, although we can't talk about numbers, roughly triples during the 1990s.

And I just want to know, with regard to resources, you must have felt a great deal of frustration with this. You get a bigger budget, but you still feel like you don't have enough personnel fighting an elusive target. Did you say to the CIA Director at that point, did you e-mail him, did you call him on the phone and say to him, we need more resources? And do you have records of this saying to Mr. Tenet, we're overwhelmed, we have to get more resources and more money here, even though this budget's tripled?

Mr. BLACK. When you find yourself in a situation of essentially intelligence war, I'm sorry if I smiled about the idea of documenting because there's not much time to document in that sense. Communication is informal and verbal because things are moving so quickly at such a high pace. I would say that without equivocation the Director and I were together on these issues. He had an appreciation of our needs. From the resources he had available to him, he gave us as much as he could and, as I indicated in my testimony, that we were able to make it through the years because of his intervention and provision of funds and lobbying for us.

Mr. ROEMER. So he tried to fight for as many of these funds and that is maybe one of the reasons why you got a tripling in the CTC budget. Did you go to the White House and OMB and say, we need more, we're not getting enough, this is not enough for us? Were they aware that you wanted more resources and more money?

Mr. BLACK. Well, I report through the Director and I believe you may be inviting him to testify. I'm the chief of the Counterterrorism Center, you know. And I should speak to that level of authority and position. I made my superiors aware and they were as helpful as possible.

Mr. ROEMER. And so you're unaware of the chain above that?

Mr. BLACK. Well, the chain, I just feel——

Mr. ROEMER. My question, Mr. Black, is, did you ever go to Mr. Tenet and say, I asked you for resources, when are you going to find out from the White House or OMB about these requests?

Mr. BLACK. Resources and requests for resources were actively considered. And what I can say is that I personally requested and lobbied for the funds that I thought I needed. You have to under-

stand that, compared to most people, that I was very much in the forefront because I was the closest to the problem. So it did require an aspect of interaction in trying to advance, the funds actually should go to this area as opposed to the other.

Mr. ROEMER. Thank you.

Mr. GIBBONS. Thank you, Mr. Roemer.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. Let me welcome our two witnesses.

I want to go back to some of the testimony here of Mr. Black where you acknowledged, as has Mr. Tenet, that the CIA fell short, using your words, in not informing the Department of State that you had identified two al-Qa'ida men. And these were the two, al-Mihdhar and al-Hazmi, who were hijackers on Flight 77. These were two people you had identified back in January of 2000 and in March of 2000.

There's another problem here besides failing to notify the State Department and that was failure to notify the FBI. The FBI says that it did not know of key bits of information—that a visa had been issued to one of them and that the other one had actually entered the United States—until August, 2001. So there was not just a failure to notify the State Department to get these folks on the watchlist, but the CIA was aware of the fact that one of them had a multiple entry visa and the other one had actually entered the country in March.

And by the way, this is nothing to do with intelligence information and nothing to do with not crossing a line between criminal investigation and intelligence investigation. This was public information.

This was a visa had been issued and somebody had traveled actually to the United States. My question is this. Why was the FBI not notified by the CIA of those two critical facts about two people that the CIA had identified as terrorists until August, 2001?

Mr. BLACK. Because of the nature of our work being very fast paced, there was communication and there was communication between the CIA officers and the Counterterrorism Center and individuals in the FBI, particularly a CIA officer assigned to the FBI. There were phone conversations, e-mails, things like that. And in particular the lapse that we're referring to is to do the extra work of submitting a formal report to the State Department into their lookout system, TIPOFF, so that action can be taken.

There was communication. I think you have a very good point. We have admitted to the lapses of not submitting a report in a form that would be actionable. But there was communication. But there's also an incredible amount of work.

Senator LEVIN. Yes. You made a point, though, about the lack of communication. You say there was communication. I want to focus on those two specific, critical facts. Are you saying that the CIA did communicate to the FBI that those two people that you suspected as being terrorists had a multiple entry visa into the United States and had entered the United States? Are you saying that in that communication, that general word you're using, that those two facts were communicated orally to the FBI? Is that what you're saying?

