U. S. Department of Justice
Office of the Inspector General

A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks (November 2004)

Released Publicly June 2006

Office of the Inspector General

UNCLASSIFIED

NOTE

This report is an unclassified version of the full report that the Office of the Inspector General (OIG) completed in 2004 and provided to the Federal Bureau of Investigation (FBI), the Department of Justice, the Congress, the Central Intelligence Agency, the National Security Agency, and the National Commission on Terrorist Attacks Upon the United States. The OIG's full report is classified at the Top Secret/SCI level.

At the request of members of Congress, after issuing the full report the OIG created an unclassified version of the report. However, because the unclassified version included information about the FBI's investigation of Zacarias Moussaoui, and because of Moussaoui's trial in the United States District Court for the Eastern District of Virginia and the rules of that Court, the OIG could not release the unclassified version of the report without the Court's permission until the trial was completed.

In June 2005, the Court gave the OIG permission to release the sections of the unclassified report that did not discuss Moussaoui. Therefore, at that time the OIG released publicly a version of the unclassified report that did not contain Chapter 4 (the OIG's review of the Mousssaoui matter), as well as other references to Moussaoui throughout the report.

The Moussaoui case concluded on May 4, 2006, when the Court sentenced Moussaoui to life in prison. The OIG then prepared this document, an unclassified version of the full report that includes the information related to Moussaoui.

On June 19, 2006, the OIG is releasing this full version of the unclassified report, which includes the Moussaoui chapter and other references to Moussaoui throughout the report, as well as the other chapters that previously were released publicly.

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CHAPTER ONE
INTRODUCTION

I. Introduction

On September 11, 2001, 19 terrorists hijacked 4 commercial airplanes as part of a coordinated terrorist attack against the United States. Two of the planes crashed into the World Trade Center Towers in New York City and one hit the Pentagon near Washington, D.C. The fourth plane crashed in a field in southwestern Pennsylvania. More than 3,000 persons were killed in these terrorist attacks.

On February 14, 2002, the House of Representatives Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence began a joint inquiry to address questions related to the September 11 attacks, such as "what the Intelligence Community knew prior to September 11 about the scope and nature of any possible terrorist attacks... what was done with that information" and "how and to what degree the elements of the Intelligence Community have interacted with each other, as well as with other parts of the federal, state, and local governments, with respect to identifying, tracking, assessing, and coping with international terrorist threats."[1] This review became known as the Joint Intelligence Committee Inquiry or "the JICI review."

One of the key questions arising after the attacks was what information the Federal Bureau of Investigation (FBI) knew before September 11 that was potentially related to the terrorist attacks. On May 21, 2002, Coleen Rowley, the Chief Division Counsel in the FBI's Minneapolis Field Office,[2] wrote a 13-page letter to FBI Director Robert Mueller in which she raised concerns about how the FBI had handled certain information in its possession before the attacks. Among other things, Rowley discussed the FBI's investigation of Zacarias Moussaoui, a French citizen who had been arrested in Minneapolis on

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[1] The U.S. "Intelligence Community" is composed of 14 agencies responsible for collecting intelligence information on behalf of the government and includes the Federal Bureau of Investigation and the Central Intelligence Agency (CIA).

[2] The CDC provides legal counsel and advice to field office management, supervisors, and agents on administrative and operational matters.

August 16, 2001. The Minneapolis FBI Field Office had received a telephone call from a representative of a flight school reporting suspicions about Moussaoui, who was taking flying lessons at the school near Minneapolis. Acting on this information, FBI and Immigration and Naturalization Service (INS) agents in Minneapolis investigated Moussaoui for possible connections to terrorism and discovered that he was in violation of his immigration status. As a result, on August 16, 2001, Moussaoui was taken into custody on immigration charges.

The Minneapolis FBI became concerned that Moussaoui was training to possibly commit a terrorist act using a commercial airplane. It therefore attempted to investigate his potential links to terrorism. To pursue this investigation, the Minneapolis FBI sought a warrant to search Moussaoui's computer and other belongings. However, FBI Headquarters did not believe that a sufficient predicate existed to obtain the search warrant, either a criminal warrant or a Foreign Intelligence Surveillance Act (FISA) warrant. Moussaoui, who was in custody at the time of the September 11 attacks, later was indicted and charged as a co-conspirator in the September 11 attacks.

