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PART THREE-TOPICS-THE ATTACKS OF SEPTEMBER 11, 2001

I. Counterterrorism Resources

Throughout the Joint Inquiry, Intelligence Community witnesses cited a lack of money and people to explain why agencies failed to produce more intelligence on al-Qa'ida, did not arrest or disrupt more terrorists, and were otherwise limited in their response to the growing terrorist threat.

In general, between the end of the Cold War and September 11, 2001, Intelligence Community resources fell or remained even in constant dollars. As a result, overall capabilities declined. The CIA, for example, reduced the number of its operations officers in the field. In addition, the necessary support "tail" for counterterrorism, such as communications and training, eroded. More generally, depth of coverage and expertise declined as personnel moved from crisis to crisis or focused only on the highest priorities.

Within the overall intelligence budget, however, spending on counterterrorism increased considerably during the 1990s. The counterterrorism component of the overall National Foreign Intelligence Program (NFIP) at least doubled at most agencies in the decade before the September 11 attacks, while funding for other intelligence missions declined or stayed even.

In spite of this increase in counterterrorism resources, the overall decline in Intelligence Community resources made it difficult to expand the counterterrorism effort significantly to meet the growing threat. In addition, the overall decline in capabilities hindered the robustness of the counterterrorism effort. Spending on counterterrorism, and spending on al-Qa'ida in particular, relied heavily on supplemental appropriations, which carried with it additional disadvantages.

Although details are imprecise, the Joint Inquiry's research and Intelligence Community agency estimates show that the number of people working on terrorism rose steadily, despite overall decreases in Intelligence Community staffing. Nonetheless, the number of people in

counterterrorism remained small, particularly when compared with post-September 11 levels.

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A. Joint Inquiry Resource Review Methodology and Limitations

To explore resource allocations, the Joint Inquiry reviewed documents, requested additional information on specific issues, and interviewed knowledgeable personnel. Documents included formal NFIP submissions and responses; staffing descriptions for major counterterrorism offices, such as the Counterterrorist Center (CTC) at CIA and the FBI's Counterterrorism Division; CIA and FBI submissions requesting additional resources; supplemental appropriations and justifications; National Security Council (NSC)-mandated reviews of counterterrorism spending throughout the Intelligence Community; Inspector General reports; internal assessments of the effort against al-Qa'ida; and many other documents.

Because existing documentary information was insufficient, the Joint Inquiry asked the Intelligence Community for additional information. This included identifying the number of personnel who worked directly on al-Qa'ida and terrorism; determining and reviewing budget methodology; calculating full-time-equivalent staffing levels; and ascertaining resources that other groups received. Interviews related to resources spanned a range of policy officials, Intelligence Community leaders, and budget officers from the agencies and former OMB officials. Policy officials at the NSC and Department of Defense (DoD) were asked about the level of resources provided for intelligence and for counterterrorism.

Based on this review, it appears that the Intelligence Community has only a limited sense of what is budgeted for missions such as counterterrorism. Agencies submit budget requests for field agents or spy satellites, for instance, but do not systematically track the missions for which these capabilities are used. As a result, methodologies vary for estimating how much is spent on terrorism. Moreover, because Intelligence Community managers do not use this data for day-to-day operations, little information was readily available in response to our data requests. The Intelligence Community cannot quickly determine how or where money is spent, or which missions its personnel are carrying out.

Intelligence Community budgeting procedures thus make it difficult to determine whether counterterrorism as a mission is properly funded. Community components budget by [page 264] capabilities, such as the number of intelligence officers or satellites, rather than by missions, such as counterterrorism. Many of these capabilities, however, serve more than one function or mission, making it difficult to measure resource allocation. For example, a CIA field officer may collect on the internal politics of a country, a weapons shipment, and terrorism.

According to the CIA's Associate Deputy Director for Operations (DDO) for Resources, Plans and Policies, it is difficult to measure how much is spent on counterterrorism and the least precise area of accounting is human resources. For instance, in the field, personnel might work on several targets. Requiring them to keep track of the time they spend on particular tasks was considered, but rejected due to the administrative burden this would impose.

Also, counterterrorism often entails infrastructure costs that cannot be readily allocated to a particular effort. Before Fiscal Year (FY) 1999, there was little effort to track counterterrorism spending because counterterrorism was not an office or an expenditure center. Counterterrorism is not limited to CTC, and other CIA components support the effort. Finally, the CIA's accounting system focused on capabilities and resources, not on missions.

In FY 1999, the Office of Management and Budget (OMB) required that spending on counterterrorism be tracked. According to the CIA Budget Office's Director and Deputy Director, counterterrorism spending was calculated by determining the cost of CTC and specific counterterrorism operations for other offices. Indirect costs for those offices, like infrastructure and computers, were not included. To make these calculations, budget officers had to examine each organization and each program. While efforts are underway to restructure budget procedures to make data more easily retrievable, it remains difficult to determine what the Intelligence Community is spending on specific issues and missions. Data must be manually retrieved since budget systems do not "talk" to human resources systems. The effort is time and labor intensive and not "repeatable" because different measures are used in different years.

Even the CIA report on the counterterrorism effort that was provided in response to a specific Joint Inquiry request required a manual reconstruction of hours worked, which is imprecise at best. Thus, the Agency could provide only limited information on how its officers [page 265] divided their time in 1998. A senior NSA official in testimony criticized personnel accounting procedures that focus only on one product line, such as counterterrorism, noting that cryptographers, target developers, and other personnel contribute to products even if they are not formally part of the product lines. However, NSA was unable to provide a procedure to account for the contributions of these personnel.

As a result of these ambiguities, the Community often does not know how much it spends on particular efforts, making it difficult to compare funding across missions. Moreover, different components of the Community use different measures to determine how much they spend on missions, and there is no universally accepted method to measure indirect costs such as infrastructure.

In light of these difficulties, the estimates of spending on counterterrorism that follow should be viewed as rough outlines, not detailed pictures of overall expenditures. Since counterterrorism is not an explicit budget category for the Intelligence Community, it is difficult to estimate the percentage of Community capabilities (e.g., field officers or spy satellites) dedicated to counterterrorism. Community budget officers advised that components of the Community use different measures to estimate total sums spent on counterterrorism and these measures are not consistently used within agencies. Finally, indirect costs (such as infrastructure or communications) are often excluded from these figures.

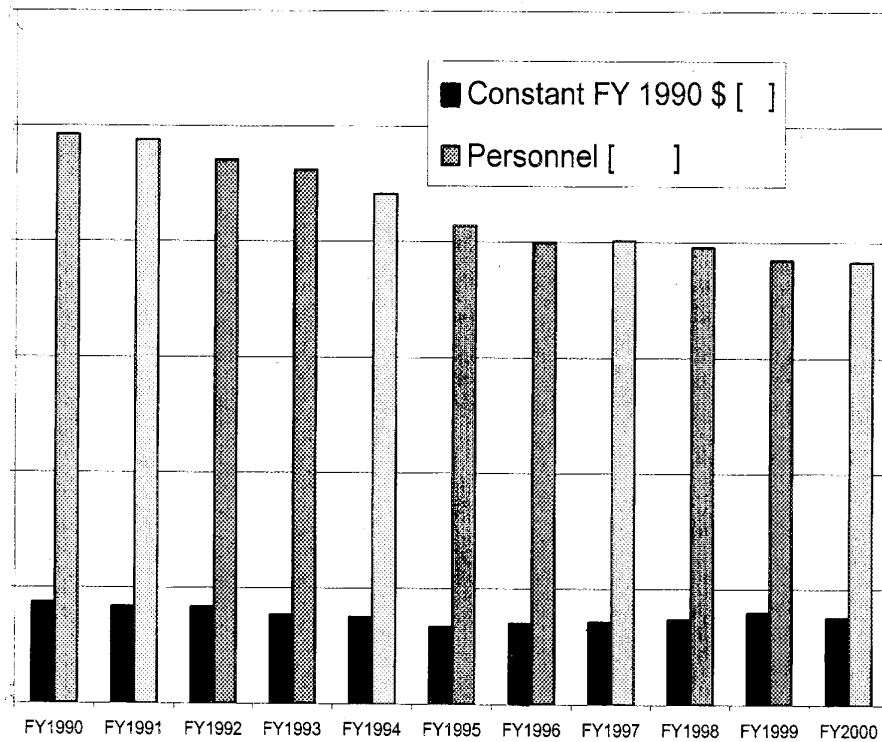
In addition to this data problem, the White House refused to allow the Intelligence Community to respond to Joint Inquiry requests for information regarding budgets and budgetary decision making. Many important resource issues revolved around the question of “Who said no?” to requests for additional funds for counterterrorism. However, the White House invoked Executive privilege and refused to permit the Intelligence Community to provide “pre-decisional” data on budget requests that were made by agencies before they were sent to Congress. The Joint Inquiry received some of this information indirectly, but large gaps remain. The White House also invoked Executive privilege in response to requests for information on spending for covert action.

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B. Overall Intelligence Community Funding

Overall funding of intelligence agencies and associated personnel levels fell or remained roughly even in constant dollars from the end of the Cold War until September 11, 2001, hindering the Community's response to the growing terrorist threat. As Chart 1.0 shows, the Intelligence Community budget fell or remained even in constant dollars throughout the 1990s.

Chart 1.0: Total NFIP Funding And Positions, FY 1990 To FY 2000 [Redacted]



Source: CMS

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Many of the overall capabilities, such as communications and training, that are needed to support counterterrorism and other intelligence operations were cut as part of money-saving efforts. Some critics claim these cuts went too far. For example, Deputy Secretary of Defense

Wolfowitz testified that his work with the “Rumsfeld Commission” in 1998 concerning the ballistic missile threat to the United States made clear to him that “resources for intelligence had been cut too deeply.” DCI Tenet testified that the CIA regularly asked OMB for more money, but had little success. This led to a shortage of trained agents and other resources.

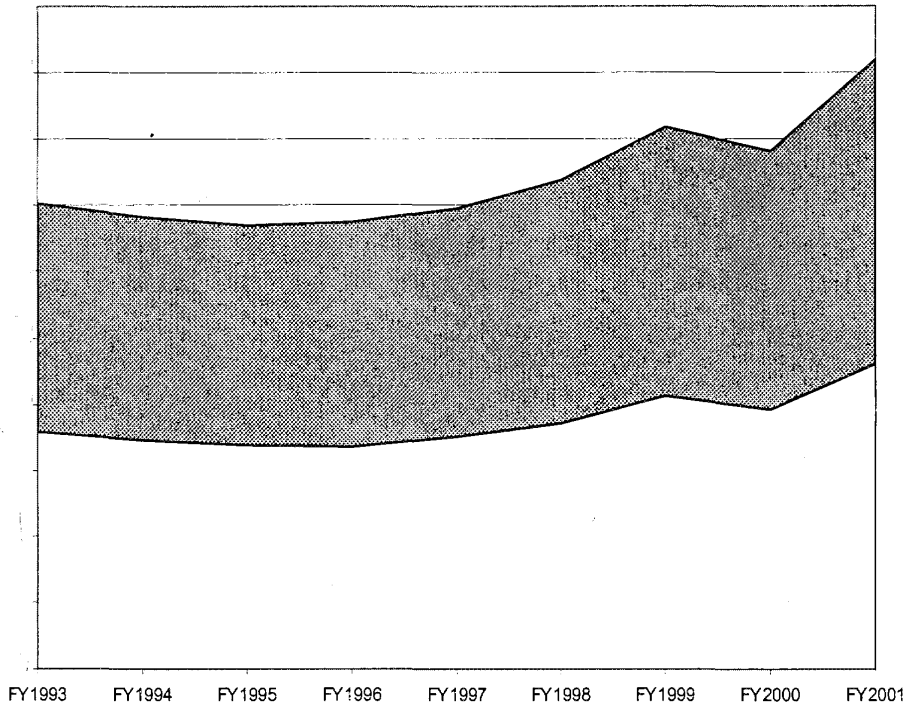
Former FBI Director Freeh testified that the FBI did not have sufficient resources to “maintain the critical growth and priority of the FBI’s counterterrorism program.” From 1996 to 1999, Congress increased appropriations substantially, but from 2000 to 2002, requests for additional funds were denied. As a result, FBI Headquarters units that dealt with Islamic extremism had insufficient resources. According to Mr. Freeh:

For FY 2000, 2001, and 2002 FBI counterterrorism budgets, I asked for a total of 1,895 Special Agents, analysts, linguists, and others. The final, enacted allocation I received was 76 people over those three years. . . . Thus, at the most critical time, the available resources for counterterrorism did not address the known critical needs.

The House and Senate Intelligence Committees typically authorized more for the Intelligence Community in the years before September 11 than the Congressional appropriators eventually approved. As Chart 1.1 indicates, only in one fiscal year (FY1996) did the appropriation exceed the authorization.

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Chart 1.1: NFIP Appropriations and Authorizations, FY1993-FY2001 [Redacted]



Source: HPSCI

C. Resources Dedicated To Counterterrorism

[Spending dedicated to counterterrorism grew, however, even as overall resources on intelligence declined. Former National Security Advisor Samuel Berger noted for the record that “working with Congress, [the Clinton administration] more than doubled the counterterrorism 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.” Information from the CIA’s Chief Financial Officer shows that funds appropriated to CTC increased from [] in FY 1992 to [] in FY 2000, excluding supplemental appropriations. Former FBI Director Freeh testified that the number of [page 269] Special Agent and support positions dedicated to terrorism more than doubled from 1993 to 1999. To achieve these increases, the Intelligence Community shielded counterterrorism programs from

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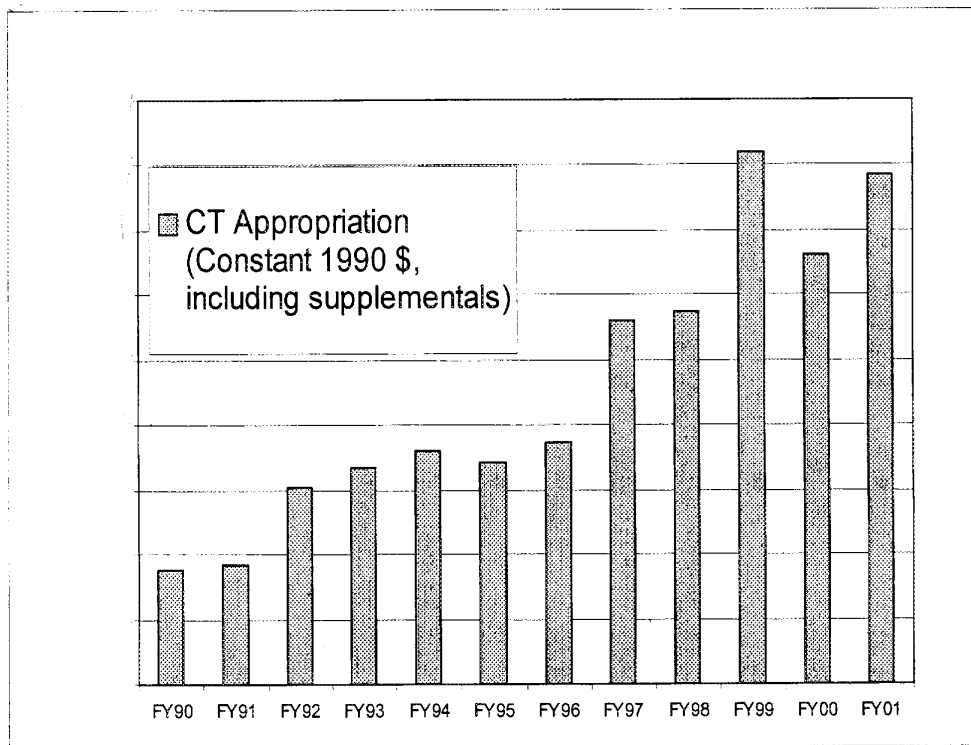
budget cuts and, as the terrorist threat grew, increased the number of personnel and the amount of resources dedicated to counterterrorism. However, despite this relative increase in resources, there was no massive increase before September 11, 2001].

Chart 1.2 describes overall trends in the Intelligence Community budget dedicated to counterterrorism before September 11, 2001. As Chart 1.2 shows, in the decade before September 11, direct spending on counterterrorism throughout the Community roughly quintupled in a time of tight budgets.

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Chart 1.2: Intelligence Community Counterterrorism Spending Before September 11

[Redacted]



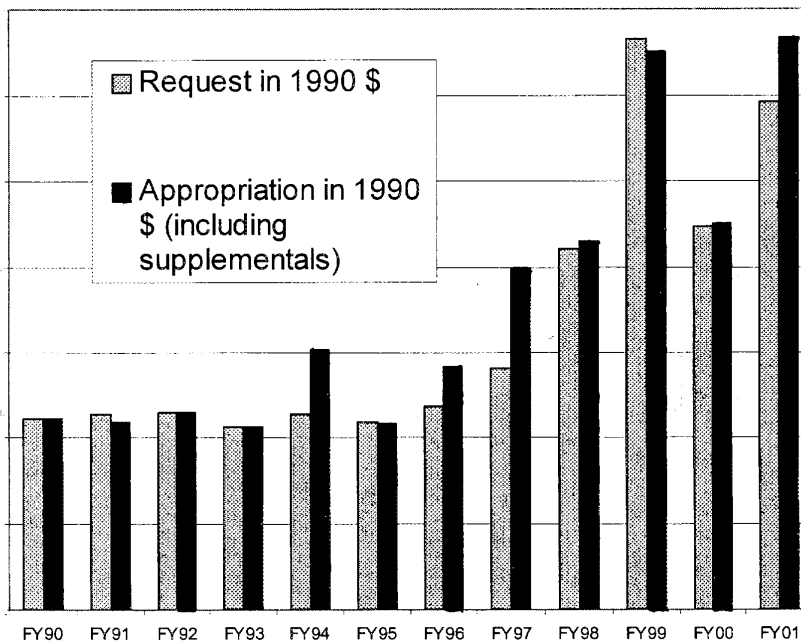
Source: CMS

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Charts 1.3, 1.4, and 1.5 compare the amounts the President requested of Congress for CIA, NSA and the FBI with the amounts, including supplemental appropriations, that were eventually appropriated. Agency leaders testified that their requests for resources were sometimes not satisfied, even though Congress appropriated as much or more than the President requested. This is because OMB often reduces agency requests before transmitting them to Congress. As mentioned earlier, the White House denied the Joint Inquiry access to pre-decisional budget data about what was asked of the White House and what was transmitted to Congress. Thus, the Joint Inquiry was not able to obtain that information for the Intelligence Community agencies, apart from FBI data available to the Senate Intelligence Committee.

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Chart 1.3. CIA Spending on Counterterrorism Before September 11 [Redacted]



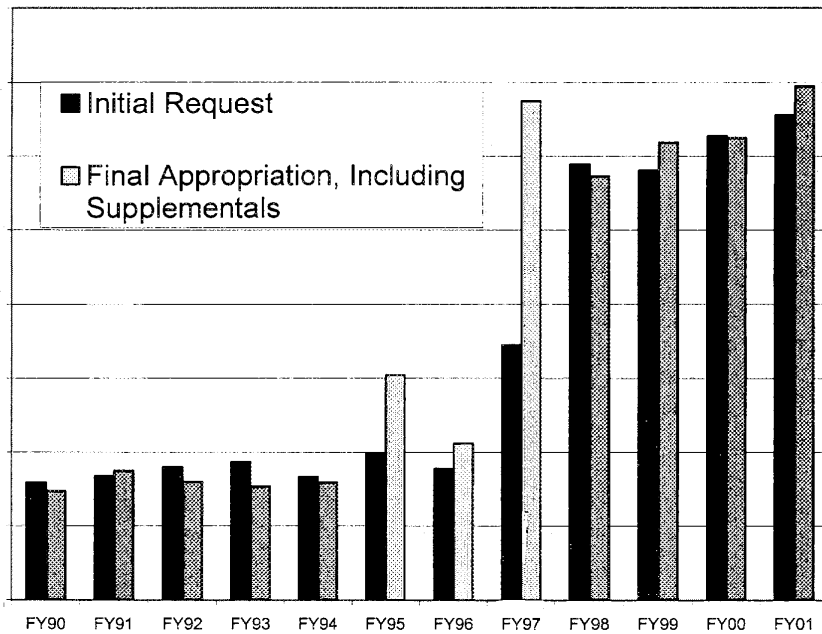
Source: CMS

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As Chart 1.3 illustrates, CIA appropriations for counterterrorism increased throughout the 1990s. In general, appropriations for CIA met or exceeded the requests that were submitted by the President to Congress.

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Chart 1.4. FBI Spending On Counterterrorism Before September 11 [Redacted]



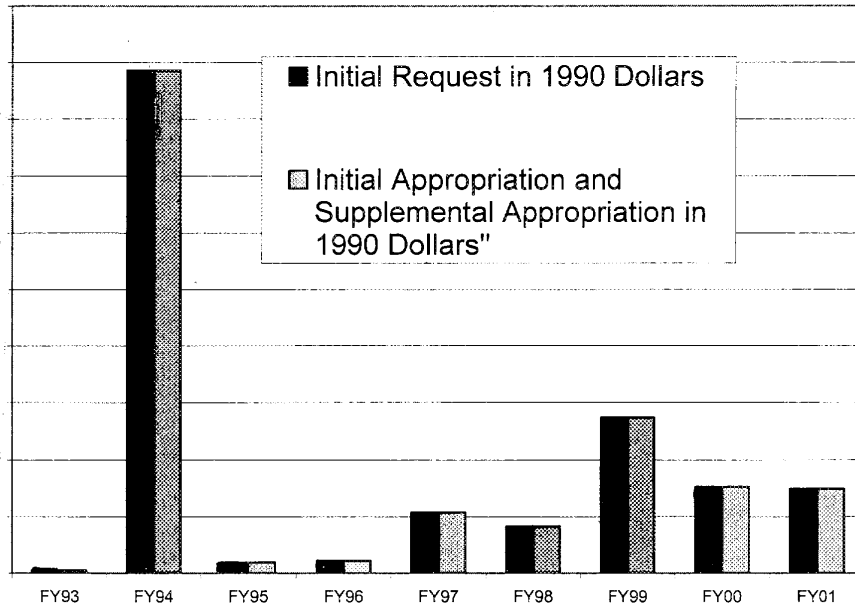
Source: FBI (information provided to SSCI)

The FBI usually received more – at times far more – than the amounts the President initially requested from Congress. FBI appropriations for counterterrorism increased dramatically in the mid-1990s and then fell or remained roughly constant in the years before September 11, 2001.

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Chart 1.5. NSA Spending On Counterterrorism Before September 11 [Redacted]



Source: CMS

NSA received increases in counterterrorism funding, consistent with the rest of the Intelligence Community, with dramatic increases throughout the 1990s. Appropriations consistently met or exceeded Presidential requests to Congress.

Intelligence Community officials contend that the increasing resources they received were not sufficient to meet the growing threat. For example, Cofer Black, former CTC Chief, testified that a lack of resources was a major impediment for CTC. Officials at NSA and CIA also stated in Joint Inquiry interviews that resources had been a problem.

D. Personnel Shortages [Page 274]

The number of analysts, operations officers, field agents, and other intelligence professionals working on al-Qa'ida was limited, creating personnel shortages that led to important information being overlooked.

a. Personnel Concerns At CIA

At the request of the Joint Inquiry, the CIA reviewed its counterterrorism effort from 1998 to 2002. This included analysts and operators outside CTC, many of whom made important contributions but worked only part time on al-Qa'ida. The review resulted in estimates of total "work-years" (i.e., 2087 labor hours per annum) combining the time expended by analysts focusing exclusively on al-Qa'ida and those working on related issues, such as terrorist financing. The results are summarized in Table 2.0.

Table 2.0. Full-Time Equivalent Personnel Dedicated To Counterterrorism At CIA (Excludes CIA Contractors And Detailees From Other Agencies)

Full-Time Equivalent (Work-years) for Staff Employees	September 1998	August 2001	July 2002
Total Headquarters and Staff Work-years Devoted to al-Qa'ida	[]	[]	[]
Total Headquarters and Staff Work-years Devoted to Terrorism, Excluding al-Qa'ida	[]	[]	[]
Total CTC Effort against terrorism (both al-Qa'ida and other groups)	[]	[]	[]

As Table 2.0 indicates, the number of CIA personnel working on al-Qa'ida almost doubled from the August 1998 East Africa U.S. embassy attacks to September 11, 2001. Before [page 275] September 11, the numbers of CTC personnel involved in the effort against terrorism grew, though much of the increase occurred in the field.

Despite these increases, the former Chief of the CTC's Sunni Extremist Group testified that "[w]e always needed more," though he also noted that every other part of the CIA's Directorate of Operations (DO) also believed they needed more resources. DCI Tenet testified

that “we never had enough” personnel working on al-Qa’ida.” Many CTC personnel asserted in interviews that the number of employees was well below the levels that were necessary, given the volume of information and the growing nature of the threat. One officer claimed she was told when appeals for more resources were rejected: “People [will] have to die for them to get resources.”

The lack of adequate resources meant that CTC personnel responsible for al-Qa’ida were required to work extremely long hours without relief. This created morale problems, made retention difficult, and fostered the perception that the DO did not truly support the counterterrorism mission. As the former Chief of the CTC unit focused on Bin Ladin testified:

We never had enough officers from the [DO]. The officers we had were greatly overworked. And there was always more senior-level concern for [_____]
_____] than for providing more officers to protect the health and welfare of the unit’s officers.