Mr. BLACK. What I'm saying is the identities, the names of the individuals.

Senator LEVIN. No. No.

Mr. BLACK. But the issue of the visa is problematic.

Senator LEVIN. All right.

Mr. BLACK. We have no evidence that that piece of information was communicated.

Senator LEVIN. And that's critical information. Now to the FBI. The FBI is at the Counterterrorism Center?

Mr. WATSON. Yes, sir.

Senator LEVIN. And so when the Counterterrorism Center is informed of this information, why is that not automatically, then, known to the FBI? We're trying to connect dots here, folks. The Counterterrorism Center is one place where the dots are supposed to be connected. And now I want to press the FBI.

Since you're at the Counterterrorism Center, and since that information, I believe, went to the Counterterrorism Center, why, then, wasn't the FBI put on notice that two terrorists identified in early 2000 as terrorists, because they had been at those critical meetings in Kuala Lumpur, why then, was that not enough notice, just being at the CTC, for the FBI to then say, whoops, wait a minute, these guys have visas to the United States, this guy entered the United States? Why weren't you put on notice? How can you say you didn't know about this until August, 2001?

Mr. WATSON. I don't know the answer to that, Senator. And there's a volume of information that flows through every day. And I'm not sure where the FBI agents were at the time that might have had access to that cable or not. It might have come in from the other division of the CIA. So I can't defend or say that they saw it and didn't report it. I will say, though, without a doubt, I know that if the Agency had it, there was no plot, no thought by anybody at the CIA not to tell us.

Senator LEVIN. Well, wait a minute. There was a decision by the CIA not to tell you back in June of 2001. They were sitting there at a meeting and the decision was made at that meeting in New York not to tell the FBI about it. That was a CIA decision, for reasons that totally mystify me because this is not criminal investigation versus intelligence. This isn't blurring a line, violating rules and regulations. This has got nothing to do with that. This is public visa information. This is public travel information, commercial travel information.

I understand the rules and regulations about not blurring the line between criminal investigation and intelligence because you don't want to mess up your criminal investigation. But that is not the type of information that the CIA—that we're talking about here and that the CIA did not share at that June meeting. But I want to press the FBI.

Mr. BLACK. Sir, could I just say one thing?

Senator LEVIN. Sure.

Mr. BLACK. As we understand it, sir, the CIA analyst was not permitted to provide all of the information FBI criminal investigators wanted because of laws and rules against contaminating criminal investigators with intelligence information.

Senator LEVIN. I understand that.

Mr. BLACK. Okay. That's what I'm saying.

Senator LEVIN. But you're saying you could have put it and should have put it on the watch list up at the State Department. This isn't polluting criminal investigation. This is stuff that should have gone on the watchlist by your own acknowledgment. This is a visa. That's public information. This is commercial travel. That is public information. There is no pollution of criminal investigation whatsoever, under any regulation, by simply the CIA telling the FBI, hey, watch these folks. We have identified these folks as terrorists. These folks have entered the United States. That's all you have to tell them.

You don't have to go into sources, methods. You don't have to talk about wiretaps. You don't have to talk about anything, just that these folks identified by us have now entered the United States. That's all we're talking about. There's no violation of any rule, any regulation that I know of by simply telling the FBI that.

And I think you acknowledge that when you say we should have notified the State Department to put them on a watchlist. That makes it the kind of information which is and should have been available to the FBI.

My time is up. If the Chairman wants to give them time to comment, that would be up to the Chairman. I would welcome it, but I can't press that any further with that red light on.

Mr. GIBBONS. Certainly if your answers are brief in response, we would like you to respond.

Mr. BLACK. In my view, I think we're talking about two separate things. On the one hand, we're talking about the New York meeting between the CIA and the FBI. And on the other, we're talking about the watchlisting issue. Yes, the whole purpose of the system is to provide this type of information to the Department of State. There's no question about that.

Mr. GIBBONS. And Senator Levin, if we have additional time at the end, we'll certainly allow you to ask some more.