In her May 21, 2002, letter to the FBI Director, Rowley criticized the FBI Headquarters managers who were involved with the Moussaoui investigation prior to September 11. FBI Director Mueller subsequently referred Rowley's letter to the Inspector General and asked the Office of the Inspector General (OIG) to review the FBI's handling of the Moussaoui investigation. In addition, the Director asked the OIG to review the issues in an Electronic Communication (EC) written by an FBI Special Agent in Phoenix (known as the Phoenix EC), as well as "any other matters relating to the FBI's handling of information and/or intelligence before September 11, 2001 that might relate in some manner to the September 11, 2001 attacks."

The Phoenix EC was a memorandum sent by an agent in the FBI's Phoenix office in July 2001 to FBI Headquarters and to the FBI's New York Field Office.[3] The Phoenix EC outlined the agent's theory that there was a

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[3] This document has commonly been referred to as "the Phoenix memo" or "the Phoenix EC." Throughout this report, we use the term "Phoenix EC" to refer to this document.

coordinated effort by Usama Bin Laden to send students to the United States to attend civil aviation universities and colleges for the purpose of obtaining jobs in the civil aviation industry to conduct terrorist activity. The EC also recommended that FBI Headquarters instruct field offices to obtain student identification information from civil aviation schools, request the Department of State to provide visa information about foreign students attending U.S. civil aviation schools, and seek information from other intelligence agencies that might relate to his theory. At the time of the September 11 attacks, little action had been taken in response to the Phoenix EC.

The OIG agreed to conduct a review in response to the FBI Director's request. In conducting our review, OIG investigators also learned that prior to the September 11 attacks the Intelligence Community had acquired a significant amount of intelligence about two of the hijackers – Nawaf al Hazmi and Khalid al Mihdhar.[4] Well before September 11, 2001, the Intelligence Community had discovered that Hazmi and Mihdhar had met with other al Qaeda operatives in Malaysia in January 2000. The CIA also had discovered that Mihdhar possessed a valid U.S visa and that Hazmi had traveled to the United States in January 2000. The FBI contended, however, that it was not informed of Mihdhar's U.S. visa and Hazmi's travel to the United States until August 2001, just before the September 11 attacks. At that time, the FBI had initiated an investigation to locate Mihdhar and Hazmi, but the FBI was not close to finding them at the time of the September 11 attacks. The OIG also learned that Hazmi and Mihdhar had resided in the San Diego area in 2000, where they interacted with a former subject of an FBI investigation and lived as boarders in the home of an FBI source. The OIG therefore decided to include in its review an investigation of the intelligence information available to the FBI about Hazmi and Mihdhar before September 11 and the FBI's handling of that intelligence information.

In December 2002, the JICI released its final report entitled, "Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001." One of the report's recommendations was for the Inspectors General at the Department of Justice (DOJ), CIA, Department of

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[4] Mihdhar, Hazmi, and three others hijacked and crashed American Airlines Flight 77 into the Pentagon.

Defense, and Department of State to determine whether and to what extent personnel at those agencies should be held accountable for any acts or omissions with regard to the identification, prevention, and disruption of the September 11 terrorist attacks.

II. OIG investigation

The OIG's review focused on the FBI's handling of the Phoenix EC, the Moussaoui investigation, and the intelligence information about Mihdhar and Hazmi. To review these issues, the OIG assembled a team of four attorneys, three special agents, and two auditors. The team conducted 225 interviews of personnel from the DOJ, FBI, CIA, and other agencies. For example, we interviewed FBI personnel from FBI Headquarters; from FBI field offices in Minneapolis, San Diego, New York, Phoenix, and Oklahoma; and from FBI offices overseas. We also interviewed employees from the CIA, the INS, the National Security Agency (NSA), and the Federal Aviation Administration (FAA). We reviewed over 14,000 pages of documents we obtained from the FBI, the CIA, the NSA, and JICI.