[Despite recognition of the menace al-Qai’da posed and the relatively limited understanding of its network, the CIA had relatively few analysts working on the problem. At CTC, the total work-years for terrorism analysis relating to al-Qa’ida inside its analytic group was only nine in September 1998. According to CIA, nine CTC analysts and eight analysts in the Directorate of Intelligence were assigned to UBL and al-Qa’ida in 1999. This was only a fraction of the analytic effort that was to be devoted to al-Qa’ida in July 2002].

b. Personnel Concerns At NSA

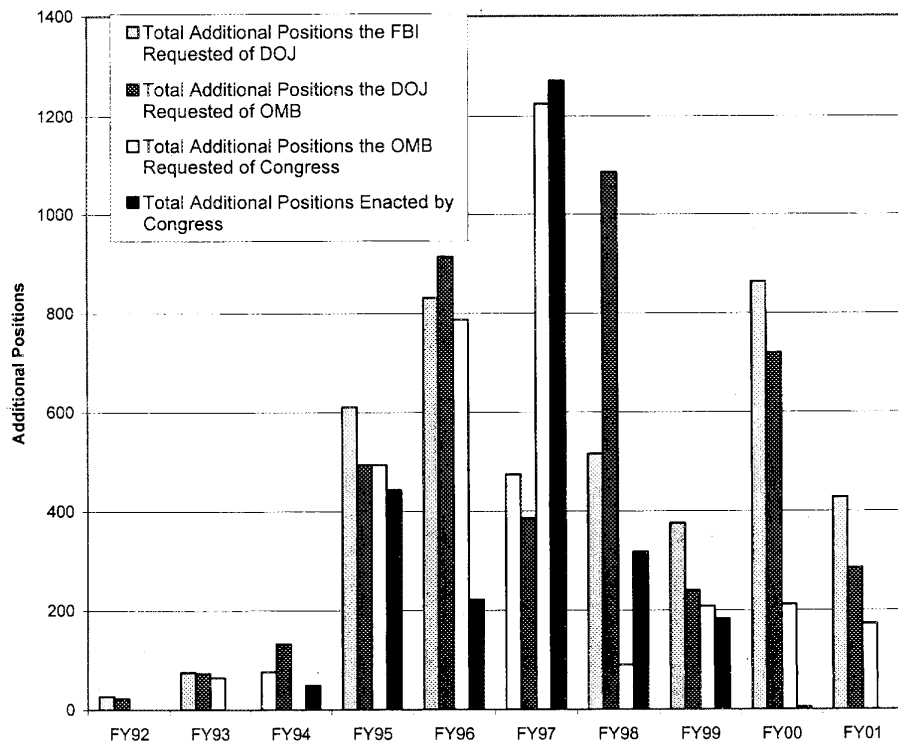
[NSA had only a limited number of Arabic linguists. Before September 11, 2001, few were dedicated full-time to al-Qa’ida, which was only one of many priority counterterrorism [page 276] targets at NSA for which Arabic linguists were needed. For example, those linguists were also used to support other important regional topics and to translate intelligence originating in other parts of the world].

c. Personnel Concerns At The FBI

The FBI labored under a hiring freeze in the last years of the Clinton Administration. As a result, it did not train new agents, according to an interview of former Director Freeh. Although FBI full-time-equivalent work-years on international terrorism doubled from 1993 to 1998, they fell or remained constant from 1999 to September 2001, according to FBI information. That information also shows that actual work-years of agents and support personnel in the field grew from 482 in 1993 to 1,034 in 2000. Despite this dramatic increase, FBI officials claim they did not receive enough resources to manage the emerging threat. A summary of FBI requests for additional personnel for counterterrorism and the responses from the Department of Justice, Office of Management and Budget, and Congress is presented in Chart 1.6.

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Chart 1.6 FBI Resource Requests



Source: FBI

Chart 1.6 demonstrates that FBI requests for additional personnel were cut or rejected at times by the Department of Justice, the Office of Management and Budget, and the Congress. Sometimes the Bureau received most of its initial request, and its request was exceeded in one instance. Former OMB officials noted in Joint Inquiry interviews that it was rare for any agency to receive more than its initial request during a time of budget stringency. They also pointed out that, while the FBI often did not receive additional personnel for counterterrorism, many other agencies faced significant cuts.

E. Counterterrorism and the Competition for Scarce Resources

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Because intelligence budgets were shrinking while counterterrorism resources were steadily growing, senior policy and intelligence officials were reluctant to make the additional cuts in other programs that would have been necessary to augment counterterrorism programs further. This would have jeopardized their ability to satisfy other collection priorities within the Intelligence Community. As Director of Central Intelligence George Tenet testified:

As I “declared war” against al-Qa’ida in 1998 – in the aftermath of the East Africa embassy bombings – we were in our fifth year of round-the-clock support to Operation Southern Watch in Iraq. Just three months earlier, we were embroiled in answering questions on the India and Pakistan nuclear tests and trying to determine how we could surge more people to understanding and countering weapons of mass destruction proliferation. In early 1999, we surged more than 800 analysts and redirected collection assets from across the Intelligence Community to support the NATO bombing campaign against the Federal Republic of Yugoslavia.

[Similarly, NSA Director Hayden testified that his energy was focused heavily on a range of regional and global issues. An FBI budget official told the Joint Inquiry that counterterrorism was not a priority for Attorney General Ashcroft before September 11, 2001 and that the FBI faced pressure to make cuts in counterterrorism to satisfy the Attorney General’s other priorities].

The CIA’s Associate Deputy Director for Operations (DDO) for Resources recalled some attempt to protect counterterrorism in response to the DCI’s declaration of war. However, this did not lead to any change in training, any dramatic increase in the size of CIA’s Middle East stations,

or significantly greater numbers of personnel assigned to CTC. A particular problem was that counterterrorism was a worldwide target, and the DO was closing stations in less strategic areas [——] even though al-Qa'ida was active there. This hindered acquisition of information on terrorism in these areas. In interviews, CIA officials explained that they were reluctant to cut entire areas of collection, particularly in the field, because senior U.S. Government policymakers had many requirements for intelligence across a wide variety of issue areas.

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By the late 1990s, Intelligence Community coverage of many issues was exceptionally slim, and staffing was skeletal. The CIA's DO cut by almost one-third the number of personnel deployed overseas, according to the DDO. The Associate DDO for Resources noted that the DO often was not able to meet its collection goals, in part because an increased focus on counterterrorism meant that other issues received less attention. At best, the DO could sustain what it had, but could not invest in the future. Communications and training suffered tremendously, DO officials reported.

[The Intelligence Community was unable to reduce requests for collection on other priorities. As NSA Director Hayden testified, "Our efforts in 2000 to churn money internally were not accepted by the Community; its reliance on [signals intelligence] had made it reluctant to give it up." Former CTC Chief Black noted that shifting resources was difficult because the policy community had other demands for intelligence. He stated in an interview that "[w]e could see it coming in Afghanistan, but, for example, couldn't get more Agency slots [within the theater]." In an interview, the CIA official responsible for the Near East noted that, even after September 11, no major issues were deleted, despite the imperatives of the war on terrorism].

As a result, Intelligence Community officials contend they had too many priorities for the resource levels that were available. The NSA Director testified that, "[g]iven all the other intelligence priorities, it would have been difficult at that time within the [Intelligence Community] or the Department of Defense to accept the kind of resource decisions that would have been necessary to make our effort against the target more robust."

Requests for additional assistance by counterterrorism officials often fell on unsympathetic ears because of declining resources. Mr. Black noted in an interview that the DDO told him that

the CTC had more than its share of people when compared with other divisions. According to the Associate DDO for Resources, every office in the DO asked for more people and the demand for Arabists was particularly high. In general, requests for additional personnel were small because managers knew that resources were limited.

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When additional resources did become available, intelligence officials sought to build up overall capabilities, not just those tied to terrorism. According to the Director of the CIA's Office of the Budget, proposals for putting more DO officers in the field, which was a priority for several years, were not specifically tied to counterterrorism. Any additional field officers would be tasked according to current requirements.

F. Policymaker Criticism of Intelligence Community Budget Allocations

Several former OMB and NSC officials asserted in interviews that the FBI and CIA focused too much on protecting overall funding, and not enough on shifting priorities to increase spending on terrorism. Budget requests specifically tied to counterterrorism were generally approved, according to former OMB officials. However, most requests were for overall capabilities, which met with less support.

For example, former National Coordinator for Security, Infrastructure and Counterterrorism Richard Clarke criticized the Intelligence Community and the FBI for not putting aside other priorities to ensure that al-Qa'ida received sufficient coverage. Mr. Clarke explained in a briefing that only a small part of CIA's counterterrorism expenditures was devoted to al-Qa'ida, even though "[w]e in the NSC and we in the OMB asked CIA repeatedly to find programs of lesser priority, either in the CIA budget or the Intelligence Community budget, to increase the size of these activities, and they claimed there was no program anywhere in the intelligence budget where they could get any funding to reprogram." Former OMB officials corroborate Clarke's argument that the Intelligence Community was reluctant to reprogram money to pay for efforts against al-Qa'ida or otherwise re-align overall spending.

The FBI's use of counterterrorism resources received particular criticism. The Bureau assigned fewer than ten tactical analysts and only one strategic analyst to al-Qa'ida before

September 11. Analysts instead focused on critical infrastructure, case support, and domestic terrorism. FBI officials told the Joint Inquiry that they focused on investigating overseas terrorism, rather than on strategic analysis or on radical activity in the United States.

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G. Reliance on Supplemental Funding For Counterterrorism

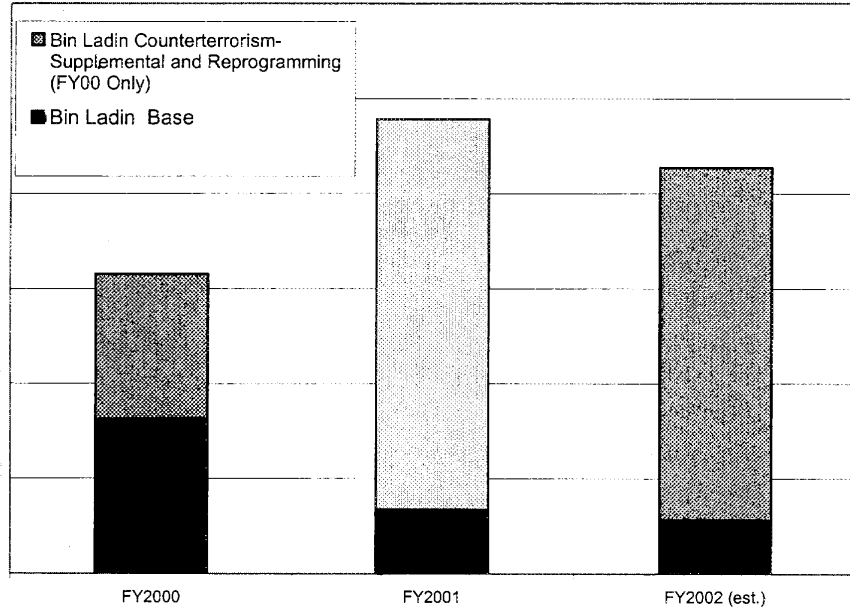
The President submits to the Congress an annual budget for the Intelligence Community for the coming fiscal year. The budget request includes funding for ongoing and new programs. Programs that are part of the President's request are considered programs of record (also called base programs) and have established and well understood oversight and accountability procedures. Whereas the President's budget request anticipates funding for current priorities, supplemental appropriations are a reaction to unforeseen events and are granted in addition to base funding.

The Intelligence Community relied heavily on supplemental appropriations to finance the effort against terrorism. The Community received large supplementals to fight terrorism following several major al-Qa'ida attacks and as part of the effort during the Millennium celebrations. In particular, most of the CIA's program against al-Qa'ida in later years was funded from supplemental appropriations. This hindered efforts to sustain and plan counterterrorism programs.

Chart 1.7 illustrates the critical importance of supplemental funding in the effort against al-Qa'ida.

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Chart 1.7 Supplemental Appropriations In The Effort Against al-Qa'ida
[Redacted]



Source: CIA

In interviews, Intelligence Community officials criticized the reliance on supplementals for vital programs such as counterterrorism. Former CTC Chief Black, for example, told the Joint Inquiry that reliance on supplementals made it hard to create a stable program. The Associate DDO for Resources explained several of the challenges supplementals posed:

- Supplemental funding must be used in the fiscal year in which it is appropriated and is not meant to establish long-term programs, making it difficult to plan for the future;
- Supplementals were tactically focused and did not pay for additional personnel or infrastructure upgrades (the September 11 supplemental appropriation was an exception to this rule); and [page 283]

- Programs within the DO take years to develop and cannot be “surged” or cut from year to year.

Despite these problems, the Intelligence Community sought additional supplementals to sustain its counterterrorism effort, rather than alter program funds in the President’s budget request. DO officials reportedly did not change overall funding patterns because they did not want to lose expertise or capabilities in other areas; they were confident that supplemental funding would be appropriated to sustain their effort; and the overall funding was largely for “target neutral” infrastructure, such as communications, that would also hinder the effort against al-Qa’ida if cut.

The Director of CIA’s Office of the Budget noted that, if a supplemental is expected, program managers can plan without changing their base. In his judgment, from late 1998 through 2001, managers reasonably expected supplementals (though the amount was never fixed) and thus could do some planning. If supplemental funding was not appropriated, base funding could have been adjusted to spend more on al-Qa’ida.

H. How Easily Can Money Be Moved?

[The Intelligence Community has limited flexibility in redistributing resources in response to crises. Reallocation can occur within budget categories. For example, operational activities relating to both a foreign country and counterterrorism may fall into “agent operations” or “analysis” and tradeoffs between them are easier to make. According to a senior Community Management Staff (CMS) budget official, there is considerable latitude in re-allocating small sums, though what counts as “small” varies across agencies. To re-allocate larger amounts, approval must be obtained from the Congressional Intelligence Committees].

According to the CMS budget official, CMS tries to influence the budget and agency spending, but has limited authority. CMS tries to use a “bully pulpit” and takes matters up with the DCI when intelligence components do not comply with CMS directives. CMS also has some leverage in these matters because of its influence over future budget proposals. [Page 284]

However, CMS exerts only limited control over the expenditure process. Unlike agency comptrollers, CMS cannot withhold money from agencies that do not comply with its directives. Agencies may also appeal to the DCI to overturn CMS guidance or inform Congressional staff about their dissatisfaction. The interests of the Secretary of Defense also matter tremendously in the appropriations process, as the Secretary controls the vast majority of the Intelligence Community budget. As a result, CMS is often able to influence only the margins of the process.

Within agencies, resource realignment is also restricted, according to the CIA's Budget Director. Resources cannot be taken out of programs that OMB and Congress have "fenced," i.e., dedicated for only specified activities. National Security Council-mandated [—————] program money is always fenced. To move fenced money, budget office must negotiate with the Congress, CMS, OMB, and others. In addition, personnel services funds cannot be reallocated to pay for non-personnel services costs.

In light of these limits, there has been a call for increasing the budget authority of Intelligence Community managers. For instance, former National Security Advisor Berger testified: "I believe in 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." And former FBI Director Freeh criticized the budget process as taking away discretion from the FBI Director and making it difficult to transfer money to priorities such as terrorism.

II. Foreign Liaison

Al-Qa'ida is engaged in a worldwide struggle against the United States and its allies. Those responsible for the September 11 plot, for example, became radicalized in Germany, held meetings in Malaysia, and received funds channeled through the United Arab Emirates. The September 11 attack is only one example of the global scope of al-Qa'ida's activities. The group has conducted or supported attacks not only in America, but also in the Balkans, the Caucasus, [page 285] France, Ethiopia, Indonesia, Kenya, Saudi Arabia, Somalia, Spain, Tanzania, Tunisia, Uzbekistan, Yemen, and dozens of other countries.

The Intelligence Community recognized early on that an effective U.S. response to al-Qa'ida must be global and that foreign intelligence and security services ("liaison services") would be important allies in fighting terrorism. Improving ties to liaison services became increasingly important for the CIA, FBI, NSA, and other agencies, and their efforts helped make foreign countries more effective partners and more willing to assist U.S. counterterrorism efforts.

[Several problems remained, however, some of which are inherent to bilateral relationships. CIA's liaison partners vary in competence and commitment. Others are unwilling to share information and some include individuals believed to have cooperated with terrorist groups. At times, U.S. policies and procedures also hinder successful liaison].

A. Efforts to Improve Foreign Liaison

[In the mid-1990s, CIA counterterrorism officials recognized that unilateral CIA operations alone were not sufficient in penetrating and countering terrorist organizations. For instance, difficulties in unilaterally penetrating [—————] extremist groups necessitated increased cooperation with liaison services, according to a former CTC Chief. To this end, CIA, NSA, and other Intelligence Community agencies strengthened their liaison relationships with existing partners and forged new relationships to fight al-Qa'ida and other terrorist groups.

Throughout the 1990s, the FBI also greatly expanded its efforts to work with foreign governments against terrorism. Former FBI Director Louis Freeh testified that he met with dozens of foreign leaders to build a global counterterrorism network and greatly expanded the Bureau's presence overseas through its Legal Attache ("Legat") program. As of September 11, 2001, the FBI had agents assigned to 44 U.S. embassies. As Mr. Freeh explained, the FBI began to position itself around the globe "in places that matter in the fight against terrorism," particularly in the Middle East, as Legats were assigned to Cairo, Islamabad, Tel Aviv, Ankara, [page 286] Riyadh, and other sites. As a result, he added, the FBI was often able to expedite access to witnesses and create additional channels for information about terrorism.

[Liaison relationships within a country often vary by agency. For instance, interviews the Joint Inquiry conducted in [_____

_____]. Arrangements also vary by location. For example, FBI Legats often have established relationships with liaison services in Europe, but they often coordinate efforts through CIA in certain countries of counterterrorism interest].

[The struggle against al-Qa'ida led U.S. intelligence agencies to work closely with liaison services that were not major partners during the Cold War. The Joint Inquiry received testimony and responses from U.S. Government officials that several foreign liaison services deserved praise for their assistance to the United States. [_____

_____].

[In the developing world, many liaison services are limited in resources, training and [_____] according to CIA officers, and the U.S. may be able to augment their capabilities greatly. According to Joint Inquiry interviews in [_____] for example, the U.S. has helped pay for and train the [_____] to the point that the [_____] require personnel to take several CIA- taught courses in order to rise above the rank of Major. The CIA support has improved [_____] capabilities and has led to several joint efforts against terrorism, according to the Chief of CIA's Near East Division].

[The CIA has also developed a program that CIA personnel told the Joint Inquiry makes liaison services [page 287] better able and more willing to pursue terrorist groups].

B. Benefits Of Foreign Liaison

[The United States relies heavily on liaison services in the fight against terrorism because they offer many critical advantages. A former CTC Chief described liaison services as a "force multiplier." Their [_____] language skills and cultural backgrounds enable

them to work more effectively against local terrorism than can most American intelligence officers [_____]. Some liaison services are highly skilled and have operated against these targets for decades].

Liaison services can also provide considerable assistance in human intelligence operations that goes beyond mere information sharing. [_____

_____].

In addition, liaison services have legal jurisdiction in their own countries, which they used before September 11 to support a number of U.S. Government operations against terrorist suspects and otherwise disrupt terrorist activities. Liaison services, particularly those outside the West, can operate more freely in accordance with laws and procedures often less restrictive than those of liberal democracies. [_____

_____].

[Page 288]

Liaison operations are often necessary because of the paucity of unilateral Intelligence Community sources, according to CIA's National Intelligence Officer for the Near East and South Asia. This is especially so in remote or hostile parts of the world where U.S. access is limited. [_____
_____].

Liaison services are also important for [_____

_____].

C. Disadvantages of Relying on Foreign Liaison Services

[Despite the many advantages of working with foreign liaison services, this approach has several limitations that were manifest before September 11. These limitations can hinder cooperation and possibly be exploited by terrorists].

[On some occasions, individuals in some liaison services are believed to have cooperated with terrorist groups, [_____

_____]. In addition, the former Chief of CTC's Bin Ladin unit testified that [_____

_____].

Governments can also be highly sensitive about information that embarrasses them or implicates their citizens in terrorism. The former Chief of CTC's Bin Ladin unit testified that [_____

[page 289] _____].

Problems are common even with governments that have long been close partners of the United States. Many intelligence services are reluctant to share information. Even the most cooperative services withhold information to protect sources and methods and for other reasons. Several European governments were described as indifferent to the threat al-Qa'ida posed before September 11, while others faced legal restrictions that impeded their ability to disrupt terrorist cells.

Former National Security Advisor Sandy Berger told the Joint Inquiry that European governments (except Britain) did not share the U.S. assessment of the al-Qa'ida threat. Joint

Inquiry interviews in Germany showed that the Germans did not see Islamist groups as a significant threat to their interests before September 11. Deputy National Security Advisor Steve Hadley also noted that European support varied according to the perceived threat.

[The former Chief of CTC's Bin Ladin unit testified that some European services had minimal interest in the Bin Ladin target and offered little assistance. [_____

_____].” Bin Ladin also was not a priority target for the [_____
_____] until after September 11, according to Joint Inquiry interviews abroad].

Several services are apparently excessively bureaucratic. Interviews in Germany revealed that the intelligence apparatus was deliberately fragmented to make abuses of power more difficult. This fragmentation also made coordination and information sharing more difficult. Furthermore, before September 11, it was not illegal to be a member of foreign terrorist organizations in Germany or to raise funds for them. The Assistant Director for the FBI's [page 290] Counterterrorism Division noted that “the Germans were so restrictive prior to 9/11 with their Constitution about what they can and cannot do, that they could do very little.”

[Finally, [_____] liaison partners have their own equities to consider, and this must be taken into account when working with them and in evaluating information received from them. Some services will try to take advantage of joint operations to seek more information [_____

_____].

D. Liaison Service Problems with the United States

An array of factors can often hinder the degree of liaison services cooperation. Many of these are outside the control of the Intelligence Community.

Leaks of information revealing a liaison service's role in assisting the United States are a source of frustration cited by almost every expert the Joint Inquiry interviewed. At times, leaks are the result of procedures regarding warnings. For example, the U.S. has issued warnings based on information from liaison services – warnings required by U.S. policies – even though this angered the liaison service by potentially revealing its sources. More commonly, leaks are unauthorized, serve no policy purpose and simply anger liaison services whose sources and methods may be compromised.

[Leaks also hinder cooperation with governments that prefer to minimize public ties to the U.S., and particularly to U.S. intelligence. For example, one foreign government is sensitive to excessive public connections with the United States because they damage its reputation in the area and provide fuel for criticism to [——] rivals, according to a U.S. Government official].

Interviews with Intelligence Community officials suggest a range of additional problems. The U.S. can easily overwhelm a small liaison service with many demands. For instance, CIA Station personnel in [——] maintain that one of their principal responsibilities is to decide on the priorities for requests for information so that the [——] do not receive too many. U.S. laws, [page 291] particularly those that attach the death penalty to crimes, make it difficult for several governments to extradite terrorist suspects to, or provide information in support of prosecutions by, the U.S. This has hindered cooperation in the investigations of Zacarias Moussaoui and other suspects. Finally, although intelligence cooperation is often isolated from shifts in bilateral diplomacy, poor bilateral relations can affect intelligence liaison relations in negative ways.

E. Coordination of Foreign Liaison

[Most Intelligence Community officials operating overseas coordinate liaison relations well with DCI representatives who are responsible for intelligence relations with foreign governments. U.S. Ambassadors are always briefed, according to the Chief of the CIA's [———]. He emphasized that the primary instruction given to the DCI representatives by CIA is: "Recruit the U.S. Ambassador first," that is, gain the good will of the Ambassador. Interviews with several Ambassadors indicate that, in general, the Intelligence Community coordinates well with U.S. embassies].

Nonetheless, there are challenges to coordinating relations with liaison services. For instance, liaison on counterterrorism has not always been integrated into overall U.S. regional goals. Senior policy makers told the Joint Inquiry that, before September 11, they had not always succeeded in incorporating the struggle against al-Qa'ida into U.S. policy toward key states [—————]. As a result, other issues often diverted attention from terrorism.

There are also many channels through different agencies for U.S. Government liaison with foreign governments. These range from CIA and FBI to the Agriculture and Commerce Departments. As former National Security Advisor Sandy Berger noted, U.S. ambassadors often lack control over these relationships and, consequently, the U.S. Government does not always properly consider the priorities of all the requests it makes of foreign governments.

Mr. Clarke also noted that there exists a “gentleman’s agreement” with friendly liaison services: “you don’t spy in the United States and we don’t spy in your country.” In his view, [page 292] however, this arrangement can put the U.S. at “some disadvantage when [foreign liaison services] are not terribly aggressive on our behalf.”

[This disadvantage was compounded by the decision at the end of the Cold War to cut CIA presence in some Western countries dramatically. [—————]
—————
—————].

[The CIA is responsible for coordinating the overall intelligence liaison relationship, but FBI Legats and Defense Department attachés do not need CIA permission to interact with their local partners when, for example, a U.S. citizen overseas is involved in terrorism. Weaknesses in inter-agency coordination overseas can also reflect lack of coordination within the United States. For example, during Joint Inquiry interviews abroad, it was determined that a joint planning meeting to target al-Qa'ida leader [—————], which was to include CIA officers and their foreign liaison service counterparts, did not include the local FBI Legat. In fact, he was not aware of the meeting, although the Bureau plays a major role in tracking [—————]. In

general, however, CIA and FBI have come to learn more about each other's procedures and requirements and, as a result, have improved cooperation overseas].

F. Additional Challenges for the FBI Overseas

The FBI's Legat program, which grew rapidly in the 1990s and remains relatively new, faces several additional problems. FBI agents reported to the Joint Inquiry that some offices were responsible for too large an area or for too many countries. As a result, they have little opportunity for the face-to-face meetings with foreign counterparts that are integral to establishing liaison relationships. In addition, Legats have limited funding for interaction with foreign counterparts. One Legat also noted that most FBI agents in the United States have little understanding of how the program works and, therefore, do not use it effectively.