Senator LEVIN. Thank you.

Mr. GIBBONS. Mr. Hoekstra.

Mr. HOEKSTRA. Thank you, Mr. Chairman.

And thank you, gentlemen, for being here today. I want to follow up a little bit on what Mr. Reyes and what Mr. Roemer were talking about, exactly what the process is here for planning. You're planning a war against al-Qa'ida and terrorism.

Mr. Black, you've said that that plan was put in writing and we have access to review that and we'll do that. I'm assuming it outlines the requirements that you feel that you need to conduct this war effectively, outlining personnel requirements, resource requirements and perhaps also a review of what you may or may not be able to do because of legal requirements or executive orders and those types of things.

You then go through a process where, you know, the budget requests come to Congress. We pass a budget. Mr. Tenet then comes back and says, you know, Mr. Black, here's your resources. Here's what we've got for you. And then what happens at that point that you go back to George and say, I can't do my job with this? And, you know, these are the risks that we are going to encounter.

Mr. BLACK. The essence of counterterrorism is—or the problem of counterterrorism is the harder you work and the more effective you are, the more work you create for yourself.

Mr. HOEKSTRA. Right.

Mr. BLACK. So you're in a constant state of requiring more and more to keep up with the problem. And the better you are, you know, the more agents you have, the more reports you produce, the more people you have overseas, the more work is generated, the more success you have. So there is essentially inherent in this kind of business a constant state of a relationship between the subordinate and a superior, me going to the Director and say, you know, this is all we're doing and we've created this opportunity over here.

And then this has to be weighed, not only, first within the counterterrorism mission, you also have to think about things like Hizbollah and the Palestinian Islamic Jihad and the whole rest of it. So you have that going on. And that has to be, if it goes outside of that process, then you have to be coordinated with the Director and the Director of Operations in terms of other specific areas that are of key interest. But again, counterterrorism was always the highest priority.

Mr. HOEKSTRA. Yes. But the question that, I think, that maybe Mr. Roemer and I have is at the end of the day, you know, we along with the President are the ones that determine exactly under what constraints you're going to be operating under. And, you know, how do we get that information more clearly or more accurately or perhaps in a more timely basis that says, you know, I'm sorry, you haven't resourced enough or you haven't put in place the proper frame work for us to do the job effectively. As a result of that, we're not going to be able to win this war on terrorism. We're fighting skirmishes. We're going to be—you know, we are very, very vulnerable and we're opened up to these kind of risks.

Mr. BLACK. I think communication, certainly between the senior intelligence officers and members of the oversight committee is key. I must say that, you know, in the last two years, I have been before the oversight committee with, I think, regularity. I think the Congressman has validated that. My need for resources, the need, at least, certainly was conveyed almost every time I came.

Mr. HOEKSTRA. Mr. Watson, I'm a little concerned about what the planning process may be at the FBI in that, you know, if there's not that plan in place as to—or you said that there's not a written plan in place.

Mr. WATSON. A war plan?

Mr. HOEKSTRA. Yes.

Mr. WATSON. I think that's an—well, I know that's an accurate statement. We have priorities, though, that we establish. And the number one priority was al-Qa'ida and UBL. That is clearly articulated.

Mr. HOEKSTRA. It's a number one priority, but I don't know what—if that doesn't translate into specific allocations of resources, specific allocations of personnel and those types of things, I mean, I don't know what it means if you had a number one priority.

Mr. WATSON. True. Yes.

Mr. HOEKSTRA. Do you have three number ones and the war on terrorism became number four, you know, the fourth number one priority?

Mr. WATSON. It's very helpful for the counterterrorism program to be a national program and say—let me see if I can explain this. At the field level, what do you want Little Rock to do with limited counterterrorism resources?

Mr. HOEKSTRA. Right.

Mr. WATSON. And if they have somebody that's on, you know, a group that's number 30 on the list of priorities, it's a prioritization. And so those priorities are set by us. And we say this is what the priorities are. That also equates to what we request through the budget cycle and the planning process of what we need.