Our review of the FBI's handling of the Hazmi and Mihdhar matter required us to obtain a significant amount of information from the CIA regarding its interactions with the FBI on that matter. To conduct our review, we thus had to rely on the cooperation of the CIA in providing us access to CIA witnesses and documents. We were able to obtain CIA documents and interviewed CIA witnesses, but we did not have the same access to the CIA that we had to DOJ information and employees. We also note that the CIA OIG is conducting its own inquiry of the CIA's actions with regard to the Mihdhar and Hazmi matter.

III. Organization of the OIG report

This report is organized into six chapters. Chapter One contains this introduction. Chapter Two provides general background on the issues discussed in this report. For example, it contains descriptions of key terminology, the FBI's organizational structure, the so-called "wall" that separated intelligence and criminal investigations in the FBI and the DOJ, the process for obtaining a FISA warrant, and other legal background issues related to how the FBI investigated terrorism and intelligence cases before September 11, 2001. Because the background chapter contains basic terminology and

concepts, those with more extensive knowledge of these issues may not need to read this chapter in full.

Chapter Three evaluates the FBI's handling of the Phoenix EC. As an initial matter, we provide background on how "leads" were assigned in the FBI before September 11, 2001, and we summarize the contents of the Phoenix EC. We then describe in detail how the Phoenix EC was handled within the FBI before September 11. In the analysis section of Chapter Three, we examine problems in how the Phoenix EC was handled, first focusing on the systemic problems that affected the way the FBI treated the EC and then discussing the performance of the individuals involved with the EC. At the end of the chapter we discuss several other pieces of information in the possession of the FBI before September 11 that also noted connections of potential terrorists to the aviation industry or the use of airplanes.

Chapter Four examines the FBI's investigation of Moussaoui, including allegations raised by Rowley. In this chapter, we describe in detail the facts regarding the FBI's investigation of Moussaoui, the interactions between the Minneapolis FBI and FBI Headquarters on the investigation, the request to seek a criminal warrant or a FISA warrant to search Moussaoui's belongings, and the plans to deport Moussaoui. We then provide our analysis of these actions. This analysis discusses systemic problems that this case revealed, and it also assesses the performance of the FBI employees who were involved in the Moussaoui investigation.

In Chapter Five, we examine the FBI's handling of intelligence information concerning Hazmi and Mihdhar. We found that, beginning in late 1999 and continuing through September 11, 2001, the FBI had at least five opportunities to learn of intelligence information about Mihdhar and Hazmi which could have led it to focus on them before the September 11 attacks. In this chapter, we describe each of these five opportunities in detail. We describe the intelligence information regarding Hazmi and Mihdhar that existed at the time, whether the information was made available to the FBI, and what additional information about Hazmi and Mihdhar the FBI could have developed on its own. In the analysis section of this chapter, we evaluate the problems that impeded the FBI's handling of the information about Hazmi and Mihdhar before September 11, and we also address the performance of the individuals involved in the Hazmi and Mihdhar case.

In Chapter Six, we set forth our recommendations for systemic improvements in the FBI and we summarize our conclusions.

The OIG completed a 421-page classified version of this report in July 2004. At that time, the OIG provided the report, which was classified at the TOP SECRET/SCI level, to the National Commission on Terrorist Attacks Upon the United States (9/11 Commission). The 9/11 Commission used certain information from our report in its final report. In July 2004, we also provided our classified report to certain congressional committees with oversight of the Department of Justice, including the House of Representatives and Senate Committees on the Judiciary, the Senate Select Committee on Intelligence, and the House Permanent Select Committee on Intelligence.

At the request of the Senate Judiciary Committee, the OIG has created this 370-page unclassified version of the report. To do so, we worked with the FBI, the CIA, and the NSA to delete classified information from our full report. However, the substance of the report has not changed, and we believe that this unclassified version fairly summarizes the findings of the full report.

CHAPTER TWO
BACKGROUND

I. Introduction

This chapter provides a description of key terminology, the FBI's organizational structure, and legal background related to an examination of how the FBI investigated international terrorism matters before the September 11 terrorist attacks.[5] It also provides a basic overview of the legal issues and policies that affected how the FBI typically handled terrorism investigations before September 11, 2001.[6]

A. Introduction to international terrorism

The FBI defines terrorism as the unlawful use or threatened use of violence committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. When such violent acts are carried out by a group or individual based and operating entirely within the United States without foreign direction, they are considered acts of domestic terrorism, such as the April 1995 bombing of the Alfred P. Murrah federal building in Oklahoma City, Oklahoma. When such acts are committed by an individual or group based or operating outside of the United States, they are considered acts of international terrorism, such as the September 11, 2001, attacks on the World Trade Center and the Pentagon. See the FBI's National Foreign Intelligence Program Manual, Section 2-1.1.