[Page 293]

In addition, the Joint Inquiry was told in interviews that FBI Headquarters has often been slow in responding to Legat requests for support or information. The FBI Headquarters unit that supports the Legat program appears to be understaffed, since it has the same number of staff to support 45 Legat offices as it did when there were only 20 such offices.

G. Progress After September 11

[The Joint Inquiry did not delve deeply into how liaison relationships changed after the September 11 attacks. However, almost all interviews and testimony that dealt with this subject indicated that cooperation had improved dramatically, particularly in regard to al-Qa'ida. The immediacy and magnitude of the threat impressed governments worldwide. In addition, increased U.S. attention to terrorism increased pressure on other governments to cooperate, and the amount of shared intelligence reporting has greatly increased, as have other types of cooperation, even with some previously recalcitrant or hostile countries [—————].

III. Covert Action and Military Operations Against Bin Ladin

[The Joint Inquiry examined whether the Intelligence Community might have missed opportunities to disrupt the September 11 attacks through covert action or military operations directed against Usama Bin Ladin. To answer that question, the Joint Inquiry reviewed covert action documents and interviewed twenty-six persons with first-hand knowledge of U.S. efforts to capture Bin Ladin before September 11. The review included documents authorizing covert action [_____] _____], and information related to 13 military options formulated by the Chairman of the Joint Chiefs of Staff in late 2000. Interviews included CIA personnel involved in covert action to capture Bin Ladin and his principal lieutenants; senior military officers responsible for planning contingency operations; [_____] _____]; senior CIA and NSC officials and senior military officers involved in [page 294] authorizing and implementing covert action and the use of military force; and State Department counterterrorism officials.

A. Background

The National Security Act of 1947, as amended, defines “covert action” as “activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.” Covert action does not include activities whose primary purpose is to acquire intelligence; traditional diplomatic or military activities; traditional law enforcement activities; or routine support to these activities or the activities of other government agencies abroad.

[In spring 1986, President Reagan signed a directive authorizing CIA to conduct certain counterterrorism operations abroad]. [_____] _____

_____].

[_____
_____, [page 295] _____
_____] All actions authorized [_____] must be
important to U.S. national security as established in the relevant Presidential Finding. [_____

_____]:
[_____

_____].

[_____

_____].

The U.S. military does not require [_____
_____] . Thus, a traditional military operation, such as a strike by cruise missile or special operations forces, to kill or capture Bin Ladin would require only an order from the President.

B. Authorities to Conduct Covert Action Against Bin Ladin

[Page 296]

[Former National Security Advisor Sandy Berger testified that “from August 1998 on, . . . [President Clinton] authorized a series of overt and covert actions to try to get Bin Ladin and his principal lieutenants.” [_____

_____]:

[_____

_____].

[_____

_____]:

- [_____
_____];
- [_____

_____];

- [_____

_____]]; and

[Page 297]

- [_____

_____].

According to CIA personnel and NSC officials interviewed by the Joint Inquiry, Bin Ladin and his associates were expected to resist capture attempts. [_____
_____].

The President also ordered the U.S. Navy to fire cruise missiles at targets in Sudan and Afghanistan. Some of the missiles were aimed at a location where Bin Ladin was thought to be, and the Joint Inquiry was told that one of the objectives of the strike was to kill Bin Ladin.

[_____

_____]

_____]. The NSC was considering [_____] operations: to capture Bin Ladin and a U.S. Navy cruise missile strike to kill him. According to a former Chief of CTC's Bin Ladin unit, the NSC decided against a cruise missile strike because of concerns about collateral damage to a nearby mosque.

NSC and CIA personnel alike have said that [_____
_____]. They differ in their interpretation [_____],

however. [_____

[page 298] _____]
_____].

[Former National Security Advisor Sandy Berger testified to the Joint Inquiry on September 19, 2002 that, from the time of the East Africa U.S. Embassy bombings in 1998, the U.S. Government was:

. . . embarked [on] an very intense effort to get Bin Ladin, to get his lieutenants, through both overt and covert means. . . . 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.

Senator 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. . . . There was no question that the cruise missiles were not trying to capture him. They were not law enforcement techniques. . . .”]

[_____] Mr. Berger noted that the Administration was openly and simultaneously trying to kill Bin Ladin with cruise missiles. Mr. Clarke also told the Joint Inquiry in June 2002 that “we wanted to make clear to the people in the field that we preferred arrest, but we recognized that that probably wasn’t going to be possible.” [_____
_____].

[Later in the September 19, 2002 hearing, Mr. Berger and former National Security Advisor Brent Scowcroft were asked whether the Executive Order 12333 prohibition on assassinations should be reconsidered. They responded:

Mr. Scowcroft: . . . it gets us into all kinds of complications and drawing legalistic lines. One of the things that we found [in connection with a 1989 coup attempt in Panama] is that 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, . . . it is very likely there are going to be some people killed.

Mr. Berger: . . . we received rulings from the Department of Justice that the Executive Order did not prohibit our ability . . . 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. . . . [A]s a practical matter, it didn't stop us from doing anything].

. . . .

Senator Bayh: . . . we have heard from some of [those] who deal in these kinds 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. . . .

Mr. Berger: They certainly would have to have clarity from the President of the United States or something like that.]

[_____

_____]:

• “[_____

_____].”

• “[_____

_____].

[page 299] [_____

_____].

- “[_____]

_____].”

- “[_____]

_____].”

- “[_____]
_____].”

As former National Security Advisor Berger noted in his interview, “We do not have a rogue CIA.”

While NSC officials maintained that [_____
_____]. CIA

personnel interviewed by the Joint Inquiry explained that [_____

[page 300] _____

_____].

[_____

_____]:

- [_____
_____]:

- [_____

_____] and

- [_____

_____].”

[_____

_____]

[page 301] _____

_____].

[_____

_____]

_____].

[_____

_____].

[_____

_____]

[Page 302] _____
_____]:

[_____

_____].

....
[_____

_____].

[_____]

_____].

[_____]

_____].

[_____]

_____].

[Page 303]

[_____]

_____].

According to individuals interviewed by the Joint Inquiry, [_____]

_____]. This idea reflects a tension between two views of counterterrorist efforts.
One view is that the problem is primarily a law enforcement matter, with prosecutions and

convictions as the ultimate goal, while the other is that we are at war and terrorists are combatants in a foreign army who may be detained until the end of the conflict.

[_____
_____] The White House refused to allow the Joint Inquiry to review the relevant documents, but [_____
_____]:

[_____

_____].

[_____

[Page 304] _____

_____].

[Deputy Secretary of State Richard Armitage testified to the Joint Inquiry on September 19, 2002 that:

The National Security Council . . . called for new proposals [in March 2001] on a strategy that would be more aggressive against al-Qa'ida. The first deputies meeting, which is the first decision making 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, sharp end things that the military was asked to do. . . . 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. . .].

[_____]
_____]:

- [_____

_____].

- [_____

_____].

The Joint Inquiry was told [_____
_____]. The Joint Inquiry was not able to determine whether senior U.S. Government policymakers or the President reviewed them before that date.

Within the Congress, distribution of [_____] was limited to the Speaker of the House, the Senate Majority Leader, the Minority Leaders of the [page 305] House and Senate, and the Chairs and Ranking Minority members of the House and Senate Intelligence Committees. Congress did not receive [_____].

Senior U.S. military officers involved in planning military operations against Bin Ladin have told Joint Inquiry staff that there were no documents [_____] authorizing the U.S. military to carry out clandestine operations against Bin Ladin. Nor were there efforts to draft

such documents, because they were not deemed necessary. However, Presidential approval would have been required for military operations.

C. Additional Operational Challenges and Constraints

In interviews, CTC personnel pointed out numerous operational challenges and constraints they faced in attempting to capture [—————] Bin Ladin and his lieutenants:

- Bin Ladin resided in a country suspicious of foreigners and embroiled in a civil war. Thus, determining his whereabouts was exceptionally difficult and dangerous, especially for Western intelligence officers.
- Bin Ladin had a number of enemies, any one of whom might attempt to kill him. As a result, when he traveled inside Afghanistan, he was always in the company of a large security detail. Some of his bodyguards were “hardened killers” who had fought with Bin Ladin against the Soviet invasion of Afghanistan.
- [—————]
[—————]. Moreover, Bin Ladin and his associates were careful not to reveal operational information [—————]
[—————].

[Page 306]

- [—————]
[—————]; and
- The U.S. had limited access to Afghanistan and the countries near it, [—————]
[—————]
[—————]
[—————].

In interviews with the Joint Inquiry, a former CTC Chief and a former Chief of the [————
————] Extremist Group also described constraints on CIA actions:

- The CIA could not violate the Constitution, U.S. law, or human rights, including Bin Ladin’s, during these operations;
- The operations could not violate the prohibition on assassinations in Executive Order 12333;
- [————
————];
- [————
————];
- The CIA was not authorized to upset the political balance in Afghanistan; and
- The U.S. military did not support putting U.S. “boots on the ground” in Afghanistan.

[Page 306]

[In the September 12, 2002 hearing, a CIA official also spoke of the constraints he faced in staging covert action against Bin Ladin:

[————
————
————
————
————
————
————].

In a Joint Inquiry interview, a former CTC Chief also offered his opinion that firing cruise missiles based on a single strand of human intelligence was not advisable since the risk of missing Bin Ladin or inflicting excessive collateral damage outweighed the chances of success.

In a statement to the Joint Inquiry, a former CTC Chief cited the “international political context of this period” as presenting “an operational environment with major impediments that CIA constantly fought to overcome”:

- “The U.S. Government had no official presence in Afghanistan, and relations with the Taliban were seriously strained. Both of these factors made it difficult to get access to Bin Ladin and al-Qa’ida personnel.”
- “U.S. policy stopped short of replacing the Taliban regime or providing direct support to others for the specific purpose of overthrowing the Taliban. These realities limited our ability to exert pressure on Bin Ladin.”
- “During this period, the Taliban gradually gained control over most of Afghanistan, increasingly limiting the opposition’s capabilities and room to maneuver.”

[Page 308]

- “U.S. relations with Pakistan, the principal access point to Afghanistan, were strained due to the nuclear tests of 1998 and the military coup in Islamabad in 1999.”

He also noted other factors that complicated CIA operations against Bin Ladin:

[_____]

 _____].

The former CTC Chief explained that these challenges and operational constraints, [_____ _____], left virtually no room to craft an executable operation. In an interview with the Joint Inquiry, CIA’s Deputy Director for Operations also noted that CIA [_____] capabilities had “atrophied” in the years preceding the September 11 attacks.

General Hugh Shelton, former Chairman of the Joint Chiefs of Staff, and the Joint Staff's current Director of Operations pointed to two additional constraints on military operations against Bin Ladin. The first was the absence of "actionable" intelligence on Bin Ladin's whereabouts: the Intelligence Community never provided a location and time at which a missile strike could be launched. The second was the absence of a declaration of war or some similar declaration indicating that the Taliban was a formal enemy. In General Shelton's view, the absence of such a declaration precluded the United States from sending U.S. soldiers into Afghanistan to capture or kill Bin Ladin. He believes that solving the Afghanistan problem before September 11 required the full range of diplomatic, economic, and military tools available to the U.S. Government.

[Page 309]

In contrast, the Chief of CTC's Bin Ladin unit through June 1999, told the Joint Inquiry:

[_____

_____].

A former CTC Chief had a somewhat different view of intelligence support to the military during his tenure [_____]:

[The military has] exacting criteria that intelligence needs, that needs to be met before they can launch an operation. [_____

_____].

Another Chief of CTC's Bin Ladin unit had yet another view on actionable intelligence:

I think our swift victory . . . after September 11th – underscores the fact that we had an enormous body of actionable intelligence on Bin Ladin's terrorist infrastructure. [_____

_____].

D. CIA Covert Action Against Bin Ladin [_____]

[The Joint Inquiry also became aware of the existence of [_____
_____]]. The White House declined to provide access, but the Joint Inquiry was able to develop some information about their content.

[Page 310]

Notwithstanding the extensive efforts [_____] to guide CIA covert action against Bin Ladin, actual efforts to implement covert action and military operations against him in Afghanistan before September 11 were very limited. A central element in these efforts was the CTC unit established in 1996 to focus exclusively on Bin Ladin and his terrorist network. Initially, the unit was created to examine terrorist financing and to determine whether Bin Ladin posed a significant threat. [_____

_____]

_____].

[_____

_____]. In February 1998, Bin Ladin issued his public *fatwa* authorizing attacks on American civilians and military personnel anywhere in the world. His statement and subsequent indictment in the United States added urgency to the effort to formulate a covert action plan against him. [_____
_____].

[_____

_____].

[_____

_____ [page

311] _____

_____].

[_____

_____].

[_____

_____].

[_____

[Page 312]

]:

[

_____].

[_____

_____] [The President ordered the U.S. Navy on August 20, 1998 to launch cruise missiles against targets in Afghanistan and Sudan. This is the only instance the Joint Inquiry has been able to identify in which the CIA or U.S. military carried out an operation directly against Bin Ladin before September 11].

According to the President's public statements at the time, the cruise missile strikes were launched in self-defense against groups that had played key roles in the embassy bombings, had executed earlier attacks against Americans, were planning to launch additional attacks, and were attempting to obtain chemical weapons. All personnel interviewed on this matter by the Joint Inquiry concur that one objective of the strikes in Afghanistan was to kill Bin Ladin.

[_____

]:

- [_____

_____]. [Page 313]

- [_____

_____].

- [_____

_____].

[_____

_____].

In the summer and fall of 1999, following the arrival of a new Chief of CTC and a new Chief of the Bin Ladin unit, CTC reviewed its covert action program against Bin Ladin and developed “The Plan.” This review was propelled by the DCI’s December 1998 memorandum declaring “war” against Bin Ladin. The Plan that resulted in September 1999 contained five main elements, with an estimate of each element’s prospects of success:

- [_____

_____].

- [_____

_____].

In testimony before the Joint Inquiry, the DCI acknowledged impediments to “The Plan”:

U.S. policy stopped short of replacing the Taliban regime, limiting the ability of the U.S. Government to exert pressure on Bin Ladin. U.S. relations with Pakistan, the principal access point to Afghanistan were strained by the Pakistani nuclear tests in 1998 and the military coup in 1999. The U.S. Government had no official presence in Afghanistan, and relations with the Taliban were seriously strained. Both factors made it more difficult to gain access to Bin Ladin and al-Qa’ida personnel.

Over time, CTC officers engaged in these covert action efforts concluded that “getting Bin Ladin” required dealing with the Taliban regime first. They believed that the different means of capturing Bin Ladin were unlikely to succeed as long as the Taliban continued to provide Bin Ladin a safehaven. In addition, CIA officers recognized that the entire al-Qa’ida apparatus in Afghanistan, not just Bin Ladin, was a problem. Thus, placing pressure on the Taliban to expel Bin Ladin and end its support for terrorism was necessary.

[_____

_____]. [The Joint Inquiry was denied access to that document].

While it appears that CIA was not able to mount a single operation against Bin Ladin directly before September 11, CIA [_____
_____] were key factors in U.S. military execution of Operation Enduring Freedom in Afghanistan beginning in October 2001. The DCI alluded to this in his testimony before the Joint Inquiry on June 18-19, 2002.

[Page 316]

E. [Use of [_____] against Bin Ladin

[In June 2002, then-Presidential Advisor for Cybersecurity Richard Clarke told a Congressional forum examining technology that can be used to combat terrorism:

Because of that development, which was telescoped and done very quickly in six months instead of three years, we were able to launch [_____] into Afghanistan last September].

[Former National Security Advisor Berger testified that the President demanded more information on Bin Ladin's location in 2000:

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 Ladin. . . . Actually it was very promising as a way of determining where he would be if we had one strand of human intelligence].

[_____]

_____].

[_____]

_____]:

[_____]

_____].

[Page 317]

[_____]

_____].

[_____
_____]

_____] :
[_____
_____] .

[Beginning in 2001, the U.S. Government embarked on an effort to develop [_____

_____].

[_____

_____].

[_____

_____]

[Page 319]

F. Use of U.S. Military Force Against Bin Ladin

According to interviews of current and retired senior military officers and DoD civilians about U.S. military options for capturing or killing Bin Ladin, cruise missile strikes in August 1998, following the embassy bombings in East Africa, were the only use of U.S. military force against Bin Ladin or his terrorist network in Afghanistan prior to September 11, 2001. On [_____] occasions in [_____], President Clinton and his advisors contemplated additional missile strikes against Bin Ladin.

- [_____
_____]

_____].

- [_____

_____].

- [_____

[page 320]_____

_____].

In each situation, the Intelligence Community lacked “actionable intelligence” for a capture or kill operation by military means. Mr. Clarke described the problem:

The Clinton Administration considered additional military strikes against Afghanistan on [] occasions [_____

_____]. We now know that on only one of those [_____] occasions was the intelligence correct.

[Actionable intelligence was particularly difficult to obtain since killing or capturing Bin Ladin required knowing where he would be when cruise missiles arrived at the target area, not

where he had been when they were launched. Several senior CIA officers who were interviewed, including the Deputy Director for Operations, two former CTC Chiefs, a former Chief of CTC's Bin Ladin unit, and a [_____]

_____]. Thus, CIA's general reluctance to rely on a single source of information or recommend missile launches based on human intelligence alone was compounded by concerns about the reliability of this information. In addition, policymakers sought information on the presence of non-combatants and property that might be damaged in a strike].

[The interviewees also mentioned contingency plans to launch additional cruise missile strikes at Bin Ladin had the Intelligence Community been able to obtain precise information on his location. [Page 321] As former National Security Advisor Sandy Berger explained to the Joint Inquiry:

Unfortunately, after August 1998, we never again had actionable intelligence information reliable enough to warrant another attack against Bin Ladin or his key 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].

According to a CIA document, in December 1999, the U.S. Special Operations Command had been tasked to begin planning and was "working closely" with CIA. The Joint Inquiry did not identify any operations that came about as a result of this planning.

In an interview with the Joint Inquiry, General Shelton, former Chairman of the Joint Chiefs of Staff explained the military options beyond cruise missile strikes. In the fall of 2000, he prepared a paper containing 12 or 13 options for using military force against Bin Ladin. Several options reportedly involved "U.S. boots on the ground" in Afghanistan and were aimed at capturing Bin Ladin, [_____]. General Shelton, along with Secretary of Defense William Cohen, discussed these options with National Security Advisor Berger in late 2000, after Mr. Berger had expressed impatience with U.S. efforts to get Bin Ladin. The military Joint Staff's Director of Operations described the military options paper as an effort to "educate" the National Security Advisor about the "extraordinary complexity of the 'boots-on-the-ground' options." According to this officer, the military did not receive any tasking to develop

these options further. The Joint Inquiry requested a copy of both the paper detailing the military options as well as the military Joint Staff’s pre-September 11 strategic plan for Afghanistan that is discussed below. The NSC denied that request, although a senior officer in the military Joint Staff was allowed to brief the Joint Inquiry on those options.

Former Chairman Shelton said the options could have been executed “very quickly,” but depended on the Intelligence Community obtaining actionable intelligence. He said CIA never provided such intelligence and the military had never been tasked to obtain it.

Mr. Clarke explained that “the overwhelming message to the White House from the uniformed military leadership was ‘we don’t want to do this,’ [_____]
[Page 322] _____
_____].” Mr. Clarke also said that “[t]he military repeatedly came back with recommendations that their capability not be utilized for commando operations in Afghanistan.”

According to CTC officers, the military levied so many requirements for highly detailed, actionable intelligence before conducting an operation – far beyond what the Intelligence Community was ever likely to obtain – that U.S. military units were effectively precluded from conducting operations against Bin Ladin’s organization on the ground in Afghanistan before September 11. As noted above, the Joint Inquiry heard conflicting testimony from CIA officers about the Intelligence Community obtaining actionable intelligence. For instance, one former CTC officer told the Joint Inquiry:

[_____

_____].

A former CTC Chief [_____] explained:

[The military has] exacting criteria that intelligence needs . . . that needs to be met before they can launch an operation. [_____

_____].

The military Joint Staff's Director of Operations also mentioned a strategic plan developed by the Joint Staff in late 2000 for dealing with the Taliban regime. The U.S. military was coming to the same conclusion as the Intelligence Community: getting Bin Ladin meant dealing with the Taliban regime first and shutting down the sanctuary in Afghanistan.

The Joint Inquiry also asked General Shelton whether the military and CIA ever pooled assets or developed plans to conduct a joint operation against Bin Ladin. The former Chairman said that no plans existed, and that, as a general principle, he was opposed to joint CIA-military [page 323] operations. He explained that he did not want U.S. military units to be dependent on the actions of CIA paramilitary units outside the military chain of command. He noted an instance in which CIA and the U.S. military conducted a coordinated operation [_____]. In that case, a "firewall" between CIA and military units allowed the military to proceed even if CIA units did not accomplish their mission. General Shelton said that he would have insisted on similar arrangements for joint operations in Afghanistan against Bin Ladin. In contrast, a former CTC Chief said about joint operations involving CIA and military units:

I think it is an absolutely great [idea]. This is something we have been advocating for a long time. If you want to go to war, you take the CIA, its clandestinity, its authorities, and you match it up with special operations forces of the U.S. military, you can really – you can really do some damage... This is something that we have tried to advocate at the working level, and we haven't made much progress. But, if this is something that you [the Congress] would like to look into, it would be great for the United States.

Similarly, a former Chief of CTC's Bin Ladin unit commented:

As someone who [_____] worked with special forces, they want to work with us and we want to work with them. History was made between the CIA and special forces. We need to do that.

IV. Strategy to Disrupt Terrorist Funding

Bin Ladin and al-Qa'ida financial assets and networks are substantial, diverse, and elusive. In addition to Bin Ladin's personal wealth, the al-Qa'ida financial network relies on funds reportedly raised through legitimate and illegitimate businesses and on donations from wealthy Muslims and charitable organizations supporting Muslim causes. Bin Ladin has claimed that he has access to four ways of transferring money: smuggling cash, the global banking system, the Islamic banking system, and hawalas or informal money transfer networks. Bin Ladin once boasted to a Pakistani newspaper that the cracks in the Western financial system were as familiar to him and his al-Qa'ida colleagues as the lines on their own hands.

[Page 324]

A. Financial Tracking before September 11

Before September 11, no single federal agency was responsible for tracking terrorist funds or coordinating U.S. Government efforts and securing international collaboration to interdict these funds. Some agencies did track terrorist financing, but, for the most part, the effort was disorganized and related to specific cases, and the U.S. Government was generally reluctant to seize assets or make arrests relating to that financing.

The General Counsel of the Department of Treasury explained to the Joint Inquiry that, before September 11, 2001, the financial war on terrorism was "ad-hoc-ism," episodic, and informal, with no mechanism for exchanging information among agencies or for setting priorities. He described errors in perception, focus, and targeting of the Bin Ladin threat and his realization as he watched the World Trade Center Towers disintegrate:

It was as if we had been looking at the world through the wrong end of a telescope. . . . Money had been spirited around the globe by means and measures and in denominations that mocked all of our detection. . . . The most serious threat to our well-being was now clean money intended to kill, not dirty money seeking to be rinsed in a place of hiding.

The fact that, before September 11, no single agency was responsible for coordinating government efforts to attack terrorist funding does not mean that individual agencies were not tracking funds effectively, identifying terrorists and their organizations, and unraveling their plots by targeting assets. The Chief of the FBI's Financial Crimes Section and the Director of

Treasury's Financial Crimes Enforcement Network (FinCEN) told the Joint Inquiry that, before September 11, they had the capacity to develop leads on terrorist suspects and link them to other terrorists by examining funding sources. The FBI Financial Crimes Section Chief also explained his belief that he would have been able to locate hijackers Nawaf al-Hazmi and Khalid al-Mihdhar, if asked, through credit card and banking transactions.

FinCEN started doing linkage analysis of terrorist financing in April 1999 and first identified an account with a direct link to Bin Ladin in February 2001. FinCEN has the advantage of being able to work with law enforcement and intelligence information, which it [page 325] combines with Bank Secrecy Act information and commercial data to produce a product useful to the Department of Treasury and others in seizing, blocking, and freezing terrorist assets. These capabilities and databases at FinCEN, the Drug Information Center, and across the Intelligence Community enabled the FBI and FinCEN to connect almost all 19 hijackers within days after September 11 by linking their bank accounts, credit cards, debit cards, addresses, and telephone numbers.

B. Financial Tracking after September 11

Since September 11, 2001, the federal government has taken actions to block and seize terrorist assets such as smuggled cash, to arrest and indict terrorist financiers, and to shut down front companies, charities, banks, and hawala conglomerates that offer financial support to al-Qa'ida. On September 24, 2001, four days after signing an Executive Order blocking terrorist funds, President Bush gave a new priority to the effort: "We will starve the terrorists of funding." The Treasury General Counsel described to the Joint Inquiry the change in the government's strategy: "the difference between the activity before 9/11 and after 9/11 is the difference between a mule and an 8-cylinder Chevy."

V. Khalid Shaykh Mohammed: The Mastermind Of September 11

[Khalid Shaykh Mohammed (KSM) is one of al-Qa'ida's most senior leaders and is believed to be the mastermind behind the September 11 attacks. Although the Intelligence

Community knew of KSM's support for terrorism since 1995 and later learned of his links to al-Qa'ida, he was not recognized as a senior al-Qa'ida lieutenant. In April 2002, the Intelligence Community learned that KSM and his group conceived the September 11 plot. KSM is also known as Mukhtar or "the Brain]."