What do we need to do to address, resource wise, at headquarters for al-Qa'ida? We need more analysts. We need more agents. We need better technology. We need, you know, the intelligence piece, reports writers, et cetera.

I don't want to mislead anybody by saying we didn't understand that process. I thought the question was do you have a five-paragraph op order against al-Qa'ida and the war that was declared on them in '98. The answer to that was no. But did we understand what the threat was? Did we know what we were trying to do? Yes, it was and it drove the budget request as part of the budget request for counterterrorism.

It also—the budget request included domestic terrorism issues. We had the winter Olympics coming, for instance. We had the problem out in Seattle with the World Bank and IMF and, I mean, resources drains like that. So the aggregate budget was incorporated all the numbers.

Mr. HOEKSTRA. Mr. Black—I'm sorry. I guess my time's up.

Mr. Chairman, thank you.

Witnesses, thank you.

Mr. GIBBONS. Thank you, Mr. Hoekstra.

Senator Roberts.

Senator ROBERTS. Mr. Black, Mr. Watson, I only have five minutes. Bear with me. I have an observation and one question.

My observation is crosscurrent with some of my colleagues on this committee and the process that has been adopted by the Joint Inquiry staff and basically acquiesced to by the leadership of this Committee. I have not acquiesced to it. My concern and frustration is that, while unintended, one of the results of this investigation has been to demoralize our Intelligence Community. These are the people, as you have pointed out, whose job it is to detect and deter terrorist acts against our citizens.

The Catch-22 of this process, it seems to me, is that in an attempt to learn our deficiencies, what went wrong prior to 9/11, and to fix it and to provide the public transparency through public hearings, not to mention the unfortunate leaks that we have seen, we have been the source, if not the instigator of what I call "gotcha" charges and also "gotcha" headlines. These new and specific insinuations and charges are media incendiary. They're controversial and they're political. We have seen a media frenzy as a result and increasing frustration and concern and anger on the part of the American people. Where was the smoking gun?

I say this knowing that mistakes were made. Hindsight is 20/20. We have an obligation for oversight and to ask the tough questions. I still believe the USS *Cole* is a microcosm of the challenges that we face and I don't think that was handled right. But my point is if we are all to assess responsibility, if not blame, that responsibility should not be selective. The responsibility for 9/11 also lies with the Congress, past and current policymakers and, yes, more comprehensive reporting by the nation's press.

Yet our process here is to pose questions to you that I define as pejorative in nature. Your only choice and response is the old "while I" answer. While I agree with you, sir, while I think we needed more resources, while I think we needed more analytical ability, let me point out that. You're in a Catch-22. You cannot provide any answers in full context to show there has been no smoking gun because the full context is classified unless it's leaked. And should it be made public, it would compromise sources and endanger lives.

My preference, shared by some on this Committee, not a majority obviously, was not to stage public hearings until the investigation of the Joint Inquiry staff was complete and then report, then go public. But here we are. My question is the same I had from Monday's behind-the-scene witnesses. We are at war. The work of those in the Intelligence Community is crucial to the safety of our American people. One of the problems we face is risk aversion. I worry about the morale and the esprit de corps of our intel community.

Before I ask you to say how is your morale and how you're feeling about this and what is the morale at the community, the question referred to you earlier, Mr. Black, was from the Joint Inquiry staff briefing book. Now you remember the question. I think it was asked by Senator Durbin and I certainly don't mean to be pointing any fingers at him. A book, by the way, that was provided to this Member as of this morning which is standard operating procedure. Had I wanted it earlier, I would have had to have gone to the Chairman for permission to speak to the staff, which is a little unique for this Member in terms of the Senate and serving on any committee.

You've heard the questions. Let me tell you the rest of the story. After the question, there is a suggestion, if not an instruction, to members. And it is, "Mr. Black will probably dissemble on this point and simply say that the press statement is accurate insofar as the total number," et cetera, et cetera. Next question and then there's some instruction. "Mr. Black will probably dissemble on this point, too." I have a definition of "dissemble" from the dictionary. It says to hide under a false appearance, to put on the appearance of, to simulate, to put on a false appearance, conceal facts, intentions or feelings under some pretense.