According to the FBI, there are three main categories of international terrorist threats to U.S. interests: formal, structured terrorist organizations;[7]

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[5] A list of acronyms used in this report is attached in the Appendix.

[6] Those who have such knowledge may not need to read this chapter and can go directly to the chapters of the report detailing our investigation of the FBI's handling of specific matters, beginning with Chapter Three's discussion of the Phoenix EC.

[7] Formal, structured terrorist organizations are those with their own personnel, infrastructures, financial arrangements, and training facilities. Such groups include al Qaeda, the Palestinian Hamas, the Irish Republican Army, the Egyptian Al-Gama Al-
(continued)

state sponsors of international terrorism[8]; and loosely affiliated Islamic extremists.[9] According to Dale Watson, the former Executive Assistant Director for Counterterrorism, the trend in international terrorism has been a shift away from state sponsors of terrorism and formalized terrorist organizations towards loosely affiliated religious extremists who claim Islam as their faith.

Among these Islamic extremists is Usama Bin Laden, who heads the al Qaeda transnational terrorist network. Al Qaeda leaders were harbored in Afghanistan by the Taliban regime from 1996 until the U.S. military operations there in 2001. In addition to the September 11 attacks, al Qaeda was responsible for the bombing of the *U.S.S. Cole* in Yemen on October 12, 2000, the bombings of the U.S. Embassies in Kenya and Tanzania in August 1998, and numerous other terrorist attacks.

B. The FBI's role in protecting against international terrorism

A critical part of the effort to prevent terrorism is the collection of timely and accurate intelligence information about the activities, capabilities, plans and intentions of terrorist organizations. The U.S. "Intelligence Community" is composed of 14 U.S. agencies responsible for collecting intelligence information on behalf of the government.[10]

(continued)
Islamiyya, and the Lebanese Hizbollah. Hizbollah, for example, carried out numerous attacks on Americans overseas, including the October 1983 vehicle bombing of the U.S. Marine barracks in Lebanon and the June 1996 bombing of Khobar Towers in Saudi Arabia.

[8] According to the FBI, as of 2001 the primary state sponsors of terrorism were Iran, Iraq, Sudan, and Libya.

[9] This is sometimes referred to as the "Islamic Jihad Movement" or the "International Jihad Movement."

[10] These 14 agencies are: the CIA, FBI, Defense Intelligence Agency (DIA), National Security Agency (NSA), U.S. Army Intelligence, U.S. Navy Intelligence, U.S. Air Force Intelligence, U.S. Marine Corps Intelligence, National Geospatial Agency (NGA), National Reconnaissance Office (NRO), Department of the Treasury, Department of Energy, Department of State, and the Coast Guard. The Director of Central Intelligence (the DCI) oversees the Intelligence Community and also serves as the principal advisor to the President for intelligence matters and as the Director of the CIA.

The National Security Act of 1947 created the Central Intelligence Agency (CIA) and established it as the United States' lead intelligence agency. The CIA engages primarily in the collection of foreign intelligence information, which is information relating to the capabilities, intentions, and activities of foreign governments or organizations, including information about their international terrorist activities. The Act prohibits the CIA from exercising any "police, subpoena, law enforcement powers, or internal security functions."

The FBI is the nation's lead agency for the collection of "foreign counterintelligence information."[11] According to the Attorney General Guidelines in place at the time, which were called the Attorney General Guidelines for Foreign Counterintelligence (FCI) Investigations, FCI is information relating to espionage and other intelligence activities, sabotage, or assassinations conducted by, for, or on behalf of foreign governments or organizations, as well as information relating to international terrorist activities. Intelligence investigations include investigations of individuals who are international terrorists, groups or organizations that are engaged in espionage; or groups or organizations that are engaged in international terrorism.