The efforts the Intelligence Community took against KSM illustrate the difficulties it had in understanding al-Qa'ida's activities and structure and formulating a coherent response. The Community devoted few analytic or operational resources to tracking KSM or understanding his [page 326] activities. Coordination within the Community was irregular at best, and the little information that was shared was usually forgotten or dismissed.

A. KSM's Links to Terrorist Attacks before September 11

KSM and his followers played a major role in several Islamist extremist plots before September 11. These plots are notable for the large number of casualties they sought to create, the use of airplanes, and focus on symbolic targets such as the World Trade Center and U.S. government facilities, all characteristics of the September 11 attacks.

Investigators determined in 1995 that KSM was linked to the February 1993 bombing of the World Trade Center. Federal prosecutors gave CIA a copy of a financial wire transaction for \$660 between Qatar and the U.S., dated several days before the blast, from "Khaled Shaykh" in Doha to Muhammad Salameh, one of four defendants convicted in the World Trade Center bombing. With additional information that emerged from the Philippines investigation described below, CIA was able to determine that Khaled was KSM, that KSM was an uncle of Ramzi Yousef, the mastermind of the first World Trade Center bombing plot, and that KSM had married the sister of Yousef's wife.

[In 1995, Yousef's plots to bomb twelve U.S. airplanes flying Asian routes, kill the Pope, and crash a plane into CIA Headquarters were thwarted by Philippine police when a fire erupted in an apartment where Yousef was preparing explosives. The police seized a list of names and telephone numbers and found a notation for "Khalid Doha" with telephone and facsimile numbers in Qatar. [_____

_____]. Yet another link to KSM was made when Yousef, who was apprehended shortly after fleeing the Philippines, made a call from detention to Qatar and asked to speak with “Khalid.” This number was similar to the one found by the Philippine police. [_____
_____].

[Page 327]

B. The Hunt for KSM

The Intelligence Community agencies worked together to apprehend KSM during his time in Qatar and in the Balkans. However, KSM’s frequent travels, and the slow pace of efforts to learn his whereabouts, [_____].

C. Finding KSM and Building the Case

[_____

_____]. [Prosecutors asked that CIA continue to assist the FBI by using its assets to help establish the case. [_____

_____].

[_____

_____].

[It was determined that KSM was a top priority. The FBI was poised to take a photograph abroad for identification purposes. If KSM were identified from the photograph, an indictment

would be sought. [_____

_____]. On December 30, 1995 KSM was
identified [page 328] from the photograph, and he was indicted by a New York City grand jury in
January 1996. The indictment was sealed and would be opened once KSM was in custody].

D. [_____]

[_____

_____].

[_____

_____].

[_____

_____].

[_____

_____].

E. Link to al-Qa’ida Discovered

The Intelligence Community was not sure of KSM’s alliances until after [_____]. For example, a December 1995 CIA cable stated, “As far as we know, Yousef and his [page 329] confederates – such as [KSM] – are not allied with an organized terrorist group and cannot readily call upon such an organized unit to execute retaliatory strikes against the U.S. or countries that have cooperated with the U.S. in the extradition of Yousef and his associates.”

[This assessment changed in 1996 when a foreign government shared information that Bin Ladin and KSM had traveled together to a foreign country the previous year. In August 1998, after the bombing of the U.S. Embassy in Nairobi, another foreign government sent CIA a list of the names of individuals who flew into Nairobi before the attack. Based on information delivered by another liaison service, CIA recognized that one of the passengers’ names was an alias for KSM. The liaison report also described KSM as close to Bin Ladin. In an interview, the FBI agent responsible for the KSM case could not remember this information, even though it had been disseminated by CIA. This information and subsequent reporting led the CIA to see KSM as part of Bin Ladin’s organization. Several CIA cables indicated that following up on information relevant to KSM was essential, given his past activities and his links to al-Qa’ida].

F. The Emphasis on Renditions

[_____

_____].

[_____

_____]: [Page 330]

[_____

_____].

Only once before September 11 did an analyst write requirements that were intended to determine KSM's role in al-Qa'ida, his future plans, or other traditional intelligence concerns.

G. KSM's U.S. Connection

[Though KSM had numerous links to the United States, it appears that information concerning such links was difficult to discover and did not generate an aggressive response. The Intelligence Community knew that KSM had attended college in the United States in the 1980s. Both the CIA and FBI tried to track this down, but they were unsuccessful until the Kuwaitis published information in the media. CIA disseminated a report that KSM had traveled to the United States as recently as May 2001 and was sending recruits to the United States to meet colleagues already in the country did not cause the Intelligence Community to mobilize, even though it contained apparently significant [_____] information. The report explained that KSM was a relative of convicted World Trade center bomber Ramzi Yousef, appeared to be one of Bin Ladin's most trusted lieutenants and was active in recruiting people to travel outside Afghanistan, including to the United States, to carry out unspecified activities on behalf of Bin Ladin. According to the report, he continued to travel frequently to the United States, including as recently as May 2001, and routinely told others that he could arrange their entry into the United States as well. Reportedly, these individuals were expected to establish contact with colleagues already there. The clear implication of his comments, according to the report, was that they would be engaged in planning terrorist-related activities].

[Page 331]

The CIA did not find the report credible, but noted that it was worth pursuing in case it was accurate: "if it is KSM, we have both a significant threat and an opportunity to pick him up." The Joint Inquiry requested that CIA review this particular source report and provide information

concerning how CTC, CIA field personnel, and other agencies reacted to this information. That information has not been received.

H. The Hunt for KSM Continues

[Since September 11, the CIA has come to believe that KSM may have been responsible for all Bin Ladin operations outside Afghanistan. In Spring 2002, intelligence indicated that he played a leading role in the *USS Cole* bombing. In the Summer 2002, CIA created a new High Value Target Team to track and target terrorist masterminds such as KSM. In the summer of 2002, KSM appeared along with Ramzi Bin al-Shibh in a taped al-Jazeera interview. Despite Bin al-Shibh's capture in Pakistan shortly thereafter, KSM has not yet been found].*

VI. The FBI's Investigation of Zacarias Moussaoui Before September 11

Zacarias Moussaoui came to the attention of the FBI as the Intelligence Community was detecting numerous signs of an impending terrorist attack against U.S. interests somewhere in the world. He was in the custody of the Immigration and Naturalization Service (INS) on September 11, 2001. The Joint Inquiry examined whether information resulting from the FBI's investigation of Moussaoui could have alerted the government to the scope and nature of the attacks on September 11.

From interviews with flight school personnel and with Moussaoui himself in August 2001, the FBI pieced together the details of his arrival in the United States. Moussaoui contacted the Airman Flight School in 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, traveling on a French passport that allowed him to stay in [page 331] the country without a visa for 90 days until May 22, 2001. On February 26, he began flight lessons at Airman Flight School.

* On March 1, 2003, Khalid Shaykh Mohammed was captured in Rawalpindi, Pakistan as a result of a joint operation by Pakistani and U.S. authorities.

Moussaoui was unhappy with the training and, at the end of May, contacted Pan American International Flight School in Minneapolis. While Airman provided flight lessons in piloting Cessnas and similar small aircraft, Pan Am provided ground training and access to a Boeing 747 flight simulator used by professional pilots.

Most of Pan Am's students were newly hired airline pilots, who used the flight simulator for initial training, or active airline pilots, who used the equipment for 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.

On August 11, Moussaoui and his roommate, Hussein al-Attas, arrived in Egan, Minnesota and checked into a hotel. Moussaoui began classes at Pan Am on August 13. On Wednesday, August 15, a Pan Am employee called the FBI's Minneapolis Field Office because he and other Pan Am employees had become suspicious of Moussaoui.

Before September 11, the FBI determined that Moussaoui had paid approximately \$6,800 in cash for training on the Boeing 747 simulator, but met none of the usual criteria for students at the flight school. Moussaoui had no aviation background and, apparently, no pilot's license. It was also considered odd that Moussaoui simply wanted to learn the most challenging elements of flying, taking off and landing a 747, which he referred to as an "ego boosting thing."

Based on information from the flight school, the FBI field office opened an international terrorism investigation of Moussaoui. Agents within that office saw him as a threat to national security. Because the FBI field office in Minneapolis hosts and is part of a Joint Terrorism Task Force, INS agents, who share space and work closely with the FBI in Minneapolis, were able to determine immediately that Moussaoui had been authorized to stay in the United States until May 22, 2001 and, thus, was "out of status" when the FBI began to investigate him in August.

[Page 333] On the day the Minneapolis field office learned about Moussaoui, it asked both the CIA and the FBI's legal attaché in Paris for information about him. The FBI field office also informed FBI Headquarters about the investigation.

FBI documents indicate Moussaoui's instructors thought that he had what they characterized as a "legitimate" interest in aircraft. Nonetheless, he was unlike any other student with whom his flight instructor had worked. Moussaoui began the ground school portion of the training with a Power Point presentation on aircraft systems. The instruction was reportedly useless for Moussaoui, who had no background in sophisticated aircraft systems and, apparently, had only approximately 50 hours of flight training in light civil aircraft. In addition, Moussaoui was extremely interested in the operation of the plane's doors and control panel. Pan Am found that suspicious. Further, Moussaoui reportedly said that he would "love" to fly a simulated flight from Heathrow Airport in England to John F. Kennedy Airport in New York. Thus, the Minneapolis FBI office decided to arrest Moussaoui.

In a Joint Inquiry interview, a Minneapolis FBI field office agent said that a Supervisory Agent at Headquarters had suggested that Moussaoui be put under surveillance, but Minneapolis did not have enough agents to do that. In testimony before the Joint Inquiry, however, the Minneapolis agent said that he had relied on his criminal experience in deciding to arrest Moussaoui, rather than surveilling him:

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. . . . It was not appropriate to do [so] in this case.

In response to questions, the agent explained in more detail why he decided to arrest Moussaoui, rather than put him under surveillance: [Page 334]

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 Tip-off 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. . . .

[I]t is important to remember the circumstances that were present before September 11th. 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.

Thus, on August 16, 2001, 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 agents a valid student visa and agreed to allow the agents to search his property in the hotel room.

Moussaoui showed the agents his passport case, which included his passport, a British driver's license, a bank statement showing a deposit of \$32,000 in cash to an Oklahoma account, and a notification from INS acknowledging his request to extend his stay in the United States. The INS agents determined that Moussaoui had not received an extension beyond May 22, 2001, and they therefore took him into custody.

Moussaoui declined to allow the agents to search his belongings. When the agents told him that he would be deported, Moussaoui agreed to let the agents take his belongings to the INS office for safekeeping. In packing those items, the agents noticed that Moussaoui had a laptop computer.

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The agents interviewed Moussaoui at the INS office in Minneapolis. He told them that he had traveled to Morocco, Malaysia, and Pakistan for business, although he could not provide details of his employment or convincingly explain the \$32,000 bank balance.

After Moussaoui's detention, the Minneapolis case agent called the field office's legal counsel and asked if there was any way to search Moussaoui's possessions without his consent. He was told that he had to obtain a search warrant. Over the ensuing days, Minneapolis agents considered several alternatives, including a criminal search warrant and a Foreign Intelligence Surveillance Act (FISA) Court search order. They also considered deporting Moussaoui to France, after arranging for French authorities to search his 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 supervisor said that INS would hold Moussaoui for seven to ten days.

After August 17, the FBI did not conduct additional interviews of Moussaoui. On Saturday, August 18, Minneapolis sent a detailed memorandum to FBI Headquarters describing the Moussaoui investigation and concluding that Minneapolis had reason to believe that Moussaoui, al-Attas “and others yet unknown” were conspiring to seize control of an airplane, based on Moussaoui’s “possession of weapons and his preparation through physical training for violent confrontation.”

In Joint Inquiry interviews, FBI Minneapolis field office agents said that FBI Headquarters advised against trying to obtain a criminal search warrant as that might prejudice subsequent efforts to obtain a FISA Court order. Under FISA, an order warrant could be obtained if the agents could establish probable cause to believe that Moussaoui was an agent of a foreign power and that he had engaged in international terrorism or was preparing to do so. FBI Headquarters was concerned that if a criminal warrant were denied and the agents then tried to obtain a FISA Court order, the FISA Court would think the agents were trying to use authority for an intelligence investigation to pursue a criminal case.

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Around this time, an attorney in the National Security Law Unit at FBI Headquarters asked the Chief Division Counsel in the Minneapolis field office whether she had considered trying to obtain a criminal warrant. The Chief Division Counsel replied that a FISA order would be the safer course. Minneapolis also wanted to notify, through the local U.S. Attorney’s Office, the Criminal Division within the Department of Justice about Moussaoui, believing it was obligated to do so under Attorney General guidelines that require notification when there is a “reasonable indication” of a felony. FBI Headquarters advised the Minneapolis field office that there was not enough evidence to justify notifying the Criminal Division.

The Minneapolis field office agent became increasingly frustrated with what he perceived as a lack of assistance from the Radical Fundamentalist Unit (RFU) at Headquarters. He had had

conflicts with the RFU agent over FISA issues earlier and believed that Headquarters was not being responsive to the threat Minneapolis had identified. At the suggestion of a Minneapolis supervisor, the agent contacted an FBI officer who had been detailed to the CTC. The agent shared the details of the Moussaoui investigation with the CTC detailee and provided the names of Moussaoui's associates. The agent explained in a Joint Inquiry interview that he was looking for any information CTC could provide to strengthen the case linking Moussaoui to international terrorism.

On August 21, the Minneapolis field office agent sent an e-mail to the RFU Supervisory Special Agent handling this matter:

[It's] imperative that the [U.S. Secret Service] be apprised of this threat potential indicated by the evidence. . . . If [Moussaoui] seizes an aircraft flying from Heathrow to NYC, it will have the fuel on board to reach D.C.

The RFU supervisory special agent sent a teletype to several U.S. Government agencies on September 4, 2001, recounting the interviews of Moussaoui and al-Attas and other information the FBI had obtained in the meantime. The teletype, however, merely described the investigation. It did not place Moussaoui's actions in the context of the increased level of terrorist threats during the summer of 2001, and it did not analyze Moussaoui's actions or plans or present information about the type of threat he might have presented.

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A CIA officer detailed to FBI Headquarters learned of the Moussaoui investigation from CTC personnel in the third week of August. The officer was alarmed about Moussaoui for several reasons. First, Moussaoui had denied being a Muslim to the flight instructor, while al-Attas, Moussaoui's companion at the flight school, informed the FBI that Moussaoui was a fundamentalist. Further, the fact that Moussaoui was interested in using the Minneapolis flight school simulator to learn to fly from Heathrow to Kennedy Airport made the CIA officer suspect that Moussaoui was a potential hijacker. As a result of these concerns, CIA Stations were advised by cable of the facts known about Moussaoui and al-Attas and were asked to provide information they had. Based on information received from the FBI, CIA described the two in the cable as "suspect 747 airline attackers" and "suspect airline suicide attacker[s]," who might be "involved in a larger plot to target airlines traveling from Europe to the U.S."

On Wednesday, August 22, the FBI Legat in Paris provided a report that [_____]
_____] started a series of discussions between Minneapolis and Headquarters RFU as to whether a specific group of Chechen rebels was a “recognized” foreign power, that is, was on the State Department’s list of terrorist groups and for which the FISA Court had previously granted orders.

The RFU agent told Joint Inquiry staff that, based on advice he received from the NSLU, he 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 order under FISA. The RFU agent told the Minneapolis agents that they had to connect Moussaoui to al-Qa’ida, which he believed was a “recognized” foreign power. The Minneapolis case agent later testified before the Joint Inquiry that he had had no training in FISA, but that he 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.”

As the FBI’s Deputy General Counsel would later testify, the agents were incorrect. The FBI can obtain a search warrant under FISA for an agent of any international terrorist group, including Chechen rebels. Because of this misunderstanding, the Minneapolis field office spent [page 338] valuable time and resources trying to connect the Chechen group to al-Qa’ida. The Minneapolis field office agent contacted CTC, asking for additional information regarding connections between the group and al-Qa’ida. The Minneapolis supervisor 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 in the future. Ultimately, the RFU agent agreed to submit Minneapolis’ FISA request to attorneys in the FBI’s NSLU for review.

In interviews, several FBI attorneys with whom the RFU agent consulted confirmed that they advised the RFU agent that the evidence was insufficient to link Moussaoui to a foreign power. One of the attorneys noted that Chechen rebels were not an international foreign terrorism group under FISA. The Deputy General Counsel, however, testified before the Joint Committee that “no one in the national security law arena said that Chechens were not a power that . . . could qualify as a foreign power under the FISA statute.” The FBI attorneys also said that, had they had

been aware of the July 2001 communication from the Phoenix field office raising concerns about al-Qa'ida flight training in the U.S., they would have forwarded the FISA request to the Justice Department's Office of Intelligence Policy and Review.

Two FBI agents assigned to the Oklahoma City field office's international terrorism squad visited Airman Flight School on August 23 as part of the Moussaoui investigation. In September 1999, one of the agents had been assigned a lead from the Orlando field office to inquire at the flight school about another individual, who had been identified as Usama Bin Ladin's personal pilot and who had received flight training at Airman Flight School. The agent had not been given any background information about this individual, and he did not know that the person had cooperated with the Bureau during the East Africa U.S. embassy bombings trial. Although the agent told the Joint Inquiry that this lead had been the most significant terrorism information he had seen in Oklahoma City, he did not remember it when he returned to the flight school two years later to ask questions about Moussaoui. The agent acknowledged that he should have connected the two visits but he did not have time to do so.

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[The Joint Inquiry also confirmed that an individual, who attempted to post bond for Moussaoui's roommate, had been the subject of a full-field FBI international terrorism investigation in the Oklahoma City Field Office. According to FBI reports, this individual was a Vice President of Overseas Operations and Recruiting for al-Fatah, the Palestinian group, and a member of the Muslim Brotherhood. He was also a close associate of [—————], the imam at the Islamic Center [—————], which hijackers al-Hazmi and al-Midhar attended when they lived there. That imam was also a close associate of the imam in San Diego who served as the hijackers' spiritual leader. The Minneapolis field office agent and the head of the RFU both testified that neither of them knew that the individual who had attempted to post bond for Moussaoui's roommate was the subject of a terrorism investigation before September 11].

On August 27, 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, 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.

[On August 28, the RFU agent edited, and returned to Minneapolis for comment, the request for a FISA Court order that Minneapolis had prepared. The RFU agent told the Joint Inquiry that it was not unusual for FBI Headquarters agents to make changes to field submissions. The major substantive change was removal of information that tried to make connections between the Chechen rebels and al-Qa'ida. After the edit was complete, the RFU agent briefed the FBI Deputy General Counsel, who told the Joint Inquiry that he agreed with the agent that there was insufficient information to show that Moussaoui was an agent of a foreign power].

The Bureau's focus shifted to arranging for Moussaoui's planned deportation to France, planned for September 17. French officials had agreed to search his belongings and provide the results to the FBI. Although the FBI was no longer considering a FISA Court order, no one [page 340] 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 earlier – concern that it would prejudice a request under FISA – no longer existed.

On Thursday, September 4, Headquarters sent a teletype to the Intelligence Community and other 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, that he might be connected to a larger plot. The teletype also did not recommend that the addressees take action or look for additional indicators of a terrorist attack. It also did not provide any analysis of a possible hijacking threat or specific warnings. The following day, the Minneapolis field office agent hand-carried the teletype to two employees of the FAA's Bloomington, Minnesota office and briefed them on the investigation. The two FAA employees told the Joint Inquiry that the agent did not convey any urgency about the teletype and did not ask them to take specific action. The final preparations for Moussaoui's deportation were underway on September 11.

The Joint Inquiry record demonstrates that the FBI's focus when Moussaoui was taken into custody appears to have been almost entirely on investigating specific crimes and not on identifying links between investigations or on sharing information with other agencies with counterterrorist responsibilities. The RFU chief testified that no one at Headquarters saw a connection between the Moussaoui case and the Phoenix communication, the possible presence of al-Mihdhar and al-Hazmi in the United States, and the flood of warnings about possible terrorists attacks in the United States, some using airplanes as weapons, all of which developed in the spring and summer of 2001. Moreover, as the RFU Chief testified, before September 11, the FBI did not canvass persons in custody and cooperating with the government in terrorist investigations to see whether they knew Moussaoui. After September 11, FBI agents showed one of those persons a photograph of Moussaoui and asked him what he knew of Moussaoui. He asserted that he had met Moussaoui in an al-Qa'ida terrorist camp in Afghanistan. When asked about this during [page 341] testimony before the Joint Inquiry, the RFU Chief admitted that "[t]he photograph was not shown before 9/11 and it should have been."

[The indictment against Moussaoui, which was filed on December 11, 2001, alleges that Moussaoui possessed a number of items on August 16, 2001. On that day, which is when FBI and INS agents first interviewed him, the INS took Moussaoui's possessions for safekeeping. Absent search authority, however, the possessions were not examined at that time. As it turned out, according to the indictment, Moussaoui's possessions included letters indicating that Moussaoui was a marketing consultant in the United States for Infocus Tech. The letters had been signed in October 2000 by Yazid Sufaat, whom the Intelligence Community was aware was the owner of the Malaysian condominium used for the January 2000 al-Qa'ida meeting attended by hijackers al-Mihdhar and al-Hazmi. The indictment also alleges that Moussaoui possessed a notebook listing two German telephone numbers and the name "Ahad Sabet," which the indictment states was used by Ramzi Bin al-Shibh to send funds to Moussaoui. Bin al-Shibh, who was apprehended in Pakistan in September 2002, is named in the indictment as a supporting conspirator.]

VII. The Phoenix Electronic Communication

In July 2001, an FBI agent in the Phoenix field office sent an “Electronic Communication” (EC) to the Usama Bin Ladin and the Radical Fundamentalist Units at Headquarters and to several agents on an International Terrorism squad in the New York field office. The agent outlined his concerns about a coordinated effort by Bin Ladin to send students to the United States for aviation training. He noted an “inordinate number of individuals of investigative interest” taking such training in Arizona and speculated that this was part of an effort to establish a cadre of persons, trained in aviation, who could conduct terrorist activity. The EC contained a number of recommendations the agent asked FBI Headquarters to consider.

The FBI’s handling of the Phoenix EC is symptomatic of its focus on short-term operational priorities, often at the expense of long-term strategic analysis. The Bureau’s ability to handle strategic analytic products, such as the EC, was limited before September 11, 2001. The EC also highlights inadequate information sharing within the FBI, particularly between operational and analytic units. Several addressees on the EC, especially at the supervisory level, did not receive it before September 11 because of limitations in the electronic dissemination [page 342] system. The Joint Inquiry repeatedly heard such complaints about the FBI’s information technology. Finally, the FBI’s case-driven approach, while extremely productive in the Bureau’s traditional law-enforcement mission, does not generally encourage FBI personnel to pay attention to preventive analysis and strategy, particularly when the matter appears to have no direct, immediate impact on ongoing counterterrorism investigations.

A. The Phoenix EC

The Special Agent in Phoenix who wrote the EC told the Joint inquiry he first became concerned about aviation-related terrorism in the early 1990s, while he was investigating Libyans with suspected terrorist ties who were working for U.S. aviation companies. Possible terrorists with easy access to aircraft conjured up for the agent visions of Pan Am Flight 103, which terrorists had blown up years before. His primary concern was that Islamic extremists, studying aviation subjects ranging from security to piloting, could learn how to hijack or destroy aircraft

and evade airport security. However, the agent told the Joint Inquiry that, in writing the EC, he never imagined terrorists using airplanes as was done on September 11.

The Phoenix EC focused on ten individuals who were subjects of FBI investigations, Sunni Muslims 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.

The Phoenix agent testified that in April 2000 he interviewed the primary subject of the EC. In the agent's experience, young foreign nationals who are subjects of interviews tend to be somewhat intimidated in their first contact with the FBI. By contrast, this subject told the agent that he considered the U.S. Government and military to be legitimate targets of Islam. The agent noticed a poster of Bin Ladin and another poster of wounded Chechen mujahideen fighters in the subject's apartment. He was also concerned that the subject, who was taking expensive aviation training, was from a poor Middle Eastern country and had not studied aviation before his arrival in the United States.

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The agent described to the Joint Inquiry another incident that increased his suspicion about Middle Eastern flight students in the Phoenix area. During a physical surveillance, the agent determined that the primary subject of the Phoenix EC was using a vehicle registered to another person, who in 1999 had been detained with a third person after trying to gain access to the cockpit of a commercial airliner on a domestic flight. The two told FBI agents who questioned them that they thought the cockpit was the bathroom, and they accused the Bureau of racism. After an investigation, they were released and the case was closed. In November 2000, the subject's name was added to the State Department's watchlist after intelligence information was received that he may have received explosive and car bomb training in Afghanistan. In August 2001, the same person applied for a visa to re-enter the United States and, as a result of the watchlisting, was denied entry.

Finally, the Phoenix agent's concern about Middle Eastern flight students in Arizona was fueled by suspicion that al-Qa'ida had an active presence in Arizona. Several Bin Ladin operatives had lived and traveled to the Phoenix area, and one of them -- Wadih El-Hage, a Bin

Ladin lieutenant -- had been convicted for his role in the 1998 East Africa U.S. embassy bombings. The agent believes that El-Hage established a Bin Ladin support network in Arizona that is still in place.

The Phoenix EC requested that FBI Headquarters consider four recommendations:

- Headquarters should accumulate a list of civil aviation university and colleges around the country;
- FBI offices should establish liaison with these schools;
- Headquarters should discuss the theories in the EC with the Intelligence Community; and
- Headquarters should consider seeking authority to obtain visa information on persons seeking to attend flight schools.