You're almost on trial, sir. You're almost on trial. I have to apologize, you know, for that and for this book. You have my apologies. It's only me. I'm not speaking for the rest of the Committee for the intended consequences of what I believe is an inspector general runaway train. I don't like it. And for me, I want to apologize, Senator Pat Roberts, to your people in the FBI and the CIA, which I think is, I won't call it shameful, but it's damn close. How is the morale down at your place?

Mr. BLACK. Senator, you really made my day. This is so unfortunate. There is no one that I know that does counterterrorism that would dissemble to a representative of the American people. I've got to tell you something's getting out of hand here. I work for the American people. I'm a big boy. Let me tell you, I'm responsible for my people. And why do you think I came in here starting with, you know, pride for my people? Things happen. People die in war. No one regrets it more than us. But dissemble, mislead our people? No. It's like living a nightmare. What's going on here? I better stop. Thank you.

Senator ROBERTS. Mr. Watson.

Mr. WATSON. I think it's been a long process since 9/11 and the fingerpointing and looking at we should have done this or you should have done that. And the responsibility of that clearly rests with myself. And, you know, I don't duck any of those issues or those questions. Individuals that work down in those sections and the agents out in the field that work these problems are absolutely the best we have. They should be supported. And it's a disappointment.

Senator ROBERTS. I thank you both. I think with the red light on I've probably said enough.

Thank you, Mr. Chairman.

Mr. GIBBONS. Thank you, Senator.

Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman, or at least I think thank you.

It's somewhat difficult to follow Senator Roberts because I think it's safe to say that there was not full agreement among members of the course that we're currently on. But the fact is that we've got the task to do it now and for that reason you're here today.

Let me move to a section that we've already covered to some degree. And that's the notification that went from either agency specifically to the aviation world about the potential threat. Let me for the purposes of your answer ask you to separate the FAA from the commercial airline industry and ask you was the alert that went out, to one or to both, the alert that went out within the entire community about an imminent threat? Or was there a specific communication, either written or verbal, that went out to the FAA and commercial airlines that was targeted specifically because of the fear of a commercial aircraft being used as a delivery system?

Mr. Watson, let me turn to you first.

Mr. WATSON. I don't know the answer to that question specifically, Congressman. I can't tell you if there was a circular that went to the commercial side or what notification. I'll be glad to get back and try to answer that question.

Mr. BURR. I would appreciate it.

Mr. WATSON. Okay. Maybe we can have it by this afternoon closed session.

Mr. BURR. Thank you. Thank you. Mr. Black, anything that might have emanated from the Agency?

Mr. BLACK. Sir, I'd like to help you out on this, too. And I certainly do remember there were alerts and notifications going out. They have dates. And I think they certainly were pretty descriptive. I just don't want to answer the question right now because I

don't have all the facts available to me. What I will do is I'll promise you we'll get the information and get back to you.

Mr. BURR. I appreciate that.

Mr. BLACK. I don't want to misspeak here.

Mr. BURR. I appreciate that and I recognize that you can't be the wealth of 100 percent of what transpired. I think it's very important that we separate for the purposes of the answer the FAA and the commercial airline industry specifically. If, in fact, this was an alert that went to the FAA but then was not disseminated to the airlines themselves, who, at the time, were primarily responsible for the security within the airports, I think that's an important aspect that we need to know.

Mr. BLACK. Okay.

Mr. BURR. By the same token, we would like to make sure that our system today for notification, heaven forbid that we were to have to put one out today, that if we had a similar situation where we believed there was a higher likelihood of a particular means of delivering the threat and that was a commercial airliner, that in fact there might be a different alert that went to the FAA than went to general communities specifying why they should read it and act on it more quickly.

Let me, Mr. Watson, if I could, turn to you and ask you, in hindsight, on or about August 23 we put everything together as it related to al-Mihdhar and al-Hazmi being in the United States. And the FBI began a process to find these individuals. Using hindsight as a tool, did we respond at that time like we should have? Or would you have responded differently looking back at it—i.e., did we put the correct number of people, did we put the right people, did we exhaust every possibility in what was a very short period of time, what ended up being a little over two weeks, to locate these individuals?