The FBI can initiate an intelligence investigation even if a crime has not been committed. For example, the FBI may investigate and collect intelligence information about an individual who is believed to be an international terrorist or a spy without showing that the individual has participated in any terrorist act or actually committed espionage. Intelligence investigations are distinguishable from criminal investigations, such as bank robbery or drug trafficking investigations, which attempt to determine who committed a crime and to have those individuals criminally prosecuted. Prevention of future terrorist acts rather than prosecution after the fact is the primary goal of the intelligence investigations with respect to international terrorism matters.

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[11] The authority for the FBI's broad mission to act as the nation's lead domestic intelligence agency is set forth most clearly in Presidential Executive Order 12333, implemented on December 4, 1981.

International terrorism could be investigated as both an intelligence investigation and as a criminal investigation. When a criminal act, such as the bombing of a building, was determined to be an act of international terrorism, the FBI could open a criminal investigation and investigate the crime, as it did other criminal cases, with the goal of prosecuting the terrorist.[12] At the same time, the FBI could open an intelligence investigation of an individual or a group to investigate the person's contacts, the group's other members, the intentions of the individual or the group, or whether any future terrorist act was planned.[13]

One significant difference between an intelligence investigation and a criminal investigation is the legal framework that applies when a physical search or electronic surveillance is initiated.[14] In a criminal investigation that implicates the privacy interests protected by the Fourth Amendment, the general rule is that searches may not be conducted without a warrant issued by a magistrate upon a finding that probable cause exists that evidence of a crime will be uncovered.[15] When the FBI seeks to conduct electronic surveillance in a criminal investigation, the FBI must obtain a warrant by complying with the requirements of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 (Title III). When a physical search is sought in

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[12] The FBI has been assigned "lead agency responsibilities" by the Attorney General to investigate "all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States." National Security Directive 207, issued in 1986, specifically assigned responsibility to the FBI for response to terrorist attacks, stating: "The Lead Agency will normally be designated as follows: The Department of Justice for terrorist incidents that take place within U.S. territory. Unless otherwise specified by the Attorney General, the FBI will be the Lead Agency within the Department of Justice for operational response to such incidents."

[13] After the attacks of September 11, 2001, the FBI significantly changed how it investigates international terrorism cases. We discuss those changes throughout this report.

[14] Electronic surveillance includes wiretapping of telephones, installing microphones in a house or building, and intercepting computer usage. Electronic surveillance is considered a particular kind of search.

[15] There are several exceptions to the warrant requirement that are not material to this report.

a criminal investigation, the FBI also must comply with the requirements of Rule 41 of the Federal Rules of Criminal Procedure.

With respect to an intelligence investigation, however, criminal search warrants issued by a magistrate are not required. The courts have long recognized the Executive Branch's claim of inherent constitutional power to conduct warrantless surveillance to protect national security.[16] However, because such authority was abused, Congress created procedures and judicial oversight of the Executive Branch's exercise of this authority with the passage of the Foreign Intelligence Surveillance Act of 1978 (FISA).[17] 50 U.S.C. §1801 *et seq*. FISA requires the FBI to obtain an order from the Foreign Intelligence Surveillance Court (FISA Court) upon a showing of probable cause to believe that the subject of the surveillance is a foreign government or organization engaging in clandestine intelligence activities or international terrorism, or is an individual engaging in clandestine intelligence activities or international terrorism on behalf of a foreign government or organization.[18] In addition, prior to September 11, 2001, the government had to submit a certification to the FISA Court that "the purpose" of the surveillance or search was collection of "foreign intelligence information."[19] 50 U.S.C. § 1804(a)(7)(E).

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[16] The U.S. Constitution, Article II, Section 1, clause 7, supplies the President's constitutional mandate to "preserve, protect and defend the Constitution of the United States."

[17] Among the most notable examples of the Executive Branch's abuse of this authority was action taken in relation to the Watergate scandal.

[18] Prior to September 11, 2001, the FISA Court consisted of seven federal district court judges designated by the Chief Justice of the Supreme Court, at least one of whom was a member of the federal district court in Washington, D.C. After September 11, 2001, the number of FISA Court judges was increased to 11. The government presents applications for a court order authorizing electronic surveillance or a physical search to the judges in *in camera, ex parte* proceedings. FISA also created the Foreign Intelligence Surveillance Court of Review, which has jurisdiction to review the denial of FISA applications by the FISA Court.