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B. Headquarters' Response to the Phoenix EC

When the Phoenix agent sent the EC to FBI Headquarters, he requested that the Radical Fundamentalist Unit (RFU) and the Usama Bin Ladin Unit (UBLU) consider implementing the suggested actions. The Phoenix agent explained in testimony to the Joint Inquiry that:

Basically what I wanted was an analytic product. I wanted this discussed with the Intelligence Community. I wanted to see if my hunches were correct.

The EC was initially assigned to an Intelligence Operations Specialist (IOS) in the RFU, who worked on it with a Intelligence Operations Specialist in the UBLU. The latter consulted two 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 FBI field office because a person 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. Portland did not take action on the communication or disseminate it because it was sent to the field for "informational purposes" only.

On August 7, 2001, the Specialists in the two units decided that the matter should be closed. The Specialist in the UBLU told the Joint inquiry that she intended to return to the project once she had time to do additional research, but on September 11, she had not yet had an opportunity to do so. Both Specialists also said that they had considered assigning the Phoenix communication to a Headquarters analytic unit, but had decided against it.

The Chiefs of both the RFU and UBLU informed the Joint Inquiry that they did not see the Phoenix EC before September 11. They do not remember even hearing about the flight school issue until after September 11. An FBI audit of the central records system requested by the Joint Inquiry supports their statements.

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The Phoenix EC was also not shared with other agencies before September 11, although the former Chief of the FBI's International Terrorism Operations Section explained in testimony to the Joint Inquiry:

One of the great frustrations is that [the Phoenix Communication] talks about airlines—we have FAA people in the [International Terrorism Operations Section]; 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 [informational] purposes, with all those people at our Headquarters. And it wasn't done, and it should have been done.

In fact, Transportation Security Administration Assistant Undersecretary for Intelligence Claudio Manno testified at a Joint Inquiry hearing that “the first time that we saw [the Phoenix EC] was when it was brought to our attention by [the Joint Inquiry Staff]. Had the FAA received the memo before September 11, Mr. Manno believes that:

[W]e would have started to ask a lot more probing questions of FBI as to what this was all about, to start with. There were a number of things that were done later to try to determine what connections these people may have had to flight schools by going back [to information] maintained by the FAA to try to identify additional people. . . . [I]n fact our process is whenever we get a threat, we open . . . an intelligence case file, and that is so we segregate that issue from the hundreds and hundreds and hundreds of other intelligence reports that we get and that we focus on it. And the work that may entail in trying to determine whether this is a credible threat, something that needs to be acted upon, maybe going back and working with FBI to try and get additional information. In some cases it can be working with the State Department or the CIA if it requires overseas work. So we make all efforts to try to get to the bottom of what this is all about.

C. New York FBI Office Action in Connection with the Phoenix EC

The Phoenix EC was sent to two FBI New York field agents who specialize in Bin Ladin cases. They were asked to “read and clear” the memorandum, but were not asked to take follow-up action. A Joint Inquiry audit of electronic records shows that at least three people in New York saw the EC before September 11. Two of the three do not recall seeing the communication [page 346] before September 11; the third remembers reading it, but said that it did not resonate with him because he found it speculative.

The New York agents stated in Joint Inquiry interviews that they had been aware that Middle Eastern men frequently came to the United States for flight training because the United States was considered the best and most reasonably priced venue for such training. In the agents’ view, information about Middle Eastern men with ties to Usama Bin Ladin receiving flight training in the United States would not necessarily be alarming because the agents knew that persons connected to al-Qa’ida had already received training in the United States. Before September 11, many agents believed that Bin Ladin needed pilots to operate aircraft he had purchased in the United States to move men and material. Two pilots with al-Qa’ida ties testified for the government during the East African embassy bombing trial.

Nonetheless, the FBI had also received reports not entirely consistent with this view of Bin Ladin pilots. One of those who testified and one other pilot had been trained in al-Qa’ida camps in Afghanistan to conduct terrorist operations. One who had received training in surveillance and intelligence apparently was selected for the course because of his aviation skills. In addition, the FBI’s New York field office was one of the recipients of the 1997 communication from FBI Headquarters, asking that the field office identify Islamic students from certain countries who were studying aviation within its area of responsibility.

D. Handling of Phoenix EC Indicates FBI Headquarters Weaknesses

The manner in which FBI Headquarters handled the Phoenix EC provides valuable insight into the Bureau’s operational environment before September 11, 2001. A number of FBI

executives have acknowledged that the handling of the EC illustrates important weaknesses before September 11. For example, Director Mueller told the Joint Inquiry:

. . . the Phoenix memo should have been disseminated to all field offices and to our sister agencies, and it should have triggered a broader analytical approach. . . . These incidents . . . have informed us on needed changes, particularly the need to improve accountability, analytic capacity and resources, information sharing and technology, to name but a few.

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The Joint Inquiry found that the FBI's strategic, analytic, and technological problems were the primary weaknesses demonstrated by the handling of the Phoenix EC. As a supervisory Headquarters agent testified: "when you want to look at systemic problems, . . . 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 do both."

The Phoenix EC demonstrates how strategic analysis took a back seat to operational priorities at the Bureau before September 11. Many people throughout the government and the FBI believed that an attack was imminent in Summer 2001, but this led only to further de-emphasis of strategic analysis. For example, the Specialist in the UBL unit who handled the Phoenix EC was primarily concerned with a person in the EC connected to persons arrested overseas and paid less attention to the flight school theories.

The RFU Chief told the Joint Inquiry that because he could not keep up with the approximately one hundred pieces of mail he saw daily, he assigned responsibility for reviewing intelligence reports to an Intelligence Operations Specialist in the unit. Even the FBI analytic unit responsible for strategic analysis was largely producing tactical products to satisfy the operational section. There was no system for handling projects with nationwide impact, such as the Phoenix EC, differently than other matters. In fact, the Phoenix agent testified that he recognized the possibility that his EC might not receive a great deal of attention.

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 thirteen years, and watched the unit in action over the 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.

The handling of the Phoenix EC also exposed information sharing problems among FBI Headquarters elements. A number of analysts commented in Joint Inquiry interviews that the UBLU and RFU frequently do not share information with the International Terrorism analytic unit. A UBLU supervisor explained that the Investigative Services Division, of which the [page 348] analytic unit is a part, was not a “major player” and that information was often not shared with it. In testimony before the Joint Inquiry, the FBI’s Deputy Assistant Director for Counterterrorism Analysis referred to strategic analysis as the Bureau’s “poor stepchild” before September 11. As a result, strategic analysts were often marginalized by the operational units and rarely if ever received requests from those units for assessments of pending al-Qa’ida cases.

Even if the Phoenix EC had been transmitted to the International Terrorism Analytic Unit, its capacity to conduct strategic analysis on al-Qa’ida was limited because five of the unit’s analysts had been transferred to operational units. According to the Chief of the National Security Intelligence Section, the Bureau had no personnel dedicated solely to strategic analysis before September 11. The Joint Inquiry has also been told that, as competent new analysts arrived, UBLU and RFU would recruit them as operational support analysts or refuse to share information with them if they remain in the analytic unit.

Due to the FBI’s technological limitations, operational units, such as UBLU and RFU, controlled information flow. Strategic analysts often had to rely on operational units for incoming intelligence, a problem the FBI’s Deputy Assistant Director for Counterterrorism Analysis acknowledged before the Joint Inquiry: “[because] the FBI lacked effective data mining capabilities and analytical tools, it has often been unable to retrieve key information and analyze it in a timely manner—and a lot has probably slipped through the cracks as a result.” Thus, even if the project had been assigned to an al-Qa’ida analyst in the analytic unit, there can be no guarantee that the several reports the FBI had received about airplanes as weapons and terrorist networks sending students to flight schools in the United States would have been drawn together.

The handling of the Phoenix EC also illustrates the extent to which technological limitations affected information flow because most EC addressees have told the Joint Inquiry that they had not seen the EC before September 11. The FBI’s electronic system is not designed to ensure that all addressees receive communications, a point a Headquarters supervisory agent

addressed in testimony before the Joint Inquiry: “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.” In fact, the electronic system was considered so unreliable that many [page 349] personnel in the field and at Headquarters used e-mail and followed up personally on important communications to ensure that they were not neglected. The same supervisory agent described the FBI’s information systems as “a setup for failure in terms of keeping a strategic picture of what we are up against.” He went on to conclude that, “the technology problems . . . are still there.”

RFU and UBLU policies at the time of the Phoenix EC gave the person to whom the matter was assigned discretion to determine which people in the unit would see the report. One FBI employee said that he was not certain why the Phoenix agent put all the addressees on the EC but believes the Intelligence Operations Specialist probably decided that the EC was more relevant to UBLU and therefore did not route the communication to all addressees within the RFU.

E. Links from the Phoenix EC to September 11

FBI officials have noted in public statements and Joint Inquiry testimony that the September 11 hijackers did not associate with anyone of “investigative interest.” However, there are indications that hijacker Hani Hanjour, who was unknown to the Intelligence Community and law enforcement agencies before September 11, associated with [—————], an individual who was mentioned in the Phoenix EC, had taken flight training in the United States, and was possibly a radical fundamentalist. There are several reasons why [—————]’s association with Hanjour did not bring Hanjour to the FBI’s attention before September 11.

FBI personnel believe that, beginning in 1997, Hanjour and the person named in the Phoenix EC trained together at a flight school in Arizona and may also have known each other through a religious center. The Bureau attempted to investigate this person in May 2001, but discovered that he was out of the country. The Phoenix office generally did not open investigations on persons they believed had permanently left the United States. Although there were no legal bars to opening an investigation, Headquarters discouraged this practice. The Phoenix office did not notify INS, the State Department, or CIA of its interest in this person. The

[page 350] FBI was apparently unaware that the person returned to the United States soon thereafter and may have associated with Hanjour and several other Islamic extremists.

For the FBI to be aware that persons of investigative interest have returned to the United States, close contact must be maintained with INS and CIA. Unfortunately, before September 11, no system was in place to ensure coordination. In this case, the FBI did not notify the INS, State Department, or CIA of its interest in the Phoenix subject. Therefore, this person was able to get back into the United States without any notification to the FBI.

The FBI has confirmed since September 11, 2001, that another individual mentioned in the Phoenix EC is also connected to the al-Qa'ida network. This individual was arrested [—————] in Pakistan in 2002 with [—————], one of the most prominent al-Qa'ida figures and one of the primary al-Qa'ida facilitators.

F. Previous FBI Focus on Suspected Terrorists at U.S. Flight Schools

The Phoenix EC must be understood in a broader context: it was not the first occasion that the FBI was concerned about terrorist groups sending persons to the United States for aviation study. The agents involved in drafting the Phoenix EC and the Headquarters personnel who worked on it were unaware of this context.

In 1981, as the U.S. military was involved in hostilities with Libya, President Reagan decided to revoke visas held by Libyan students in the United States involved in aviation or nuclear studies. In March 1983, the INS published a rule in the Federal Register, terminating the non-immigrant status of Libyan nationals or persons acting on behalf of Libyan entities engaged in aviation or nuclear studies. The INS turned to the FBI for assistance in locating such persons. In May 1983, FBI Headquarters sent a "priority" communication to all field offices, asking for assistance in complying with the INS request.

In 1998, the Chief Pilot in the FBI's Oklahoma City Field Office informed an agent on the office's counterterrorism squad that he had observed many Middle Eastern men at Oklahoma [page 351] 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 terrorist activity and his speculation that light planes would be an ideal means to spread chemical or biological agents. The communication was sent to the office's "Weapons of Mass Destruction" control file, apparently for informational purposes only with no follow-up requested or conducted.

The FBI also received reports in 1998 that a terrorist organization might be planning to bring students to the United States for flight training. The FBI was aware that persons connected to the organization had performed surveillance and security tests at airports in the United States and had made comments suggesting an intention to target civil aviation.

In 1999, the FBI received reports that another terrorist organization was planning to send students to the United States for aviation training. The purpose of this training was unknown, but organization leaders viewed the plan as "particularly important" and reportedly approved open-ended funding for it. An operational unit in the Counterterrorism Section at Headquarters instructed 24 field offices to pay close attention to Islamic students from the target country engaged in aviation training. This communication was sent to the Phoenix Office's International Terrorism squad, but the agent who wrote the Phoenix EC does not recall it. 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 the terrorist group's involvement with students. There is no indication that field offices conducted any investigation after receiving the communication. The analyst who drafted it explained that he received several calls from the field for guidance since it raised concerns about the Buckley Amendment, which bars post-secondary educational institutions that receive federal funding from releasing personal information without written student consent.

The project was subsequently assigned to the International Terrorism Analytic Unit at Headquarters, where an analyst determined that 75 academic and more than 1000 non-academic institutions offered flight education in the United States. In November 2000, the analyst informed field offices that no information had been uncovered about the terrorist group [page 352] recruiting students and stated that "further investigation by FBI field offices is deemed imprudent" by FBI Headquarters.

The former chief of the operational unit involved in this project told the Joint Inquiry that he was not surprised by the apparent lack of vigorous investigative action by the field offices. The FBI's structure often prevented Headquarters from forcing field offices to take investigative action they were unwilling to take. The FBI was so decentralized, he said, and Special Agents in Charge of field offices wielded such power that when field agents complained to a supervisor about a request from Headquarters, the latter would generally back down.

Personnel working on the Phoenix EC at Headquarters were not aware of these earlier reports on terrorist groups sending aviation students to the United States and did not know that Headquarters had undertaken a systematic effort in 1999 to identify Middle Eastern flight students in the United States. This example demonstrates the lack of information sharing in the FBI. According to interviewees, this is a problem not only at Headquarters, but also in the field. Agents often will be familiar only with cases in their own squad. The FBI's Deputy Assistant Director for Counterterrorism Analysis, recently detailed from CIA to improve the FBI's analytic capability, testified before the Joint Inquiry that the Bureau "didn't have analysts dedicated to sort of looking at the big picture and trying to connect the dots, say between the Phoenix memo . . . and some other information that might have come in that might have suggested that there were persons there who might be preparing to hijack aircraft."

The Phoenix agent also testified that he was unaware of most of the earlier reports on the potential use of airplanes as weapons. He explained that after a downsizing at Headquarters "we in the field . . . saw a decreased amount of analytical material that came out of Headquarters that could assist someone like myself in Arizona." In an interview, the agent noted that he often felt "out on an island" investigating counterterrorism in Phoenix. In his words, before September 11 counterterrorism and counterintelligence were the "bastard stepchild" of the FBI because these programs do not generate career-enhancing statistics like other programs, such as Violent Crimes/Major Offenders or drugs.

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VIII. Strategic Analysis

A recurrent theme throughout this Joint Inquiry has been the need for stronger, more focused analytic capability throughout the Intelligence Community. The FBI had fewer than ten tactical analysts and only one strategic analyst assigned to al-Qa'ida before September 11. At CTC, only three analysts were assigned to al-Qa'ida full time between 1998 and 2000, and five analysts between 2000 and September 11, 2001. Including analysts from other CIA components in CIA who focused on al-Qa'ida to some degree, the total was fewer than 40 analysts. DCI Tenet acknowledged at a Joint Inquiry hearing that the number of analysts in the CTC analytic unit working on Bin Ladin and al-Qa'ida was "too small" and "we should have had more analysts than we did."

NSA had, in all, approximately [—] analysts in its Counterterrorism "Product Line," supported by analysts in other lines. Throughout 2001, the Counterterrorism Product Line had a standing request for an additional [—] SIGINT analysts, but there was little expectation that such a large request would be satisfied. Moreover, requirements for NSA's Arabic linguists were substantial. Before September 11, only [—] language analysts were working "campaign languages," such as Arabic, Pashto, and Dari. Today that number is almost [—], but requirements continue to increase.

When CTC was created in 1986, DIA's analytic capability remained as a parallel analytic organization. In 1993 or 1994, DIA began a concerted effort against Bin Ladin, with a total authorized strength of 80 terrorism analysts.

A. The Intelligence Community's Lack of Strategic Analysis

The Intelligence Community's analytic focus on al-Qai'da was far more oriented toward tactical analysis in support of operations than on strategic analysis intended to develop a broader understanding of the threat and the organization. For example, the DCI's National Intelligence Council never produced a National Intelligence Estimate on the threat al-Qa'ida posed to the United States. According to an August 2001 CIA Inspector General report, CTC analysts only had time to focus on crises or short-term demands and "did not have the time to spot trends or to [page

354] knit together the threads from the flood of information.” Commenting on the CTC’s analytic record, the Director of Terrorism Analysis explained during a Joint Inquiry hearing:

[W]hile the unit's production had gone up dramatically—particularly in the area of current intelligence where the increase had been more than double—production of strategic research had, in fact, remained flat. Earlier correction of these shortcomings would not have enabled us to produce explicit tactical warning of the September 11 plot—the available data was only sufficient to support the strategic warning we indeed provided – but we did recognize our shortcomings and took several steps to address them.

In a Joint Inquiry hearing, DCI Tenet explained the importance of strategic analysis:

[T]he single lesson learned from all of this is the strategic analytical piece of this has to be big and vibrant to give you the chance to be predictive, even when you don't have much information to go on. I think it's a very important point. We've made a lot of progress.

FBI witnesses identified little, if any, strategic analysis against domestic al-Qa'ida activities before September 11, 2001. The Chief of the FBI's National Security Intelligence Section testified to the Joint Inquiry that the FBI had “no analysts” dedicated to strategic analysis before September 11. In fact, as of that date, the FBI had only one analyst working on al-Qa'ida. FBI Assistant Director for Counterterrorism Dale Watson testified that he could not recall any instance where the FBI Headquarters analytical unit produced “an actual product that helped out.”

In regard to the September 11 attacks, witnesses confirmed the Bureau's failure to connect information on al-Mihdhar, al-Hazmi, Moussaoui, and the FBI Phoenix memorandum in the summer of 2001. The FBI's Deputy Assistant Director for Counterterrorism Analysis, recently detailed from the CIA to improve the FBI's analytic capability, testified before the Joint Inquiry that the Bureau “didn't have analysts dedicated to sort of looking at the big picture and trying to connect the dots, say between the Phoenix memo and Moussaoui and some other information that might have . . . suggested that there were individuals there who might be preparing to hijack aircraft.”

One of the primary reasons there was so little focus on strategic analysis in the Intelligence Community may have been the perception that operational matters were more [page 355] important to counterterrorism missions than analysis. Consistent with its traditional law enforcement mission, the FBI was, before September 11, a reactive, operationally-driven

organization that did not value strategic analysis. While FBI personnel appreciated case-specific analysis, most viewed strategic analytic products as academic and of little use in on-going operations. The FBI's Assistant Director for Counterterrorism acknowledged in Joint Inquiry testimony that the reactive nature of the FBI was not conducive to success in counterterrorism:

No one was thinking about the counterterrorism program what the threat was and what we were trying to do about it. And when that light came on, I realized that, hey, we are a reactive bunch of people, and reactive will never get us to a prevention and what we do. . . . Is there anybody thinking and where's al-Qa'ida's next target? And no one was really looking at that.

The Assistant Director also acknowledged the difficulty of going beyond the FBI's traditional case-oriented approach:

We will never 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. It's particularly difficult for law enforcement people.

A former CTC Chief also told the Joint Inquiry that in CTC:

We have underinvested in the strategic only because we've had such near-term threats. The trend is always toward the tactical. . . . The tactical is where lives are saved. And it is not necessarily commonly accepted, but strategic analysis does not . . . get you to saving lives.

In Joint Inquiry testimony, the FBI's Deputy Assistant Director for Counterterrorism Analysis explained that, before September 11, strategic analysis was the FBI's "poor stepchild." As a result, strategic analysts were often marginalized by operational units and rarely, if ever, received requests from operational sections for assessments of pending al-Qa'ida cases.

In 2000, FBI management aggravated this situation by transferring five strategic analysts, who had been working on al-Qa'ida matters, to operational units to assist with ongoing cases. [Page 356] According to a former Chief of the International Terrorism Analytic Unit, this "guttled" the analytic unit's al-Qa'ida expertise and left it with little capacity to perform strategic analysis.

Concerns about protecting criminal prosecutions also limited the FBI's ability to utilize strategic analytic products. In interviews, some analysts said they frequently were told not to produce written analyses, lest they be included in discovery during criminal prosecutions. FBI analysts were further hindered because of the limitations of the FBI's information technology.

The Bureau has had little success in building a strategic analytic capability, despite numerous attempts before September 11 to do so. For example, in 1996, the FBI hired approximately 50 strategic analysts, many with advanced degrees. Most of those analysts left the Bureau within two years because they were dissatisfied with the role of strategic analysis at the FBI.

CTC analysts also expressed concern that their opinions were not given sufficient weight. A CTC manager confirmed that CIA operations officers in the field resented tasks from analysts because they did not like to take direction from the Directorate of Intelligence. Despite the need for increased analytic capability, CTC reportedly refused to accept analytic support from other agencies in at least two instances before September 11. Both FAA and DIA informed the Joint Inquiry that CTC management rebuffed offers of analytic assistance because the agencies wanted in return greater access to CTC intelligence, particularly intelligence about CIA operations.

NSA analysts told Joint Inquiry staff that the CTC viewed them as subordinate, like an "ATM" for signals intelligence. The analysts attempted to accommodate CTC requests for information by focusing on short-term operational requirements, sometimes at the expense of more thorough analysis, even changing reporting formats because CTC did not like NSA analyst comments to be embedded in the text of the reports. Several NSA analysts also stated their belief that the DCI will always side with the CIA's CTC operational personnel over NSA analysts in the event of agency disagreements.

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B. Analyst Qualifications and Training

The Joint Inquiry explored the extent to which analysts were inexperienced, undertrained, and, in some cases, unqualified for the responsibilities they were given. At the CTC, analysts were a relatively junior group before September 11 with three years experience on the average, in

contrast to eight years for analysts in the CIA's Directorate of Intelligence. The Director of Terrorism Analysis explained during a closed hearing:

We had some analysts who had been on the terrorism target for some time, but . . . our biggest concentration was people at about the three to four years of experience, so we had a few senior analysts, a large cadre of very good, very experienced when we hired them, but nevertheless they hadn't had the ten years, fifteen years on the account that you would want. There's a historical reason for that. In the Counterterrorist Center, when it was founded, people were brought in on a rotational basis and worked there for two years, and then they went back to their home office. So you hadn't built up that skill back in the late eighties and nineties. Starting in about '97 the Counterterrorist Center had a career service, a nurturing expertise-building service. So by 2000, when I arrived in the Center, what you had is the new people who had been hired into that career service who were reaching their own, but still in the beginning part of their careers.

A January 2002 FBI internal study found that 66% of the FBI's 1200 "Intelligence Research Specialists," or analysts, were unqualified. This problem was compounded by the fact that newly assigned analysts received little counterterrorism training. As the Chief of the FBI's National Security Intelligence Section told the Joint Inquiry:

While there was no standardized training regimen, other than a two-week basic analytical course, training was available on an ad hoc basis and guidance was provided by both the unit chiefs of the analytical units and the FBI's Administrative Services Division. The development of a standardized curriculum, linked to job skills, and career advancement was being planned . . . , but it was never implemented.

A senior CTC supervisor testified at a Joint Inquiry hearing that CTC did not have enough analysts with sufficient experience to produce sophisticated, in-depth analysis in the quantities needed. In the same hearing, the FBI's Deputy Assistant Director for Counterterrorism Analysis testified that FBI analysts "had great expertise on investigations, [but] were not in a position to see the big picture [or] connect the dots." As a result, the FBI's [page 358] Counterterrorism Division had great difficulty in producing integrated intelligence assessments that provided early warning of emerging threats. Finally, the Chief of DIA's Joint Intelligence Task Force for Combating Terrorism concluded, "We are probably still in the business of describing potentials more than we are able to really render predictive analysis." That testimony reinforces an observation by a DIA senior official with broad experience in counterterrorism that Intelligence Community analysts largely perform descriptive analysis, and interpretive analysis skills have not been encouraged or built into the workforce.

Former NSA Director William Odom also focused on training in materials he submitted to the Joint Inquiry:

[Although] the Intelligence Community's system of education and training is extensive, diverse, specialized — and fragmented . . . it lacks three key elements. First, nowhere is a common doctrinal understanding of intelligence functions and processes documented and taught to all Intelligence Community management and executive leadership personnel. Second, the teaching of Community-wide resource management has been generally neglected. Third, there is no educational emphasis on senior executive leadership and staff training.

C. Analysts' Access to Information

The Joint Inquiry was also told that all-source counterterrorism analysis suffered because analysts not located at CTC had limited access to “raw material” in FBI counterterrorism investigations, including Foreign Intelligence Surveillance Act information, unpublished NSA information and CIA operations cables. The Special Assistant for Intelligence at DIA testified about the extent of these problems:

In my opinion, one of the most prolonged and troubling trends in the Intelligence Community is the degree to which analysts, while being expected to incorporate all sources of information into their assessments, have been systematically separated from the raw material of their trade. . . . At least for a few highly complex high stakes issues, such as terrorism, where information by its nature is fragmentary, ambiguous and episodic, we need to find ways to emphatically put the “all” back in the discipline of all-source analysis.

At the FBI, information access continues to be frustrated by serious technology shortfalls. The Bureau's Deputy Assistant Director for Counterterrorism Analysis told the Joint Inquiry:

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There were a variety of problems in sharing information, not only with other agencies, but within the Bureau itself. This was and is largely attributable to inadequate information technology. In a nutshell, because the Bureau lacks effective data mining capabilities and analytical tools, it has often been unable to retrieve key information and analyze it in a timely manner - and a lot probably has slipped through the cracks as a result.