Mr. WATSON. That can be a short answer or a long answer. And I think the short answer is I don't have a problem with what we did after August 23. If you recall, on the I–94 he lists his name on the I–94. He lists his sponsor as himself. He lists his occupation as fisherman. And he lists his place of staying as the Marriott, New York City. And there were 17 of those—long gone from the Marriott in New York City, long gone if you want to take this and think this through, long gone from California.

Mr. BURR. Let me ask you, if I could because I've just got a couple seconds left.

Mr. WATSON. Okay. Sure.

Mr. BURR. I understand that the focus was on al-Mihdhar. Was there an effort on al-Hazmi to try to locate him? Because, in fact, he had an address that was in a phone book, though it wasn't current. He had an address that was the same under his own name on a visa extension that during the period he's in the country was granted. Was all the focus on al-Mihdhar and not on al-Hazmi?

Mr. WATSON. It was on both, absolutely on both. And if you recall, though, and I know your time's up and I'll be real short with the answer, long gone out of California. Yes, he was in the phone book. Yes, he got a loan. And there are a lot of clues there, but he's not in California on August 23.

Mr. BURR. I thank both of you for your willingness.

The Chair has been very gracious. Thank you. I yield back.

Mr. GIBBONS. Thank you, Mr. Burr.

Senator Bayh.

Senator BAYH. Thank you.

Gentlemen, thank you for your testimony. I have five minutes. I have five questions, so I'll try and move quickly and I'd be grateful to you if you could do the same.

Mr. Black, most of these questions are for you. As you stated, you were the head of CTC until, I think, about four months ago.

Mr. BLACK. Yes, sir.

Senator BAYH. And in your prepared testimony, you had indicated that before 9/11 of last year Hizbollah had really been perceived as probably the greatest terrorist threat. The question I have for you is could you give us the—as of the date that you left CTC, can you give us the hierarchy of priorities? I assume al-Qa'ida was number one by that point.

Mr. BLACK. Yes, sir. I have to apologize if I misspoke. I didn't mean it like that. I said—I was trying to convey the sense that there was not only al-Qa'ida. There was Hizbollah. And up until 9/11, Hizbollah had killed more Americans.

Senator BAYH. Correct.

Mr. BLACK. So I'm not saying that they were——

Senator BAYH. So as of the date you left, it would have been al-Qa'ida, presumably, would have been number one?

Mr. BLACK. Al-Qa'ida would have been first. This is a list of particularly—what I'd rather do is give you the criteria. Essentially, it makes it easier. The highest criteria for us are terrorist groups that say they want to kill us, have the capability to kill and have killed us. So essentially, if you look at that, that would be the highest. The greatest threat to the United States would be like al-Qa'ida.

Senator BAYH. Let me cut to the chase.

Mr. BLACK. Please.

Senator BAYH. I was sort of laying a predicate there. As of May when you left, where would Iraq have been on the priority list of terrorist threats to our country?

Mr. BLACK. That's a good question, but it's sort of the wrong shop. That is a state sponsor of terrorism. I deal with the outgrowth of that. I don't specifically address countries.

Senator BAYH. Well, we're now in the business of trying to analyze the nexus between state sponsorship and other terrorist organizations. But in any event, with other questions, I'll just move on. That obviously is a question of some moment.

Mr. BLACK. Yes, it is. And I don't think it would be a good idea, certainly, for me to address that here.

Senator BAYH. The question of the use of lethal force, we can't get into that in any detail here. But, as you know, there's a prohibition against that. Occasionally, the chief executive of the country can authorize certain activities that don't involve that but might involve that. The lawyers get involved, et cetera, et cetera, and understandably there's a reluctance on the part of your former shop to read too much into those kind of things.

Is it your opinion that we should revisit the policy and consider revoking the prohibition against the use of lethal force?

Mr. BLACK. In my view?