[19] The FISA statute provides that the FBI must show that "the target of the electronic surveillance is a foreign power or an agent of a foreign power." 50 U.S.C. § 1804(a). These terms and requirements are discussed in more detail in Section IV, A below.

II. The FBI's organizational structure with respect to international terrorism

The FBI's Counterterrorism Program is responsible for supervising and handling FBI terrorism matters. Before September 11, 2001, the Counterterrorism Program was housed in the Counterterrorism Division at FBI Headquarters.[20] International terrorism and domestic terrorism were subprograms within the Counterterrorism Program.

A. Counterterrorism Program

Although the FBI has had primary responsibility since 1986 for investigating and preventing acts of terrorism committed in the United States, the FBI developed its formal Counterterrorism Program in the 1990s. For much of the 1990s, terrorism matters were overseen at FBI Headquarters by about 50 employees in the counterterrorism section within the FBI's National Security Division (later called the Counterintelligence Division). The National Security Division also managed the FBI's Foreign Counterintelligence Program. According to Dale Watson, former Executive Assistant Director for Counterterrorism, in the early 1990s counterterrorism was considered a "low-priority program" in the FBI.

According to Watson's testimony before the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence on September 26, 2002, the first attack on the World Trade Center in February 1993 and the April 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, were "confirmation" that terrorist acts could be committed on U.S. soil. Watson testified that the World Trade Center bombing in 1993 was a "wake-up call" and that prior to this attack and the Oklahoma City bombing "terrorism was perceived as an overseas problem."

In addition to the FBI's counterterrorism efforts, the CIA has for years focused on international terrorism in general and Usama Bin Laden in particular. In 1986, the CIA established a Counterterrorist Center (CTC) at

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[20] The FBI has reorganized its Counterterrorism Program several times since September 11, 2001. We provide in this section of the report the description of the organization and positions that existed immediately prior to the September 11 attacks.

CIA Headquarters after a task force concluded that U.S. government agencies had not aggressively operated to disrupt terrorist activities. The CTC's stated mission is to preempt, disrupt, and defeat terrorists by implementing a comprehensive counterterrorist operations program to collect intelligence on and minimize the capabilities of international terrorist groups and state sponsors of terrorism. The CTC attempts to exploit source intelligence to produce in-depth analyses on potential terrorist threats and coordinate the Intelligence Community's counterterrorist activities.

CIA Director George Tenet testified before Congress that Usama Bin Laden came to the attention of the CIA as "an emerging terrorist threat" during his stay in Sudan from 1991 to 1996. As early as 1993, the CIA began to propose action to reduce his organization's capabilities. Tenet stated that the Intelligence Community was taking action to stop Bin Laden by 1996, when he left Sudan and moved to Afghanistan.

In 1996, the CIA established a special unit, which we call the Bin Laden Unit, to obtain more actionable intelligence on Bin Laden and his organization.[21] This effort was the beginning of an exchange program between the FBI and the CIA in which senior personnel moved temporarily between the two agencies.

Around the same time, in April 1996 the FBI created its own Counterterrorism Center at FBI Headquarters. As part of the Counterterrorism Center, the FBI established an exchange of working-level personnel and managers with several government agencies, including the CIA, Immigration and Naturalization Service (INS), the Federal Aviation Administration (FAA), and others.

In May 1998, a task force of FBI officials created a 5-year strategic plan for the FBI, based on a 3-tier system, setting investigative priorities that would affect the allocation of FBI resources. Tier 1 included crimes or intelligence problems that threatened national or economic security. Counterterrorism was

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[21] The Bin Laden Unit was housed organizationally within the CTC during the time period most relevant to this report. Around September 11, 2001, approximately 40-50 employees worked in the Bin Laden Unit. We discuss the Bin Laden Unit in more detail in Chapter Five.

designated a Tier 1 priority. Tier 2 involved criminal enterprises or those offenses that adversely affected public integrity, and Tier 3 included crimes that affected individuals or property.

In November 1999, the FBI took the Counterterrorism Program out of the National Security Division and created a separate Counterterrorism Division.