Following the attack on the *USS Cole*, DIA recognized the need for better information sharing and initiated the Joint Terrorism Analysis Center. The DIA Special Assistant for Intelligence testified:

. . . a specific aspect of the concept of operations was its provisions for a highly-protected merged data base containing all U.S. intelligence on terrorism, regardless of sensitivity, sourcing or collection methods. This was a Director of DIA initiative to overcome the evident vulnerabilities posed by insufficient intelligence sharing within the U.S. Intelligence Community. Although Intelligence Community principals endorsed the idea at the time and since, it has so far not been implemented. . . . Legacy rules, policies, interpretation of regulations, and agency cultures continue to impede information and data sharing. As a result, we cannot bring our full analytical power to bear on the terrorist threat, nor can we provide the best possible support to military planners, operators, decision makers or to other consumers of intelligence. . . . [P]rogress is being made and there are positive developments under way. But so far remedies remain insufficient to the magnitude of the problem.

Witnesses also described a lack of collaboration among analysts within the Intelligence Community. Terrorist-related intelligence often consists of small fragments of seemingly disparate information. Information that may seem unimportant to one agency may be critical to another. Capitalizing on the analytical strengths of each intelligence agency to understand the terrorist target from different angles should be paramount. Unfortunately, there was no mechanism in place to enable inter-agency collaboration. A former CTC Director of Terrorism Analysis described the problem:

I think the only way to overcome the various cultures of the various agencies is to force the interaction . . . where you're putting people together and getting the understanding. You do find out there are real concerns. People aren't trying to be jerks on purpose. They have problems and you start finding out about those and learning how to work with those.

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Although it was established with the intention that it would be the Intelligence Community's hub for counterterrorism activities, some suggested that CTC's operational focus significantly overshadowed collaborative strategic analysis. In interviews, NSA analysts, for example, said that CTC viewed them as subordinate, despite the value of their products. Constructive CTC feedback on their reports was rare. A positive step was taken in early 2001 when NSA and CTC analysts began holding bi-weekly video teleconferences, but these were suspended following September 11 due to workload demands.

DIA analysts reported that their efforts are not fully appreciated by CIA. According to a senior DIA official, a lack of trust on the part of collectors and all-source analysts underlay the failure of the CIA to share information with the rest of the Intelligence Community concerning the January 2000 Malaysia meeting that involved at least two of the September 11 hijackers.

Another component of collaboration is understanding the culture and information requirements of other intelligence agencies. NSA regularly sends liaison personnel to other intelligence agencies to help NSA customers better understand its products. Currently there are [—] NSA analysts assigned to CTC; before September 11, there were [—]. There also are [—] NSA analysts at the FBI; before September 11, there were [—]. These analysts often do double duty as NSA liaison and by working on projects for the offices to which they are assigned.

Conversely, no CIA analyst and only one FBI analyst works in NSA's Counterterrorism Product Line. The lack of Intelligence Community representation at NSA reportedly prevents collaboration and insight into how customers use NSA products. Over a year ago, for example, a CIA analyst agreed to an assignment at NSA. While there, she was able to scour unpublished NSA transcripts for lead information, such as [—————], of utility to CTC operations. She left after four months without a replacement, despite CTC's increasing need for leads. While the CIA analyst was at NSA, she had access to the CIA computer network, which is not otherwise available to NSA analysts. The CIA detailee conducted searches of CIA operational cables to determine how NSA products were being used by CTC and to check lead information relevant to NSA. These NSA analysts found the information very useful. When the detailee left, the CIA computer access left as well. A senior NSA analyst said that, if her office had daily [page 361] access to CIA [—————] cable traffic, its productivity could increase dramatically with immediate insight into [—————] requirements and lead information. Currently, the responsibility for reviewing CTC [—————] cables for lead information falls to overworked NSA analysts assigned to CTC who usually conduct these searches "when they have the time."

D. Language Skills

[Witnesses emphasized for the Joint Inquiry the critical importance of language skills in counterterrorism analysis. The linguistic expertise needed to identify, analyze, and disseminate intelligence relating to the al-Qa'ida threat includes an understanding of colloquial expression in [—] "terrorist languages" and dialects. [—————]

_____]. The majority of Intelligence Community language employees, however, do not have the skills necessary to understand terrorist communications.

[According to NSA's Deputy Director for Analysis and Reporting, "[a]nalyzing, processing, translating, and reporting al-Qa'ida related [_____] communications requires the highest levels of language and target knowledge expertise that exists." Communicants speak all major Arabic dialects, making analysis linguistically and conceptually challenging. Evaluating these communications requires considerable subject-matter expertise in Islam in general and Islamic extremist thought in particular to ensure accurate interpretation. Very few NSA Arabic language analysts have done any graduate work in Islamic Studies, [_____]
_____] The targeted person lives in and understands life in a thoroughly Islamic milieu that is reflected in that person's communications].

[The level of language expertise needed to work on the counterterrorist threat is very high. Subject-matter knowledge is necessary in explosives, chemistry, technical communications, [_____], paramilitary operations, weaponry and tactics. Moreover, speakers of Arabic [page 362] and other languages used by al-Qa'ida are in demand: Arabic linguists are also sought for such important issues [—] as other regional and terrorist intelligence targets].

The pool of qualified persons from which the Intelligence Community can draw to meet this challenge is very small and includes persons with military experience, university students, and those with native background or extensive experience in particular countries. Very few U.S. college graduates have more than a limited capability in Arabic. According to the 2002 Integrated Postsecondary Education Data System statistics, American colleges granted only six degrees in Arabic in the survey year, 183 in Chinese, and 339 in Russian. U.S. colleges or universities offer degrees in languages that are critical in countering the terrorist threat, such as Dari, Pashto, Punjabi, Persian-Farsi, Hindi, Urdu, Turkmen, Tadjik, Tagalog, Somali, Kurdish, Chechen, or Uzbek.

In sum, the Joint Inquiry was told that the quality of Intelligence Community counterterrorism analysis affected not only its strategy and operations, but also the ability of U.S. Government policymakers to understand threats and make informed decisions. Several current and former policymakers provided testimony underlining the importance of intelligence analysis. For example, Mr. Clarke, former National Coordinator for Counterterrorism, explained:

The FBI did not provide analysis. The FBI, as far as I could tell, didn't have an analytical shop. They never provided analysis to us, even when we asked for it, and I don't think that throughout that ten-year period we really had an analytical capability of what was going on in this country.

Former National Security Advisor Sandy Berger implied in his testimony that the U.S. Government has often relied too heavily on analytic expertise within its own ranks:

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 academia, 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.

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IX. Views of Outside Experts on the Intelligence Community

The Joint Inquiry interviewed and took testimony from many leading experts on the Intelligence Community. The experts touched on a wide array of topics, but much of the discussion revolved around four issues: setting priorities, strategy against international terrorism, reform of the Intelligence Community, and counterterrorism within the United States. Included in the record are, for example, the testimony and statements of several seasoned observers: Lee Hamilton, former chairman of the House Permanent Select Committee on Intelligence, Judge William Webster, former Director of the Federal Bureau of Investigation and the Central Intelligence Agency, General William Odom, former Director of the National Security Agency; Frederick Hitz, former CIA Inspector General; former Senator Warren Rudman, co-chairman of the U.S. Commission on National Security/21st Century; and former Governor James Gilmore, chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction.

A. Setting Priorities

Former Congressman Hamilton placed “first” on his list of reforms setting “clear priorities for the Intelligence Community.” Because demand for intelligence by policymakers has become “insatiable,” the Congressman argued, the Intelligence Community has become “demand driven” and “there are simply too many intelligence targets, products, and consumers.” Since the end of the Cold War, there has not been a “clear set of priorities” within the Intelligence Community and, consequently, there has not been an ordered allocation of resources.

In addition, Former Congressman Hamilton noted that generally “responsibility [has been] on the consumer of the intelligence in both the Legislative and the Executive branches to set forward in some orderly manner the priorities,” and he called on the National Security Council to provide guidelines for “long-term strategic planning.” The two most important [page 364] priorities, he urged, should be “combating and preventing terrorism” and “preventing the proliferation of weapons of mass destruction.”

B. Strategy And Organization

Senator Rudman brought to the Joint Inquiry’s attention a 1996 recommendation of the Aspin/Brown Commission on Roles and Capabilities of the United States Intelligence Community, “a distinguished group of Americans who spent a lot of time looking in advance of 9/11 at precisely the things that [the Joint Inquiry is] looking at post-9/11.” Under the heading, “The Need for a Coordinated Response to Global Crime,” the Aspin/Brown Commission recommended that, in responding to terrorism and other transnational criminal dangers to the American people, the U.S. Government may have to develop “strategies which employ diplomatic, economic, military, or intelligence measures . . . instead of, or in collaboration with, law enforcement response.” This made it essential “that there be overall direction and coordination of U.S. response to global crime.” Senator Rudman reflected, “I will tell you that nobody evidently read it.”

Congressman Hamilton stated the broad case for reorganizing the Intelligence Community, which he described as now a “loose confederation” with redundant efforts, imbalances between collection and analysis, and coordination problems:

The very phrase ‘Intelligence Community’ is intriguing. It demonstrates how decentralized and fragmented our intelligence capabilities are. . . . New intelligence priorities demand a reorganization of the Intelligence Community. . . . [W]e really are in a new era, and we must think anew.

Joint Inquiry witnesses expressed a range of views on two interrelated questions about the organization of the Intelligence Community:

- whether Community leadership should be vested in a new, cabinet-level Director of National Intelligence (DNI) with Community-wide responsibilities beyond those now vested in the Director of Central Intelligence (DCI), particularly with regard to budget planning and execution; and [page 365]

- whether the “double-hatting,” by which the DCI is also the Director of the Central Intelligence Agency, should be ended so that the DNI becomes the President’s principal intelligence advisor with authority to lead the Community, while a separate Director oversees the CIA.

C. Should a Strong Director of National Intelligence be Established?

Congressman Hamilton testified that:

[w]e need a single cabinet-level official who is fully in charge of the Intelligence Community, a Director of National Intelligence or DNI.” To fulfill that role, the DNI “must be in frequent and candid contact with the President[,] have his full confidence . . . have control over much, if not most of, the Intelligence Community budget, and the power to manage key appointments. [Presently, the DCI] does not have this control, and thus [the DCI] lacks authority.

Former National Security Advisor Sandy Berger also stated:

. . . [S]trengthening 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.

A DNI with authority over management and particularly budget, Congressman Hamilton concluded, is important for “responsibility and accountability”:

The person who controls the budget controls the operation. And if you don’t have budget authority, you are dramatically undercut in your ability to manage the operation. That’s why the bureaucrats fight so hard over budget. Budget is power.

General Odom expressed a limited difference on the extent of the proposed Director of National Intelligence’s budget authority: “I think Congressman Hamilton wants more executive budget authority than I do, but otherwise I think we overlap enormously.” The General would give the DNI the planning power necessary to take “an overall comprehensive look” at the intelligence budget and assess whether intelligence agencies are adequately funded. He would not give the DNI budget “execution” or “spending” power, which would require that Congress [page 366] rewrite regulations governing Department of Defense spending because NSA, a principal member of the Intelligence Community, is a component of the Department of Defense.

D. Should the Same Person be both DNI and Director of the CIA?

Several experts called for separate heads of the Intelligence Community and the CIA. Former National Security Advisor Sandy Berger “encourage[d] the Committees 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.” Congressman Hamilton was even more definite: to avoid a “natural bias” toward the CIA, the head of the CIA should not also be the DNI: “You cannot be head of the Intelligence Community and head of the CIA at the same time. There’s a conflict there. And I want someone over all that. . . .” General William Odom, former Director of the National Security Agency; added: “The DCI becomes trapped if he’s also directing an agency, and therefore he doesn’t look at the Community as a whole as much as he could.”

Judge Webster disagreed with separate appointments and roles for the head of the Community and the CIA and argued instead for keeping the DCI “double-hatted,” but strengthening the DCI role.

[M]ore emphasis [should be put] on finally addressing the lack of real authority that the DCI has over the Intelligence Community. He does not write the report cards on the agency heads. He does not even pick the agency heads. He has nominal authority over the budget....

Reflecting on his time as DCI, Judge Webster explained that “[o]ccasionally I would issue something that looked nominally like an instruction, it was mostly hoping with a lot of groundwork behind it . . . something would come of it.” If the head of national intelligence were placed at the White House “without troops,” Judge Webster argued, “it’s difficult for me to see how it would be truly effective.”

Former CIA Inspector General Fred Hitz agreed with Judge Webster, describing the Secretary of Defense as an “800-pound gorilla” that the DCI has never been able to wrestle to the ground because of the Secretary’s responsibility and command authority for defense intelligence [page 367] agencies. Mr. Hitz recommended “realistic” proposals giving the DCI “a kibitzing power over selection of Director of NSA and more collaborative powers with the Secretary of Defense.”

Former Congressman Hamilton responded that the Director of National Intelligence should have “real authority and real personnel authority”: “I wouldn’t put him in the White House, as Judge Webster is suggesting [I would].” General Odom argued that the DNI “has to take some organizational capability with him – he can’t just stand out there in an office and be a czar over in the White House.” He should have an expanded National Intelligence Council as a reinforcement which together with the DCI’s Community management staff give him “a pretty good organizational base.” As for limiting change to strengthening the existing DCI position, Congressman Hamilton asserted:

We’re in a new world, and we have to begin to think of ways to structure this. I have heard the argument about strengthening the DCI for 35 years. . . . It’s a move in the right direction. But I don’t think it gets us into the new era we’re in.

E. Counterterrorism within the U.S and Creation of a Domestic Intelligence Agency

The witnesses addressed the organizational and other challenges to the effective conduct of counterterrorism operations in the United States. To Congressman Hamilton, the CIA and FBI must “fundamentally alter” policies and practices: “The FBI, with its new emphasis on prevention, will have to focus more on counter-terrorism, and the CIA will have to trace international leads to the homeland.” Indeed, “the threat of terrorism is going to require an unprecedented overlap between intelligence and law enforcement.” Although Congressman Hamilton favored

restructuring the Intelligence Community so that “resources can be coordinated and agencies aid, not obstruct one another,” he did not recommend a new organization to conduct counterterrorism domestically:

I don't think it's a statutory solution, a legislative solution. . . . Most important, the two agencies will have to share information and work together to infiltrate, disrupt and destroy terrorist cells . . . If the shortcomings leading up to 9/11 were systemic in nature, the solution lies in better system management, the handling and analysis of vast amounts of information, and the distribution in a timely manner of the key conclusions to the right people.

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Congressman Hamilton urged recognition of the fact that CIA and FBI have “for a very long period” done their jobs “quite well” and they are now “suddenly confronted with a new world.” The decision to transform FBI priorities from law enforcement to prevention is a “huge change,” and we cannot expect the Bureau “to turn around on a dime.” Rather than new legislation, change “takes leadership, it takes oversight.”

In contrast, General Odom argued for a major change in the organization of U.S. counterintelligence and counterterrorism. Counterintelligence, he urged, “is in the worst shape of all.” Five agencies have counterintelligence operations – FBI, CIA, and three military services – “with no overall manager.” As a consequence, “[t]he parochialism, fragmentation, and incompetence are difficult to exaggerate in the U.S. counterintelligence world.” Fragmentation and lack of skills ensures “dismal performance” because “terrorists, like spies, come through openings.”

General Odom recommended that the “first step” is “to take [counterintelligence] responsibility out of the FBI, leaving the Bureau with its law enforcement responsibilities, and create a National Counterintelligence Service under the DCI with operational oversight over the [counterintelligence] operations of the CIA and the three military departments in the Pentagon.” The new organization would not be given arrest authority, which would remain with the FBI and other law enforcement organizations: “The FBI might be the agency to use [intelligence] to go make arrests and provide the evidence for prosecutions, but the business of locating spies, finding out what they're doing, understanding patentable collection, terrorist infiltrations, et cetera, can be primarily an intelligence operation.”

Judge Webster did not “warm to the idea of separating counterterrorism from the FBI.” He responded to proposals for a separate domestic intelligence service modeled after England’s MI-5 service:

We’re not England. We’re not 500 miles across our territory. We have thousands of miles to cover. Would you propose to create an organization that had people all over the United States, as the FBI does?

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The Congress, Judge Webster argued, would “never vote the resources to have a second FBI throughout the country.” It is better, then, “to use what we have and train them to be more responsive.” Rather than spending time “moving the boxes around,” Judge Webster recommended that Congress look to those areas in the system which need to be shored up with appropriate resources and training.” The “crucial” example, he testified, was the FBI’s twelve year-old information system, that “the FBI has been trying to get help with for years, and has not succeeded.” Judge Webster also called for “new sets of relationships between CIA, which has been functioning largely abroad, until more recently, with the FBI’s participation and expanded legal attaché relationships, and the law enforcement responsibilities of dealing with the threat here”:

More than any other kind of threat, there is an interrelationship between law enforcement and intelligence in dealing with the problem of terrorism ... We need both investigative capability and intelligence collection capability, as well as those who go through the bits and pieces and fill in the dots.

Senator Rudman maintained that creation of a British-styled MI-5 domestic intelligence service would not solve the problems we face: “You have got enormous domestic collection capability in the FBI, assuming it is focused in the right direction.” He concluded that the Intelligence Community could enhance its campaign against terrorism by adopting measures designed to share and cooperate amongst its members:

[T]he more jointness that you have between these agencies, the more they work in joint counterterrorism centers, the more their information databases become common, the more there is constant daily, hourly cooperation between them, the more the NSA is brought in by statute, if necessary, to supplying the FBI with domestic counterterrorism information, then you will do the improvement you need.

Senator Rudman spoke forcefully against proposals for a new counterterrorism organization:

I do not believe we need new structures or new systems. We may need different kinds of people, we may need different kinds of technology, but I don’t think

[page 370] there is anything wrong with the systems. I think there is a lot wrong with how they have been used over the last ten years.

Senator Rudman did not believe that a law-enforcement culture makes it impossible for the Bureau to be an effective intelligence-gathering agency, an issue he has also addressed as chairman of the President's Foreign Intelligence Advisory Board. "The best domestic intelligence-gathering organization . . . on the ground today is the FBI," although the Senator agreed that "[t]he problem is that they have had a law enforcement mind-set." In spite of that problem, the Bureau has 56 field offices and 44 offices overseas, and, therefore, "it is not a question of trying to get a new agency to do the domestic intelligence, counterintelligence; it is a question of [getting] the resources" necessary for the task.

Following the Joint Inquiry hearings, the Commission that Governor Gilmore chairs on assessing domestic response capabilities against terrorism, released recommendations in advance of its fourth annual report in December 2002. The Commission recommended establishment of a National Counter Terrorism Center (NCTC), a "stand-alone organization" headed by a Senate confirmed, presidential appointee, "responsible for the fusion of intelligence, from all sources, foreign and domestic, on potential terrorist attacks inside the United States." The Commission also recommended that "collection of intelligence . . . on international terrorist activities inside the United States, including the authorities, responsibilities and safeguards under the Foreign Intelligence Surveillance Act, which are currently in the FBI, be transferred to the NCTC" for two reasons: First, "while the FBI remains the world's preeminent law enforcement agency, there is a big difference between dealing with a terrorist act as a crime to be punished and dealing with it as an attack to be prevented." Second, "it is important to separate the intelligence function from the law enforcement function to avoid the impression that the U.S. is establishing a kind of 'secret police.'" The proposed NCTC would not have arrest authority.

Governor Gilmore's preference is "to maintain these [domestic intelligence] functions within the FBI and to build upon [its] considerable structures, sources and resources to upgrade and improve these functions." Nevertheless, he said he would support the Commission's recommendation, given the oversight provisions and legal restrictions described in the Commission's preliminary report to ensure that our civil liberties are not diminished. Another Commission member disagreed with the [Page 371] recommendation, however, asserting in

dissent that “[t]he FBI culture as a law enforcement agency provides a backdrop and check and balance against any abuse of civil liberties.”

F. A Legislative Charter for the Intelligence Community

Beyond streamlining the Intelligence Community by, for example, enacting legislation to create a new Director of National Intelligence, Congressman Hamilton urged the enactment of a “legislative charter” for the Community, a task he knew from personal experience would be difficult to accomplish:

U.S. intelligence is governed by a set of disparate laws and executive orders produced over the last fifty-five years. No single one of these laws provides a comprehensive legal foundation for our massive intelligence establishment. This is a remarkable state of affairs in a country that takes the rule of law so seriously.

In short, the Congressman testified, “[w]e need a statutory foundation for U.S. intelligence.”

G. Respect for the Rule of Law

Notwithstanding differences on particular proposals, many witnesses joined in the conviction Congressman Hamilton voiced that “[r]eforms in the Intelligence Community must not come at expense of the rule of law and respect for civil liberties.” As Judge Webster put it: “I hope that in the rush to judgment, we will remember who we are and [that] the methods we choose, both for intelligence and for law enforcement, will be consistent with who we are in this country.” Congressman Hamilton described the challenges ahead: “Intelligence work requires that our government obtain information, and obtaining that information requires surveillance of people who have committed no crime -- the challenge is to facilitate information-gathering about suspicious people, while insulating legitimate personal and political activity from intrusive scrutiny.”

Congressman Hamilton also stressed that responsibility for protecting basic rights lies in several places:

It’s very easy to overlook these matters of privacy and civil rights -- it has to come from the top of the agency. It has to be protected by the courts. The United

[page 372] States Congress, the intelligence committees, have to be sensitive to the manner in which intelligence activities are carried out, and they have to zero in on civil rights and liberties.

Judge Webster added that ensuring that investigatory tools are used in accordance with the law is “an important role for the Department of Justice,” and, therefore, he is opposed to law enforcement “go[ing] outside the Department of Justice at the federal level by giving it to people who are not trained and do not understand the requirements that the Constitution and our laws impose on them.”

General Odom asserted that “[t]he [Congressional] committees that did the investigation [of the Intelligence Community] in the 1970s did a great service in implementing the system that they have at NSA now, ensuring that rights are not violated”:

Congress should get credit for that. And as the director of the agency I felt better for having this. I felt that I could be certain that my bureaucracy was not going to run away and violate these kind of rights. And it was a thoughtfully done process that created that system in the 1970s.

Finally, General Odom emphasized the importance of accountability:

In the military, we have a tradition. When you screw things up, we relieve the commander, which leaves me puzzled about the behavior of the Administration in the intelligence area. I consider intelligence . . . a military engagement, and I would hold the commanders as responsible as I would ship commanders who run their ships aground. They don’t stay around after they’ve run them aground, even if they are not very guilty.

X. Information Sharing

Before September 11, 2001, the Intelligence Community had not melded into an effective team to prevent terrorist attacks within the United States. Efforts had been taken to improve cooperation between the CIA and FBI. After the DCI created the CTC in 1986, for instance, CIA and FBI cross-detailed personnel to each other’s counterterrorism units, but this did not lead to a plan between those two agencies or across the Community to integrate intelligence collection and analysis. In the absence of a plan, agencies tended to operate independently.

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Prior to September 11, information was inadequately shared not only within the Intelligence Community, but also between the Community, other federal agencies, and state and local authorities. In sum, the Joint Inquiry discovered significant problems in how intelligence agencies shared information among themselves and with entities that need information to protect the nation against terrorist attack.

A. Information Sharing between Intelligence Agencies and within the Federal Government

In closed and open hearings witnesses from both the intelligence and law enforcement communities spoke of the need to share information. As the Comptroller General put it in a statement submitted for the Joint Inquiry record, “The success of a homeland security strategy relies on the ability of all levels of government and the private sector to communicate and cooperate effectively with one another.”

a. National Security Agency

NSA intercepts well over [—————] communications each day, which it uses to create reports for dissemination to components of the Executive Branch that have expressed requirements for certain information. The growth of global communications and computer networks has significantly increased the volume of communications NSA can intercept. One of the major challenges the agency faces is to find information buried in the avalanche of electronic data it receives every day. In deciding which communications [———] to target, which [———] to monitor [—————], and which communications to select [—————], NSA tries to maximize its exploitation capability, including its linguistic and analytic workforce.

[The effort to find and report the most useful information results in decisions at every step in the exploitation process that leave information behind, unanalyzed and unreported. Thus, potentially vital information is rejected before analysts see it, or, if it reaches an analyst, it is not reported to customers. For example, NSA informed the Joint Inquiry that it reported some but not all communications analyzed in 1999 and the first half of 2000 involving a [page 374] suspected terrorist facility in the Middle East linked to al-Qa’ida activities directed against U.S. interests. NSA did not publish other communications involving this facility and associated with a participant

in a January 2000 meeting in Malaysia, hijacker Khalid al-Mihdhar. As was explained in the section of this report devoted to that meeting, these communications fell below NSA's reporting threshold].

NSA officials described the threshold as a subjective standard that can change every day. It is a product of several factors including the priority of the intelligence topic (for example, threat warnings have the highest priority), the level of customer interest in a particular subject, the perceived value of the information, and the amount of intercept available for analysis and reporting. In short, analysts have considerable discretion in reporting information, especially when it is fragmentary or obscure.

A major concern of NSA customers is that this winnowing process is not sufficiently well informed to avoid leaving potentially vital but seemingly irrelevant information on the "cutting room floor," particularly with regard to targets like al-Qa'ida where the smallest piece of information may fill in the mosaic of the organization and its plans. To make well-informed decisions about what to report, NSA needs detailed knowledge about how raw intercept data might respond to customer needs. NSA deploys many analysts to customer agencies to understand their needs and help them shape NSA reports. This is an important, but not complete solution to the problem.