Senator BAYH. Yes.

Mr. BLACK. Yes.

Senator BAYH. Mr. Black, you mentioned during your testimony, you mentioned at least one occurrence where laws and results against contaminating criminal investigation with intelligence information sort of hampered the cooperation between yourselves and the FBI.

Could you give us a list or, if not a list, at least your top examples of the laws and the rules that you think we should take a look at to perhaps improve, to make your job and the job of the FBI easier in terms of discharging your duties in terms of protecting the country?

Mr. BLACK. I'm unprepared to answer that question. I will have to research it and get back to you.

Senator BAYH. Well, I would appreciate it if you would, because obviously looking forward we want to examine those things that you view or your colleagues in the FBI view as impediments and look for ways that we can address those impediments to better accomplish the mission that we all share here. So if you would do that, I would appreciate it.

Mr. BLACK. Yes, sir. I will certainly do that.

Senator BAYH. My next question deals with—and I think Mr. Watson has addressed this and I apologize, Mr. Black, if you have addressed this as well. One of the big picture issues we have to address is not only whether we should have some systemic changes in terms of the management of intelligence globally but whether we should follow the British example and the example of other countries in terms of having a separate domestic intelligence capability.

I think that Mr. Watson spoke that things have changed, in his view, since the '70s and the '80s. It's a little bit different now. Do you have an opinion about that, whether we should adopt the British model, the Israeli model, some others, or whether we should try and work within the current structure to meet that responsibility?

Mr. BLACK. I would have to look at it in some detail for a definitive answer. One could go either way. But the FBI is positioned with exceptionally good people and they can certain do this job. What it requires is a different set of training, different sort of mindset, and I'm sure they're up to it and it can be done. If they can't, then of course there's a problem, but I have ever confidence that they can.

It requires looking at problems in a different way. As opposed to law enforcement, it is intelligence collection and operations.

Senator BAYH. That's one of the big picture questions that we have to answer.

I'm down to my last question, if I can sneak one in here. It's been my impression since joining the Committee that we're still suffering the after-effects of the '60s and the '70s and really a withdrawal from many areas of human intelligence, at least in the aggressive sense, abroad. We're attempting to reconstitute that, but aren't quite where we need to be yet. And as a result of that, we're more reliant upon some of our allies who have the right assets in the right places.

Mr. Black, how long, if I'm correct—first of all, am I correct? And if so, how long will we be overly reliant upon others for that kind of capability? How long will it take us to reconstitute our human intelligence resources so that we can be more independent in terms of protecting our country?

Mr. BLACK. Well, I think we are independent. I think it's a combination of two, sir.

Senator BAYH. Or have the assets that we really need.

Mr. BLACK. Have the assets that we really need is a function of resources and people. We have to put the trainers in place. We have to put the right kind of people here. We have to do much, much more—I hate to say this; this won't sound very clever—of what we're doing already. Then we get the people out there and produce. I don't want to minimize the relationship with others.

Senator BAYH. Well, my last comment was—and again, thank you for the Chair's forbearance—if given a blank check, how long would it take?

Mr. BLACK. A blank check. It would be speculation, sir, I can give—you know, it depends what type of comprehensive defense you're looking for. There'll never be 100 percent. So you can give me everything and I can't get 100 percent. It would go down something from there. It would be speculative.

Senator BAYH. Thank you.

Mr. GIBBONS. Thank you very much, Senator.

Mr. Black, Mr. Watson, thank you for your presence here today. We've kept you what must have seemed like an eternity. It's been three hours and we appreciate that. Your testimony has been very helpful and very enlightening, not only just to the Committee but to those of us that have been able to listen and watch what's gone on.

I do have an announcement to make at the request of the Chairmen. The Committee will meet this afternoon in S–407. That's upstairs in the Capitol, and it will be a closed session starting at 2:00 p.m. We will also, once again, return to this room Tuesday, October 1, at 10:00 a.m. and we will return to an open session.

With that, this meeting has been adjourned.

[Whereupon, at 1:04 p.m., the hearing was adjourned.]