1. Organization of the Counterterrorism Division

The major components of the FBI's Counterterrorism Division prior to September 11, 2001, were the International Terrorism Operations Section (ITOS), the Domestic Terrorism Operations Section (DTOS), the National Infrastructure Protection Center (NIPC), and the National Domestic Preparedness Office (NDPO).[22]

The issues in this report focus primarily on ITOS, which was responsible for overseeing the FBI's international terrorism investigations, both criminal and intelligence investigations. The mission of the ITOS was twofold: to prevent terrorist acts before they occurred, and if they occurred to mount an effective investigative response with the goal of prosecuting those responsible.

Prior to September 11, 2001, approximately 90 employees worked in ITOS at FBI Headquarters. ITOS was led by Section Chief Michael Rolince during the time relevant to this report.

ITOS was divided into several units. One of those units handled Bin Laden-related investigations, and was called the Usama Bin Laden Unit or the UBLU. Cases that could not be linked to a specific group and that involved radical

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[22] The NIPC, created in February 1998, was originally called the Computer Investigation and Infrastructure Threat Center. The NIPC's mission was to serve as the U.S. government's focal point for threat assessment, warning, investigation, and response for threats or attacks against the nation's critical infrastructures. These infrastructures include telecommunications, energy, banking and finance, water systems, government operations, and emergency services. The NDPO was created in October 1998 to coordinate all federal efforts to assist state and local law enforcement agencies with the planning, training, and equipment needs necessary to respond to a conventional or non-conventional weapons of mass destruction incident. The NIPC has since been moved to the Department of Homeland Security. The responsibilities for the NDPO were moved to the Federal Emergency Management Agency before September 11, 2001.

extremist allegations were assigned to Radical Fundamentalist Unit or the RFU. Before September 11, it had approximately ten employees.

2. Management of counterterrorism cases at FBI Headquarters

FBI Headquarters was more closely involved in overseeing counterterrorism investigations compared to criminal cases such as bank robberies or white collar crime. In counterterrorism cases, FBI Headquarters was responsible for, among other things, ensuring that intelligence information received from outside agencies was provided to the relevant field offices and assisting field offices in preparing the paperwork necessary to apply for a FISA order. For this reason, we discuss the duties of the relevant personnel at FBI Headquarters with respect to counterterrorism investigations.

a. Supervisory Special Agents and Intelligence Operations Specialists

Each of the five units within ITOS was staffed by several Supervisory Special Agents (SSA), each of whom worked closely with Intelligence Operations Specialists (IOS). The SSAs were FBI agents who had several years of experience in the field and had been promoted to a supervisory headquarters position. These SSAs generally worked in ITOS for approximately two years before becoming supervisors in a field office or elsewhere in FBI Headquarters. ITOS SSAs typically had at least some experience in terrorism matters prior to coming to ITOS.

IOSs were non-agent, professional employees.[23] Some had advanced degrees in terrorism or terrorism-related fields. Others had no formal training in analytical work but advanced to their IOS positions from clerical positions within the FBI. Most IOSs were long-term employees who were expected to have institutional knowledge about terrorism matters, such as the history of a particular terrorist organization or the principal participants in a terrorist organization.

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[23] In October 2003, the FBI reclassified all FBI analysts under one position title – Intelligence Analyst. IOSs now are called "Operations Specialists."

The responsibilities of each SSA and IOS depended on the unit in which they worked. Some SSAs and IOSs oversaw all FBI investigations relating to a particular terrorist group or a particular target. Other SSAs and IOSs were responsible for overseeing terrorism investigations conducted in a particular region of the country.

SSAs and IOSs were the first point of contact for agents and supervisors in the field conducting counterterrorism investigations when approval, advice, or information was needed. For example, if a field office's investigation revealed connections between the subject of the investigation and a known leader of a terrorist organization, the IOS was supposed to provide the field office with the FBI's information on the leader of the terrorist organization. In addition, SSAs and IOSs assisted field offices by assembling the necessary documentation to obtain court orders authorizing electronic surveillance pursuant to FISA. This is discussed further in Section IV, B below.