NSA officials complained to the Joint Inquiry that its customers rarely reciprocate by assigning analysts to NSA to access its information, including raw intercepts. An NSA counterterrorism supervisor noted that the productivity of NSA analysts was substantially increased when a CIA analyst with access to Directorate of Operations cables was detailed to NSA.

NSA officials are concerned about sharing raw intercepts in large part because some intercepts contain information about "U.S. persons" that NSA must protect under "minimization procedures" established by the Attorney General and the Foreign Intelligence Surveillance Court. It is not practical to review all raw traffic to strip off this information, and minimized [page 375]

information might not have the same value as original text. NSA officials also cited concerns about protecting sources and methods that produced the data and the difficulties in separating content from information about them.

b. The Central Intelligence Agency

CIA personnel also make decisions about sharing information, particularly with regard to [—————] cables that contain vital information about CIA activities.

[NSA has told the Joint Inquiry that regular access to [—————] cables would enhance its understanding of material it intercepts and increase the productivity of its analytic workforce. The Director of the Defense Intelligence Agency expressed particular concern about cables relating to the Malaysia meeting. Joint Inquiry staff identified numerous CIA [—] cables concerning that meeting that contained information of value to all-source analysts. In response to a Joint Inquiry request, DIA identified four leads its terrorism analysts could have pursued in early 2000 and one in December 2000, had information been shared. DIA also identified three leads in [CIA] cables in August 2001 that would have allowed it to take action concerning the Malaysian meeting, Zacarias Moussaoui, Khalid al-Mihdhar, and Nawaf al-Hazmi].

[CIA is concerned that access to cables would place its sources and methods at risk because cables contain information about activities, including meetings with human assets. Most analytic personnel recognize this concern and profess not to want operational details or information about sources and methods. These analysts see information of potential significance, embedded in the raw data. The CIA, they believe, filters out many intelligence “nuggets” before analysts receive the information. The agency has itself recognized the value of this data by integrating its counterterrorism analysts into the CTC where they are supposed to have full access to raw traffic].

[Page 376]

c. The Federal Bureau Of Investigation

The FBI collects vast amounts of information from both criminal and intelligence investigations, including interviews, wiretaps, physical searches, grand jury material, and

intelligence disseminated by other members of the Intelligence Community. The FBI's problem is twofold: 1) dissemination of information within the Bureau and, 2) sharing of information with other members of the Intelligence Community. In some cases, the FBI was limited by legal or policy constraints on, for example, the use of grand jury information and information obtained through criminal wiretaps. The USA Patriot Act eliminated some of those constraints. However, the FBI has also been hampered by its own limitations, for example, a failure to develop a strategy for sharing information. As its Deputy Assistant Director for Counterterrorism and Counterintelligence testified:

We did not leverage what we had information-wise, and we did not leverage what other agencies had as information. We lacked analysts, we lacked linguists, we lacked electronic architecture that allows to us interact with other organizations. . . . We lacked size. And we lacked attacking the target from 360 degrees. For example, we did not develop a program that leveraged what we have as expertise, what the Treasury had as expertise, and what the [CIA] had as to expertise for a concentrated, focused, aggressive investigation in finances. Terrorist organizations . . . like al-Qa'ida . . . have several points of strength, but several points of weakness. . . . We did not leverage State and local police. The culture says you don't share that information.

In addition, as a result of technological problems, FBI analysts did not have access to all information within the Bureau. The FBI's Deputy Assistant Director for Counterterrorism Analysis testified that "the FBI lacked effective data mining capabilities and analytical tools, it has often been unable to retrieve key information and analyze it in a timely manner, and a lot has probably slipped through the cracks as a result."

Before September 11, FBI personnel were not trained or equipped to share foreign intelligence developed in counterterrorism investigations with the Intelligence Community or even with other units within the Bureau, which deprived analysts throughout the Community of information. The FBI's Chief of the Counterintelligence Analysis Section in the Counterintelligence Division explained: [page 377]

Technology alone, however, is not the silver bullet; gaining access to all relevant FBI information associated with an individual terrorist suspect, terrorist group or State Sponsor was also an issue the analysts faced periodically. Information was sometimes not made available because field offices, concerned about security or media leaks, did not upload their investigative results or restricted access to specific cases. This, of course, risks leaving the analysts not knowing what they did not know.

Finally, the FBI typically used information obtained through the Foreign Intelligence Surveillance Act only in the cases in which it was obtained and would not routinely disseminate the information within the Bureau or to other members of the Intelligence Community.

d. The Department Of State

One of the principal State Department contributions to the fight against terrorism is the TIPOFF watchlist program, which, according to its director, was established in 1987 after the Department issued a visa to someone the Intelligence Community knew was a terrorist.

According to TIPOFF's Director, from inception to Summer 2002, the program prevented 763 individuals from receiving visas to enter the United States. However, the Joint Inquiry was told that information flow into TIPOFF before September 11 was less than complete. It was not until 1995, eight years after a terrorist was mistakenly allowed into the United States, that the CIA approved State Department declassification of data for inclusion in TIPOFF. Before the change in policy, State would submit a list of names monthly for CIA declassification, and that process delayed the watchlist updates.

Growing concern about the terrorist threat did not noticeably increase the amount of information shared between the Intelligence Community and the State Department before September 11, which, in contrast, advised the Joint Inquiry that it received at least 1,500 CIA Central Intelligence Reports containing terrorist names shortly after September 11. State Department officials also spoke about the difficulty in obtaining data for watchlisting purposes from the FBI National Crime Information Center, in spite of ten years of negotiations with the Bureau for access.

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September 11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi provide perhaps the most glaring examples of incomplete information sharing with the State Department. As is demonstrated in other sections of this report, the CIA had reportable information about these men long before it asked that they be "watchlisted" in August 2001. As DCI Tenet testified, this failure is not the result of a limited problem in the systems in place:

The fact that we did not recommend al-Hazmi and al-Mihdhar for watchlisting is not attributable to a single point of failure. There were opportunities, both in the

field and at Headquarters, to act on developing information. The fact that this did not happen – aside from questions of CTC workload, particularly around the period of the disrupted Millennium plots – pointed out that a whole new system, rather than a fix at a single point in the system, was needed.

In particular, the DCI pointed to CIA personnel not understanding their obligation to place people on watchlists or the criteria by which watchlist decisions should be made. The Director of the TIPOFF program also described poor attendance at meetings he would arrange to brief CIA personnel on the program and the frequent turnover of CIA personnel assigned to it.

Some improvements have been made since September 11. For example, Ambassador Francis Taylor told the Joint Inquiry that, “in August, 2002, the entire TIPOFF database, including full biographic records on nearly 85,000 terrorist names, photographs, fingerprints, and on-line documentation, was made available to the authorized users from five Intelligence Community and law enforcement agencies.” In August 2002 the State Department added over seven million names from FBI indices to a State watchlist, augmenting the 5.8 million names already uploaded.

e. The Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA)

The FAA and its successor TSA are responsible for making threat information available to airlines and airports, domestic and foreign. Without specific information from intelligence [page 379] and law enforcement agencies, TSA is unable to provide the context of threat to carriers and airports. FAA officials told the Joint Inquiry that they have to make convincing cases about threats to the aviation industry because the industry is not willing to absorb additional security costs, absent strong evidence of need.

An example of the importance of providing context is the memorandum an agent in the FBI’s Phoenix office prepared expressing concern about Middle Eastern students taking aviation training. Claudio Manno, TSA’s Assistant Undersecretary for Intelligence, told the Joint Inquiry that the FAA saw the Phoenix memorandum for the “first time” when Joint Inquiry staff brought the matter up. Mr. Manno testified that, had he been made aware of the document, he would have done “a number of things that were done later” to advance the post-September 11 investigation.

B. Information Sharing between Intelligence Agencies and State and Local Officials

Although federal officials emphasized the importance of state and local perspectives, the Joint Inquiry heard witnesses complain that the federal government does not systematically involve state and local agencies in counterterrorism programs. Governor Gilmore, Chairman of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, testified:

[T]o the extent that there has been intelligence sharing, it has been ad hoc. It has been without a real systematic approach. And what would you expect? With the Intelligence Community, it is within the culture if not within the statute that you don't share information. If you do [share information], you are even subject to criminal penalties. . . .

Some progress was made on information sharing with state and local officials after the FBI organized Joint Terrorism Task Forces in its field offices. Starting with the first JTTF New York City in 1980, the FBI made a concerted effort to expand the program. As Director Freeh noted, "We doubled and tripled the number of Joint Terrorism Task Forces around the United States so we could multiply our forces and coordinate intelligence and counterterrorism [page 380] operations with FBI's federal, state, and local law enforcement partners." As of September 11, thirty-five FBI field offices had JTTFs; now all fifty-six offices do.

JTTFs are designed to combine federal and local law enforcement and intelligence capabilities into a cohesive unit to address complex international and domestic terrorism investigations. JTTFs might include federal participants from CIA, INS, the Marshals Service, the Secret Service, TSA, Customs, the Bureau of Alcohol, Tobacco, and Firearms, the State Department, U.S. Postal Inspection Service, the IRS, Park Police, and other agencies.

According to FBI representatives, JTTFs have improved communication among these agencies and enabled the FBI to leverage their capabilities in counterterrorism investigations. For example, INS personnel assigned to the Minneapolis JTTF were able to determine quickly that Zacarias Moussaoui's authority to stay in the United States had expired, leading to his arrest and detention.

JTTFs have not solved the information concerns of all state and local officials. Baltimore Police Commissioner Edward Norris told the Joint Inquiry that serious gaps remain:

I would like to know exactly what everyone else knows in my city. Whatever Federal agencies are working on in my city . . . , I should know exactly what's happening. . . . [W]e know for a fact [that] terrorists are living in our cities. We all know they're here; we just don't know who they are, we being the urban police departments in this country. I would like to know and I would like to have a briefing . . . at least every month. I would like to know what's happening, because I get briefings from my intelligence division every day, so I know who we're working on and I know what we're looking at. . . . If I had access in a full briefing from whatever agency investigating within my city, it would make my life a whole lot more efficient and comfortable. I would like to know what is happening, but currently do not.

C. Additional Information Sharing Problems

Detailing employees from one agency to another is often praised as a form of information sharing, but the Joint Inquiry heard that there are several limits to the practice. The Departments of State, Transportation, Treasury, and Energy and the INS, Customs, and other organizations detail personnel to the CIA's Counterterrorist Center, the FBI, and, to a much lesser extent, NSA.

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Intelligence Community agencies also send detailees to non-intelligence and law-enforcement agencies. Numerous task forces and cooperative agreements exist between the FBI and border-security and intelligence agencies. Task forces are also primary vehicles for involving state and local agencies in counterterrorism efforts.

The Joint Inquiry was told repeatedly that host agencies restrict access to information and limit databases detailees can query on security and policy grounds. Detailees often learn about intelligence only after host agency employees make ad hoc judgments to share information.

Representatives of detailing agencies also told the Joint Inquiry that host agency employees often do not understand issues of interest to other agencies and consequently provide detailees with information without context.

Access to databases is also impaired. This is because there is no single architecture in the Intelligence Community that bridges all federal, state, and local government databases.

Cultural concerns are another problem. Former DIA Director Admiral Thomas Wilson explained to the Joint Inquiry that “information sharing” implies that one “owns the information.” According to Admiral Wilson, agencies must shed the belief that they own information, which, in fact, belongs to the government.

D. The Wall: Barriers between Law Enforcement and Intelligence

Legal and other considerations have substantially influenced the degree to which intelligence agencies share information with law enforcement agencies. These concerns also affected how information was shared between FBI intelligence components and FBI criminal investigators and Department of Justice prosecutors. In interviews and at hearings, the Joint Inquiry has been told repeatedly that a phenomenon known as the “Wall” significantly hampered the free flow of information between the intelligence and law-enforcement entities. Michael Rolince, former Chief of the FBI’s International Terrorism Operations Section, testified:

[Page 382] 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.

The “Wall” is not a single barrier, but a series of restrictions between and within agencies constructed over sixty years as a result of legal, policy, institutional, and personal factors. These walls separate foreign from domestic activities, foreign intelligence from law-enforcement operations, the FBI from the CIA, communications intelligence from other types of intelligence, the Intelligence Community from other federal agencies, and national-security information from other forms of evidence.

Following World War II, the National Security Act of 1947 created the Central Intelligence Agency, our first peacetime civilian intelligence organization. Two fundamental considerations shaped that Act: the United States would not establish an organization that coupled foreign and domestic intelligence functions, and the FBI’s domestic jurisdiction would be preserved. To satisfy these aims, the Act provided that the CIA would not have police, subpoena, or law enforcement powers and would not perform internal security functions.

Generations of intelligence professionals have been trained in the belief that the CIA should not play an internal security role. They also learned that sensitive information should be disclosed only to those with a demonstrable “need to know” the information within the rigidities of a national security classification system. In addition, law enforcement personnel have long recognized that confidentiality, protection of witnesses, and secrecy of grand jury information are essential to the successful investigation and prosecution of crimes. Thus, in the law-enforcement and foreign intelligence professions, security practices and strict limits on sharing information have become second nature.

The division between foreign intelligence and law enforcement is illustrated in the different procedures developed for law-enforcement and foreign-intelligence electronic surveillance and searches.

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The Fourth Amendment to the Constitution requires a judicial warrant for most physical searches for law enforcement purposes. In 1967, the Supreme Court held in *Katz v. United States*, 389 U.S. 347, that the Constitution requires that law enforcement officers engaged in electronic surveillance in criminal investigations also obtain a warrant.

The 1967 decision stated that it was not addressing the question of whether electronic surveillance for foreign intelligence required a warrant. However, in 1972, the Court held that a domestic group could not be subjected to warrantless electronic surveillance, even if authorized by the President or Attorney General, unless a connection was established between the group and a foreign power. The government’s argument that surveillance was necessary to collect intelligence about the group as part of an “internal security” or “domestic security” investigation was not sufficient to override the Constitutional warrant requirement. The Court explicitly did not address the President’s surveillance power with respect to foreign powers.

A few years later, Congress conducted extensive investigations into the activities of U.S. intelligence agencies, including warrantless electronic surveillance of citizens who were not agents of a foreign power and warrantless physical searches purportedly to identify subversives and protect intelligence sources and methods. These investigations led to the enactment of the Foreign Intelligence Surveillance Act of 1978 (FISA).

FISA established a special court in response to the argument that the judiciary was not equipped to review requests for foreign intelligence surveillances. Recognizing that intelligence and law enforcement interests would coincide in many cases where foreign intelligence surveillance is appropriate, such as espionage and terrorism investigations, the Act permits information produced by surveillance to be shared with law enforcement. However, to ensure that the division between foreign-intelligence and law-enforcement surveillance was maintained, the Act required a certification that “the purpose” of a proposed FISA surveillance was collection of foreign-intelligence information.

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In the early 1980s, the law enforcement and intelligence communities often worked together often in counterintelligence and counternarcotics investigations. Law enforcement agencies became more acutely aware in the course of this collaboration of the evidentiary complications that could arise as a result of using intelligence information in law enforcement efforts. For example, defense attorneys seeking discovery of investigative information relating to the guilt or innocence of their clients could move to have charges dismissed, if the government withheld information on the basis of national security. Thus, increased interaction between law enforcement and intelligence agencies required that procedures be devised to disseminate intelligence for law enforcement use while protecting intelligence sources and methods. For example, intelligence agencies provided information to law enforcement organizations “for lead purposes only,” so as to allow those organizations to act on the information without its becoming entwined in criminal prosecutions.

Personnel within the Justice Department and United States Attorneys’ Offices were given responsibility for insulating law enforcement personnel from intelligence information while finding ways for them to benefit from it. These arrangements came to be known as “walls.”

To avoid court rulings that FISA surveillances were illegal because foreign intelligence was not their “primary purpose,” Department of Justice lawyers began to limit contacts between FBI personnel involved in these activities and DOJ personnel involved in criminal investigations. One result of this approach was that the then Counsel for Intelligence Policy at DOJ, the official

most responsible for dealing with the FISA Court, was recused from handling FISA applications on al-Qa'ida because she had worked with prosecutors on the embassy bombing prosecution.

The Attorney General issued procedures in 1995 regulating FBI foreign intelligence investigations in which FISA was used and potential criminal activity was discovered. These procedures required notice and coordination among the FBI, DOJ's Criminal Division, and its Office of Intelligence Policy and Review (OIPR). In November 2001, the FISA Court adopted these procedures.

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The wall in FISA matters became thicker and higher over time, as the FISA Court explained in a May 2002 opinion rejecting procedural changes proposed by the Attorney General:

[T]o preserve . . . the appearance and the fact that FISA [was] not being used *sub rosa* for criminal investigations, the Court routinely approved the use of information screening "walls" proposed by the government in its applications. Under the normal "wall" procedures, where there were separate intelligence and criminal investigations, or a single counter-espionage investigation with overlapping intelligence and criminal interests, FBI criminal investigators and [DOJ] prosecutors were not allowed to review all of the raw FISA [information] lest they become *de facto* partners in the FISA [operations]. Instead, a screening mechanism, or person, usually the chief legal counsel in an FBI field office, or an assistant U.S. attorney not involved in the overlapping criminal investigation, would review all of the raw [information] and pass on only that information which might be relevant evidence. In unusual cases . . . , [DOJ] lawyers in OIPR acted as the "wall." In significant cases, . . . such as the bombings of the U.S. embassies in Africa, . . . where criminal investigations of FISA targets were being conducted concurrently, and prosecution was likely, this Court became the "wall" so that FISA information could not be disseminated to criminal prosecutors without the Court's approval.

The thicket of procedures, reviews, and certifications regarding FISA information and contact between foreign-intelligence and criminal investigators led to confusion and error. An FBI attorney noted in an interview that, as detail was added to certain FISA applications, the Court began to expect that level of detail in all applications. Thus, an application to renew a surveillance of an intelligence officer of a foreign government that might have originally required two paragraphs in support grew to many pages, increasing the possibility of error in details.

In March 2000, the Department of Justice discovered substantive errors in factual applications presented to the FISA Court. By September 2000, the Department identified errors in

about seventy-five FISA matters, and in March 2001 notified the FISA Court of additional errors. In response, the Court required that all DOJ personnel involved in FISA matters certify that they understood that FISA information could not be shared with criminal prosecutors without the Court's approval and an FBI agent involved with the erroneous filings was barred from the Court. While the Department attempted to correct the process that had led to erroneous [page 386] filings, a large number of FISA surveillances, including many related to international terrorism, expired in the spring and summer of 2001.

[The consequences of the FISA Court's approach to the Wall between intelligence gathering and law enforcement before September 11 were extensive. FBI personnel involved in FISA matters feared the fate of the agent who had been barred and began to avoid even the most pedestrian contact with personnel in criminal components of the Bureau or DOJ because it could result in intensive scrutiny by OIPR and the FISA Court. In addition, because NSA was not certain that it could identify reporting that came from FISA derived information, it began to indicate on all reports of terrorism-related information that the content could not be shared with law enforcement personnel without FISA Court approval].

The various walls have had other consequences of direct relevance to the Joint Inquiry. For example, a CIA employee spoke to two FBI employees in January 2000 about the activities of future hijacker Khalid al-Mihdhar in Malaysia, but did not tell them that he had a U.S. visa. The CIA officer stated in an e-mail at the time that the FBI would be brought "into the loop," only after "something concrete" was developed "leading us to the criminal arena or to known FBI cases." Perhaps reflecting the deadening effect of the long standing wall between CIA and FBI, the FBI agents reportedly thanked the CIA employee and "stated that this was a fine approach," although the FISA wall did not apply in this case.

Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other "Bin Laden-related individuals" were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers than would be available in an intelligence investigation. This was based on Headquarters' reluctance to utilize intelligence information to draw the connections

between al-Mihdhar and the *USS Cole* bombing necessary to open a criminal investigation. FBI attorneys took the position that criminal investigators “CAN NOT” (emphasis original) be involved and that criminal information discovered in the intelligence case would be “passed over the wall” according to proper procedures. An agent in the FBI’s New York field office responded by e-mail, [page 387] “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.” Again, FBI Headquarters applied FISA “walls” to a non-FISA case.

The USA PATRIOT Act, enacted in response to September 11, provided unambiguous authority for the Attorney General and other law enforcement officials to disclose to the Director of Central Intelligence foreign intelligence collected in the course of a criminal investigation. The Act also requires that intelligence be “a significant purpose” of a FISA search rather than “the purpose.” These provisions were intended to reduce, if not remove restrictions that had grown up around FISA operations. The Foreign Intelligence Surveillance Review Court, in its first opinion since being established in 1979, has affirmed that the Act permits the free flow of intelligence to prosecutors, who may direct and control FISA surveillances.

XI. Technology Gaps

Technology is critical to the Intelligence Community’s efforts to collect, analyze, and disseminate information on terrorist identities, locations, capabilities, plans, and intentions. The Joint Inquiry examined a number of issues in order to assess how well-postured the Community was in regard to its use of technology as well as its understanding of the use of technology by terrorists. The NSA, which, of all the intelligence agencies, relies the most on technical collection, received most of the attention.

A. Technology Gaps at NSA

Al-Qa’ida members employed a variety of communications technologies, including modern ones such as [—————], in the conduct of their activities. In his testimony, NSA Director Lt. Gen. Hayden lamented the fact that terrorists have access to the three-trillion-dollar-a-year communications industry. The Joint

Inquiry attempted to examine NSA's current and planned capabilities to exploit these types of modern communications as well as the tools being used and developed to help linguists and analysts process and share the volumes of information collected. In addition, the Joint Inquiry [page 388] examined the health of the technical collection platforms from which the majority of counterterrorism intelligence information is derived.

The assessment presented below draws on testimony, interviews, and some NSA documentation.

[_____]

[_____

_____].

[_____

_____].

[_____]

[_____

_____]

_____].

[Page 389]

[_____

_____].

[_____]

[_____

_____].

[_____]

[_____

_____].

[_____

_____]

[Page 390] [_____
_____].

F. Selection and Filtering for [_____]Communications

Much of NSA's pre-September 11 success against terrorist targets was due to the ability to [_____] based on [_____] interest rather than randomly choosing among millions of communications. With the proliferation of multimedia communications, even better selection and filtering techniques will be required.

One area of increased attention is [_____] an area in which NSA has made only limited progress. [_____] . Unfortunately, NSA's selection capabilities suffer from a critical deficiency, [_____] . The solution to this deficiency is well understood and estimated to cost less than \$1 million to implement. However, the Joint Inquiry learned in interviews that even though [_____] have been available for many years, and even though NSA has had recent significant funding increases, the program manager is still "scrounging" for funds to pay for this upgrade that would not be completed until 2004.

G. Analyst Tools

NSA often did not provide analysts with sufficient tools to exploit the data collected. For example, NSA in 1998 did not have the capability to [_____] , NSA's Analysis and Production Chief, noted, "At that time the systems that were in place were high tailored, not integratable. The plug and play was only beginning to come into play at that point in time. So a tailored solution that you might be able to architect at home wasn't necessarily one that you could deploy across [_____] or within a CT shop." [_____] noted, however, that this capability now existed.

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However, field operators still do not have such tools, even though they were available at NSA Headquarters after September 11. During a visit to the [_____] ,

Joint Inquiry personnel found [] linguists frustrated with Headquarters support for language tools. In fact, one of their primary concerns was the inability to display []. They noted that they could purchase software on the local economy that can display [] but are prohibited from doing so because the software is not an “approved application” for their computer platform. “When they officially requested such a capability through official channels, they were told that something could be available in 18 months.” They noted that some computers they still use are 1993 vintage UNIX machines that cannot even display ordinary graphical user interfaces correctly due to color graphics limitations.

H. Collection Platforms

NSA collects signals intelligence using a variety of methods or platforms. Often these platforms, which have a sizable infrastructure investment, serve a myriad of intelligence missions. In identifying these critical platforms, the Joint Inquiry examined statistics on counterterrorism-related reporting. The following chart shows the source of counterterrorism reports per technical collection platform both pre- and post-September 11:

Collection Platform	All Counterterrorism Reports 10 May 01 - 10 Sep 01	All Counterterrorism Reports 11 Sep 01 - 11 Jan 02	Percent Increase
[]	[]	[]	[]

NSA spending increases after September 11, however, are not focused on several of the most productive sources of counterterrorism information. [] [Page 392]

[_____

_____].

The evidence suggests that an effective counterterrorism effort requires [_____
_____] In testimony, Lt. Gen. Hayden acknowledged, [_____
_____] Lt.

Gen. Hayden also stated that in his effort to develop capabilities against new communications technologies by the end of the 1990s, “This meant taking money away from current, still active, still producing activities. . . .” Since the attacks, NSA has focused on its transformation strategy.

Lt. Gen. Hayden testified:

“Shortly after September 11th, I had a meeting of my senior leaders. I asked them the following question: Is there any part of our transformation roadmap that we should change as a result of the attacks? Unanimously, they responded, ‘No, but we need to accelerate these changes.’ With the money the President has requested and Congress has provided, we have done just that.”

NSA’s commitment to the future viability of the [_____] collection platforms remains unclear, despite their value.

XII. Technical Collection of Terrorist Communications

[Responsibility for most of the technical collection of terrorist communications falls under the purview of the National Security Agency, although the CIA and the FBI also conduct technical collection against terrorism. NSA and other agencies learned valuable information from intercepting terrorist communications and prevented several planned attacks. Indeed, numerous

officials throughout the policy and Intelligence Community told the Joint Inquiry that [page 393] Signals Intelligence (SIGINT) was a valuable source of information on al-Qa'ida. Exploitation of terrorist communications, however, was uneven at best and suffered from insufficient investment. Al-Qa'ida was only one of several high priority targets and a difficult one].

A. NSA's Organizational Structure for Collecting Terrorist Communications

Within the NSA, the Signals Directorate, which was created in February 2001 by combining the Operations and Technology Directorates, has the primary SIGINT mission. Within the Signals Directorate, the Counterterrorism Product Line has the lead for counterterrorism reporting. [_____

_____]:

- [_____];
- [_____];
- [_____];
- [_____];
- [_____];
- [_____].

B. SIGINT and the September 11 Attacks

Prior to 11 September 2001, NSA had no specific information indicating the date, time, place, or participants in an attack on the United States. Numerous NSA personnel, including

Lt. [page 394] General Hayden, the Director of the NSA (DIRNSA), repeatedly related this conclusion to the Joint Inquiry.

[NSA had intercepts on September 10, 2001 that, in retrospect, appear to relate to the September 11 attacks. These intercepts were processed on September 11 (after the terrorist attacks) and reported early on September 12, 2001. Although each of the products referred to something occurring the following day, neither intercept had specifics on the attack, location, or targets. This wording was similar to other non-specific threats occasionally reported by NSA over the past several years].

In an effort to place the September 10 messages in perspective, General Hayden testified, “I should also note that [over a period of time] earlier that summer we had intercepted and reported over 30 such imminent attack messages and that since September 11 [NSA continues to report similar activities].”

In fact, following September 11, there was a flurry of similar [——] intercepts that were not associated with any terrorist attacks:

- [—————
———];
- [—————];
- [—————
———]; and
- [—————
———].

[Page 395]

C. A Chronological Review of NSA Collection Efforts Against al-Qa'ida

[In the years before the September 11 attacks, NSA steadily increased its collection on al-Qa'ida. Initial Intelligence Community efforts focused on Bin Ladin himself as a terrorist financier. As the 1990s wore on, this effort expanded to collection on Bin Ladin's associates and the al-Qa'ida organization. [_____

_____].

The following review is largely drawn from Joint Inquiry interviews. It highlights important milestones in NSA's collection against al-Qa'ida.

[_____

_____]. Bin Ladin was viewed almost exclusively by the Intelligence Community as a terrorist financier until 1996].

[In 1996, CTC established its Bin Ladin unit as the Intelligence Community focal point for tracking Bin Ladin. [_____
_____]. The first phase of the unit's Bin Ladin project was strategic information gathering, [_____
_____]. It was at this point that the Intelligence Community began focusing on the Bin Ladin target as a terrorist support network in addition to being a terrorist financier].

[_____

_____].

[Before Bin Ladin issued his February 1998 anti-American *fatwa*, [_____]
_____]]. Following the *fatwa*, the Director of
NSA appealed to [_____] partners, few of which were focused on counterterrorism at the
time, for counterterrorism assistance. [_____

_____].

[Following the August 1998 East Africa Embassy bombings, NSA instituted a much higher
operations tempo, which never really subsided. After the bombings, at the request of FBI's New
York Field Office, NSA provided all reports that appeared related to the attacks. This information
was useful to the FBI].

[In the fall of 1998, NSA lost the ability to listen to Bin Ladin on his satellite phone. This
loss was probably the result of, among other things, a media leak. [_____

_____].

[_____

_____].

In February 1999, the Department of State demarched the Taliban, [_____

_____].

[_____

_____].

The Millennium threat surge began in November 1999. The Millennium threat was a top priority for the entire Intelligence Community, and NSA personnel worked around the clock supporting CIA's disruption campaign. During this time, Jordanian officials arrested terrorists linked to al-Qa'ida. [_____
_____].

[_____

_____].

Several other advances occurred throughout 2000. [_____

_____].

[Page 398]

Following the *USS Cole* bombing in October 2000, NSA consolidated some of its counterterrorism efforts [_____
_____].

_____].

[By the winter of 2000, NSA noted a general rise in threat activity. The Intelligence Community assessed the threat to be mostly oriented abroad. In spring 2001, NSA noted another significant rise in threat activity. Again, the Intelligence Community assessed the threat to be directed abroad].

[Throughout June and July 2001, another rise in threat activity was identified. NSA analysts noted vague communications traffic indicating that something was afoot. Intelligence Community speculation centered on whether the likely target was abroad. The U.S. military was sufficiently concerned that an attack would occur on the Arabian Peninsula that “ThreatCon Delta” was declared and all ships in the area were sent to sea].

[Military customers asked NSA/CT analysts if the threat were real. NSA counterterrorism analysts reviewed the evidence and were confident that it was. [_____

_____].

[In the spring, the Intelligence Community reported indications that an attack may have been postponed. The Joint Inquiry was told that this led the Intelligence Community to believe that a real terrorist attack had been averted].

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D. Technical Collection Problems and Limits at NSA

Technical collection was limited. This was due to both the nature of the target and missteps by the NSA and other U.S. government elements.

a. Difficulties of Gaining Actionable Intelligence on al-Qa'ida

[Several senior NSA officials, including the Deputy Director of NSA and Chief of the counterterrorism organization contended in interviews and testimony that information on terrorist plans and intentions was often not available [_____

_____]. Even when information was intercepted, the analyst often must interpret arcane, circumspect discussions, put them into context, and identify linkages to other known targets or activities. NSA's Director stated: "... we do not anticipate being able to provide detailed threat information from SIGINT in most cases." Indeed, SIGINT did not provide significant intelligence to prevent other major terrorist attacks against U.S. interests such as Khobar Towers, the East Africa U.S. Embassies, and *USS Cole*].

[However, these arguments are somewhat belied by evidence uncovered during the Joint Inquiry that identified several instances of communications providing some specifics in terms of a timeframe and general location for terrorist activity. In addition, the FBI acquired toll records that five or six hijackers communicated extensively abroad after they arrived in the United States. The Intelligence Community had no information prior to September 11, 2001 regarding these communications, and, as a result, does not know what clues they may have contained].

[_____

_____]

[Page 400] [_____]. The Director of NSA, testifying about the targeting challenges facing NSA, said "cracking into these targets is hard – very hard – and SIGINT operations require considerable patience – sometimes over years – before they mature."

b. Difficulties in Adjusting to Terrorist Targets

The communications sophistication of stateless terrorists in general and al-Qa'ida in particular clearly surprised NSA officials. The rise of al-Qa'ida seemingly paralleled in some respects what NSA's Director referred to as "the telecommunications and information revolution" of the past ten years. He noted that al-Qaida operatives are skilled users of the global telecommunications infrastructure, "al-Qa'ida is in many respects different from NSA's typical SIGINT targets of the past 50 years."

In spring 2001, NSA began to change direction: rather than analyzing *what was collected*, NSA would dissect its targets' communications practices to determine *what to collect*. This is commonly referred to at NSA as *hunting* rather than *gathering*. This procedure was in its infancy when the September 11 terrorist attacks occurred.

c. Problems Keeping Pace with [—————] Advances before September 11

[—————]
—————
—————
—————
—————
—————
—————
—————
—————

—————]. The Director of NSA did acknowledge NSA's deficiencies in dealing with some forms of modern communications, but was also quick to credit his organization for working on the building blocks before September 11, so that [Page 401] fielding additional capabilities after September 11 was expedited].

NSA's Director apparently felt handcuffed in his effort to move forward in this area, citing his inability to "churn" (redirect) some \$200 million into "new age signals ... because we were going to erode our coverage of [other intelligence issues] as part of this effort." Indeed, General

Hayden told the Joint Inquiry that he was severely criticized on several occasions for abandoning so-called legacy communication paths in favor of developing robust new capabilities.

[There is some apparent inconsistency concerning NSA's concentration. On at least one occasion, the Director of NSA asserted that it was not so much NSA's inability to collect some modern communications, but other factors. The bulk of the information available to the Joint Inquiry, however, suggests NSA was behind the curve in this area and only began to catch up after September 11, 2001].

E. Insufficient Resources for Counterterrorism at NSA

Although NSA has had difficulty in generating consistent, accurate personnel numbers for the Joint Inquiry, it appears from interviews and the limited information provided that personnel employed in the counterterrorism organization were largely static over several years, despite repeated efforts by local managers to increase the numbers of linguists and analysts. General Hayden testified that in hindsight he would have liked to have doubled his resources against al-Qa'ida.

NSA acknowledged it had insufficient numbers of linguists and analysts on the counterterrorism target. This acknowledgment seems to have come from leadership in retrospect, while those closer to the counterterrorism problem stated to the Joint Inquiry they had been requesting personnel increases for years, mostly to little or no avail.

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Declining overall resources made it difficult to dramatically expand counterterrorism coverage. As discussed in more detail in a separate chapter, for much of the 1990s NSA's budget and manpower were steadily reduced to a point that all collection efforts were impeded. Cuts were "salami-sliced" across the agency rather than specifically targeted, a tactic employed by NSA for many years to cope with declines while still trying to satisfy an increasing number of intelligence requirements, and competing priorities (especially force protection requirements) that drained scarce resources, such as Arabic linguists. Funds for [—————] collection, historically two of NSA's most lucrative reporting sources, were essentially put in a maintenance

mode, with investment focused on other collection sources that NSA felt needed to be developed to have a more balanced SIGINT collection system.

There was little significant, sustained reaction to the DCI's declaration of war on al-Qa'ida in 1998. Indeed, LTG Hayden (who became Director of NSA in 1999) noted that by 1998, NSA was already at a heightened counterterrorism posture and thus no additional wholesale shifts in resources were made at that time. LTG Minihan, the Director of NSA at the time of the DCI's declaration, told the Joint Inquiry that he felt the DCI was speaking for the CIA only. In his view, the DCI generally left Intelligence Community matters to the head of the Community Management Staff.

[Numerous individuals noted that counterterrorism was but one of several seemingly equally high priority targets levied on NSA prior to September 11. Although the Director of the Signals Directorate stated that in addition to al-Qa'ida, [—————] was the only other Tier 0 (highest priority) target in the 1998-2001 timeframe, there did not seem to be an objective method for resource assignment within NSA, nor guidance from the DCI. The Director of NSA in his testimony referred to the PDD-35 requirements system as "cumbersome." The requirements system in place on the eve of September 11 consisted of some 1,500 standing requirements calling for some 200,000 detailed pieces of information – ad hoc requirements that were received telephonically or via e-mail, and requests for additional information. In response, NSA juggled resources to cope with competing requirements but did not make dramatic cuts in other priorities to dramatically expand counterterrorism coverage].

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The NSA Director also cautioned in his testimony, "If these hearings were about the war that had broken out in Korea or the crisis in the Taiwan Straits that had taken us by surprise or if we had been surprised by a conflict in South Asia or if we had lost an aircraft over Iraq or if American forces had suffered casualties in Bosnia or Kosovo, in any of these cases I would be here telling you that I had not put enough analysts or linguists against the problem. We needed more analysts and linguists across the agency, period."

F. Technical Collection at CIA

Most of the technical collection operations at the CIA have a human access element, and the primary offices with responsibility are in the Directorate of Operations. The Counterterrorist Center has a Technical Operations Branch that is responsible for orchestrating special technical collection operations for terrorist targets. Some of these operations are conducted in concert with NSA, [_____].

[_____

_____] [Despite this [_____] effort, a senior CIA official testified that in hindsight he would have liked to have had more [_____]].

G. NSA/CIA Disputes Over [_____] Collection

[NSA and CIA failed to agree on an approach to collect [_____]], and both agencies independently developed a capability [_____]]. After considerable discussion with NSA and CIA personnel, the Joint Inquiry [page 404] determined that CIA wished to have [_____] as soon as possible [_____]], and NSA said it could not deliver in the requested timeframe. Accordingly, CIA developed its own capability while NSA continued with its program, which ultimately was delivered some 15 months early. In the end, peace was made and over time, NSA and CIA began to benefit from each other's capabilities].

Especially during periods of budgetary shortfalls, the competitive example just cited appears particularly wasteful. To avoid similar disputes, NSA and CIA have created the Senior Partnership Advisory Group (SPAG).

H. Technical Collection at FBI

The FBI performs considerable technical collection within the United States to support its own intelligence and criminal investigations. It also supports the collection efforts of Intelligence Community agencies, [_____]. These activities are conducted pursuant to the authority of the Foreign Intelligence Surveillance Act of 1978. [_____

_____].

FBI was conducting relatively few technical collection operations against al-Qa'ida before September 11. The intelligence produced was of relatively limited value because the targets did not appear to be involved in significant activity.

FBI officials indicated that after September 11 a joint program had begun with NSA [_____
_____]. FBI is responsible for collecting the information. NSA receives the information and is responsible for reporting to the Intelligence Community and [page 405] intelligence customers. [_____]. FBI personnel maintain that collaboration [_____
_____] can still be improved.

XIII. HUMINT Collection

Three agencies in the Intelligence Community have primary responsibility for HUMINT (intelligence from human sources) collection: the CIA, the FBI, and the DIA. Before September 11, none of these agencies had collected any information through HUMINT sources warning of the September 11 attacks on the Pentagon and the World Trade Center.

[The agencies' attempts to use human penetrations to gather intelligence on al-Qa'ida steadily grew throughout the 1990s, until by the end of the decade it was a top priority. The CIA met with the most success through its foreign liaison relationships and with volunteers. It made only limited progress with unilateral attempts to place human assets in al-Qa'ida's leadership. The DIA's Defense Humint Services (DHS) had some success against the Taliban, but little against al-Qa'ida. The FBI collected valuable information on Islamic radical activity in the United States, but the Bureau's focus was often overseas. In addition, the FBI often failed to coordinate its human collection].

The Joint Inquiry collected information about the agencies' pursuit of HUMINT through interviews and reviews of documents. The Joint Inquiry was frequently unable to catalog or audit the HUMINT sources from the information delivered by CIA because the documents were heavily redacted for source protection. This did decrease the Joint Inquiry's ability to judge the breadth and depth of the HUMINT program at CIA.

A. CIA Human Intelligence Collection

[The CIA has tried to collect on Bin Ladin and al-Qa'ida since the mid-1990s. Collecting human intelligence on al-Qa'ida became an increasingly important priority at the CIA, and in 1996, the Counterterrorist Center (CTC) set up a special Bin Ladin unit to increase its focus on [page 406] Bin Ladin. The CIA used the three traditional mechanisms for developing HUMINT or field intelligence: unilateral sources, volunteers, and liaison relationships].

The CIA made the penetration of al-Qa'ida a top priority. The DCI characterized the counterterrorism effort against Bin Ladin and his organization to the Committees on June 18, 2002 in this way:

We understood that our first priority was to try and stop the next attack that was going to occur and operate against these people around the world, and then penetrate a sanctuary through whatever means we could, to build the [capabilities] that would allow us to mount these kinds of operations. . . . As we race through [a] period of threat when we're disrupting specific attacks against embassies and overseas facilities and thousands of people would be dead, except for what we did, I don't remember anybody saying you guys are too timid, you're not working it hard enough or you haven't expended a level of effort.

[To improve collection on, and efforts to disrupt, al-Qa'ida, a special unit focused on Bin Ladin was created in early 1996. The Bin Ladin unit initially had fewer than 20 people, and included operations officers, analysts who acted as targeteers, and desk officers who directed field operations. At the start, it did not have any case officers of its own deployed to the field. To conduct operations overseas for intelligence collection or disruption, the unit had to work through the Directorate of Operations (DO) area divisions and request the use of their operations officers to pursue al-Qa'ida related leads. With the passage of time and the increased priority of al-Qa'ida, more people were added to the Bin Ladin unit and more case officers were assigned to the field either permanently or temporarily. The area divisions also increased their case officers' efforts against the target].

However, Joint Inquiry interviews indicate that even into 2001, the Bin Ladin unit knew it needed more people – particularly experienced Headquarters desk officers and targeters – to effectively meet the HUMINT challenge. In early Spring 2001 briefing to the DCI, CTC [page 407] requested hiring a small group of contractors not involved in day-to-day crises to digest vast quantities of information and develop targeting strategies. The briefing emphasized that the unit needed people, not money.

The penetration of al-Qa'ida by an Intelligence Community human asset is an exceptionally difficult task. Intelligence Community officials in several agencies told the Joint Inquiry that members of Usama Bin Ladin's inner circle have close bonds established by kinship, wartime experience, and long-term association. Information about major terrorist plots was not widely shared within al-Qa'ida, and many of Bin Ladin's closest associates lived in war-torn Afghanistan. The United States had no official presence in that country and did not formally recognize the Taliban regime, which viewed foreigners with suspicion. Pakistan is the principal access point to southern Afghanistan, where al-Qa'ida was particularly active, but U.S.-Pakistani relations were strained by Pakistani nuclear tests in 1998 and a military coup in 1999. This was an exceedingly difficult operational environment in which to conduct clandestine operations.

[Nevertheless, CIA officials recognized the imperative of penetrating al-Qa'ida, particularly at the leadership level. A CTC presentation made to the CIA senior leadership on December 2, 1999 noted:

- Without penetrations of [the] UBL organization... [_____].
- While we need to disrupt operations...we need to also recruit sources inside UBL's organization.
- Realize that recruiting terrorist sources is difficult...but we must make an attempt].

[On the next day, the CTC briefed the National Security Council Small Group about the CIA's lack of sources and the importance of recruitment:

We will continue with disruptions of operations and renditions...but with an increased emphasis on recruiting sources; at this time, we have no penetrations inside UBL's leadership].

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[Because this target was such a high priority, the CIA tried many unilateral avenues to obtain access to Bin Ladin and his inner circle. Interviews of CIA officials and documents provided to the Joint Inquiry indicate the CIA tried to [_____

_____]

According to documents reviewed by the Joint Inquiry Staff, [_____
_____]: “[_____
_____].” Despite these creative attempts, former CTC officers told the Joint Inquiry that before September 11 the CIA had no penetrations of al-Qa'ida's leadership, and the Agency never got actionable intelligence [_____].

In interviews with current and former CTC officers, the Joint Inquiry learned that [_____

_____]

_____].

The CIA frequently draws on an active set of volunteer sources, [_____], to gain intelligence. [_____]

_____].

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[Volunteers needed particular scrutiny, as some of these individuals were suspected of being sent in from foreign intelligence services as counterintelligence assets, or they might have been al-Qa'ida provocations. [_____]

_____].

[_____]

_____].

Critical to the successful collection of intelligence and to the disruption of terrorist activities were the relationships forged with foreign liaison services. (See Section II). Because of the scarce personnel resources initially assigned to this target, and because of the intense pressure to capture Bin Ladin himself, CTC chose to have liaison services develop sources wherever possible to support the U.S. mission. In addition, as noted in section II, liaison services had

additional capabilities that made them particularly effective against the al-Qa'ida target. The DCI, the senior leadership of the CTC, and the leadership of the Directorate of Operations were actively engaged in building and maintaining these liaison relationships.

Developing relationships with liaison services paid off handsomely when there was some actionable intelligence about a terrorist or a cell. For example, in July 2001, a Bin Ladin operative was arrested in the [_____]. Because of this arrest, a plot to bomb an American Embassy in Europe was thwarted.

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[The liaison relationship worked extremely well with the [_____], as well as with other services in the [_____]. Liaison sources often provided valuable information about the al-Qa'ida network, but the CIA could not rely on them to provide access to Bin Ladin's leadership. Moreover, in other parts of the world, abdicating collection to foreign partners meant the CIA obtained precious little information. According to one U.S. Government official, if liaison services did not want to help, for example in certain Western countries, there was little that could be done, by CIA].

B. DIA Human Intelligence Collection

[DIA's Defense HUMINT Service also plays a role in clandestine collection, though on a much smaller scale than CIA. According to General Dayton, the Director of DHS, after the Embassy bombings DHS "got excited" about Bin Ladin and al Qa'ida. They searched their old agent files and reestablished contact with [_____] sources that could help them with terrorist targets. [_____] former highly placed agents were reactivated. Prior to September 11, at any one time, DHS had [_____] active. Based on those sources they produced several hundred intelligence reports from fall 1998 to September 2001.

Most of the DHS sources were focused on [_____] and had little direct reporting capability against [_____]. DHS characterized its [_____] sources as well placed and extremely useful in the post-September 11 air campaign targeting effort. [_____]

].

C. FBI Human Intelligence Collection

The FBI attempted to develop specific intelligence that could be acted upon before September 11 by penetrating terrorist organizations operating in the United States. Before September 11, the FBI had 70 full field investigations of individuals with al-Qa'ida ties.

[Page 411] However, Bureau and Department of Justice policy and practice may have hampered the FBI's coverage of the radical fundamentalist community in this country. Much of the FBI's effort against al-Qa'ida was actually expended overseas, with the investigations of the terrorist attacks against the US Embassies in Africa in 1998 and the *USS Cole* in 2000.

Recruiting sources in fundamentalist communities within the United States is difficult for many of the reasons noted above with regard to the penetration of al-Qa'ida in general. However, even those FBI agents who were skilled at developing such sources faced a number of difficulties that may have hampered the Bureau's ability to gather intelligence on terrorist activities in the United States. According to several agents, for example, FBI Headquarters and field managers were often unwilling to approve potentially controversial activity involving human sources that could provide counterterrorism intelligence.

The 1996 Antiterrorism and Effective Death Penalty Act, which specifically outlawed providing material support to terrorism, posed a particular problem. If an FBI source was involved in illegal funding or in terrorist training, the agent responsible for the source had to obtain approval from Headquarters and the Department of Justice to allow the source to engage in the illegal activity. This reportedly was a difficult process that sometimes took as long as six months. Because terrorist sources frequently engaged in activity that violated the 1996 Act, the cumbersome approval process negatively affected the Bureau's ability to operate more sources successfully.

Sending sources recruited in the United States overseas proved particularly difficult. Some FBI agents also saw the requirement that the Director of Central Intelligence approve such

operations as a problem, claiming that the CIA took advantage of this requirement to prevent FBI sources from operating overseas. Another FBI agent stated that FBI Headquarters management did not readily approve overseas travel for sources because of its belief that the Bureau should focus on activity within the United States. When management did approve such operations, it often declined to allow the responsible agents to accompany the sources while traveling overseas, a decision some agents believe significantly diminished the quality of the operations.

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The Joint Inquiry was told by several officials that the FBI was not using its network of counterterrorism sources in the most effective and coordinated manner. The Bureau focused source reporting on cases and subjects within specific field offices and did not adequately use sources to support a national counterterrorism intelligence program. In 1999, the FBI received reporting that a terrorist organization was planning to send students to the United States for aviation training. In response, an operational unit at FBI Headquarters instructed twenty-four field offices to "task sources" for information. However, it appears that no FBI sources were asked about the matter. The problems experienced in Phoenix and Minneapolis – both of which are discussed in separate sections – further suggest that the FBI did not effectively task its sources in the United States to follow up on suspicious activity.

[This problem was painfully manifest in August 2001, when the FBI was made aware by CIA that terrorist suspects Nawaf al-Hazmi and Khalid al-Mihdhar were in the United States. Neither the FBI field offices that were involved in the search nor FBI Headquarters thought to ask FBI field offices to ask their sources whether they were aware of the whereabouts of the two individuals, who later took part in the September 11 attacks. A San Diego FBI field office agent who handled such sources, including the source who had numerous contacts with Nawaf al-Hazmi and Khalid al-Mihdhar, insisted to the Joint Inquiry that he would have been able to find them through his sources].

Finally, that same agent testified that he had "never" discussed any FBI interest in Bin Ladin or al-Qa'ida with that source prior to September 11, "because that was not an issue in terms of my assignments. I was interested in Hamas, Hizbollah, Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, the whole different range." He stated that "we knew [al-Qa'ida] was an important person or important organization. But we

didn't have any presence. We didn't have any cases and we didn't have any source information that indicated that these guys were here in San Diego at that time.”

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XIV. Summary of Joint Inquiry Review of Anthrax Attacks

In October 2001, the Congress, the United States Postal Service (USPS), and elements of the domestic infrastructure were the targets of anthrax attacks that eventually killed five Americans. The Joint Inquiry requested that the General Accounting Office review those attacks, focusing on the difficulty of producing and spreading anthrax, mail as a delivery system, the status of USPS efforts to detect anthrax, the federal investigation into the attacks, and how the government is preparing for other incidents.

When the Joint Inquiry report was filed, the GAO investigation had been substantially completed, with an initial finding that no consensus exists among experts regarding the ease with which terrorists or a disgruntled scientist could effectively produce and disseminate anthrax on U.S. soil. According to the GAO, technical experts believe that it would be very difficult to overcome technical and operational challenges to produce and deliver biological warfare agents sufficient to cause mass casualties.

According to the experts the GAO interviewed, delivery of anthrax by mail is not as efficient a method of producing mass casualties as military technologies. However, in the public's mind and in terms of economic damage, anthrax powder in the mail represents a potentially significant problem. The USPS effort to defend against biological agents illustrates a key aspect of homeland defense: the distinction between reactive and proactive operational environments. Whereas the nation's posture had been to prevent attacks against military facilities, the anthrax attacks targeted civilian facilities that are unprepared to react.

According to the GAO, the FBI is aware of numerous anthrax incidents throughout the United States, which were random in nature and determined to be hoaxes. Because this was the first time the FBI responded to an actual attack, however, there was some initial confusion about the investigative roles and responsibilities of various agencies. The Bureau has recognized the

need to involve subject-matter experts and, as a result, its investigative teams include scientists, criminal investigators, hazardous-material experts, investigators from other federal agencies, and federal laboratories.

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As a result of the anthrax attacks, the FBI and other investigative agencies have increased attention on chemical and biological threats. These agencies have reached agreements delineating roles and responsibilities, increased liaison with public health officials, developed a Center for Disease Control and FBI handbook for conducting investigations, and identified state and local officials who need security clearances for access to classified information.

To date, no connection has been established between the anthrax attacks and the terrorist attacks of September 11.

A copy of the GAO report can be found in the Appendix to this volume.