SSAs and IOSs also were responsible for collecting and disseminating intelligence and threat information. They received information from various FBI field offices and from other intelligence agencies that needed to be analyzed and disseminated to the field. SSAs and IOSs also acted as liaisons with other intelligence agencies. They also received information from these agencies in response to name check requests or traces on telephone numbers as well as intelligence and threat information.

With respect to threat information, SSAs and IOSs worked with FBI field offices or Legal Attaché (Legat) offices to assess the threat and take any action necessary to prevent terrorist acts from occurring.[24] For example, an IOS would conduct research on the names associated with the threats, arrange for translators to translate any intercepts from electronic surveillance, request information from other agencies about the persons associated with the threats, and prepare communications to the field office and Legat to ensure that

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[24] Prior to September 11, 2001, the FBI had 44 Legat offices around the world. Legat offices assist the FBI in its mission from outside of the United States by, for example, coordinating with other government agencies to facilitate the extradition of terrorists wanted for killing Americans. As of June 2004, the FBI had 45 Legat offices and four Legat sub-offices.

updated information was provided to the necessary persons involved in the investigation.

b. Intelligence Research Specialists and analysis within the Counterterrorism Division

Prior to September 11, 2001, Intelligence Research Specialists (IRSs) also were a part of the FBI's Counterterrorism Program, although they were housed in a separate division of the FBI from the SSAs and IOSs. Both IRSs and IOSs performed an important function in the intelligence arena called "analysis."

Analysis is the method by which pieces of intelligence information are evaluated, integrated, and organized to indicate pattern and meaning. As information is received, it must be examined in-depth and connected to other pieces of information to be most useful.

Analysis generally is considered to be either tactical or strategic. Tactical analysis, which also is called operational analysis, directly supports investigations or attempts to resolve specific threats. It normally must be acted upon quickly to make a difference with respect to an investigation or a threat. An example of tactical analysis is the review of the telephone records of several subjects to determine who might be connected to whom in a certain investigation or across several investigations. Another example of tactical analysis is a review of case files to determine whether similar, suspicious circumstances in two unrelated police reports exist in other cases and are somehow connected to each other or to criminal or terrorist activity.

In contrast to tactical analysis, strategic analysis provides a broader view of patterns of activity, either within or across terrorism programs. Strategic analysis involves drawing conclusions from the available intelligence information and making predictions about terrorist activity. It is not simply descriptive but proactive in nature. A typical product of strategic analysis is a report that includes program history, shifts in terrorist activity, and conclusions about how the FBI should respond.

The FBI has acknowledged that prior to September 11, 2001, its Counterterrorism Division was primarily geared toward conducting tactical

analysis in support of operational matters rather than strategic analysis.[25] Tactical analysis generally was handled by IOSs within the operational units.

Prior to September 11, strategic analysis for the Counterterrorism Division was performed by IRSs. Like IOSs, IRSs were non-agent, professional employees who were expected to be subject matter experts about a particular terrorism group, program, or target. All IRSs at the FBI had college degrees, and some had advanced degrees. Like IOSs, IRSs were expected to be long-term FBI employees who possessed the "institutional knowledge" about a particular program or target.[26]

During the time period relevant to our review, IRSs who worked counterterrorism matters were assigned to the Investigative Services Division (ISD), a division separate from the Counterterrorism Division that contained all IRSs in the FBI. IRSs were grouped in units and reported to a unit chief, who reported to a section chief. The IRSs who were assigned to the FBI's Counterterrorism Program typically worked with the same SSAs and IOSs assigned to a particular terrorist group or target. For example, an IRS who was assigned to Bin Laden matters typically worked with IOSs and SSAs in the UBLU in ITOS.

As we discuss in detail in Chapter Three, the number of FBI IRSs decreased significantly before September 11, 2001, and the relatively few IRSs were often used to perform functions other than strategic analysis.

Many FBI analysts and supervisors noted to the OIG that the resources devoted to the Counterterrorism Program and analysis were inadequate, and that the amount of work in the Counterterrorism Program was overwhelming. They also stated that they were hampered significantly by inadequate technology. We discuss these issues in further detail in Chapter Three of the report on the handling of the Phoenix EC. However, these difficult conditions in the Counterterrorism Program apply equally to the issues in the other chapters in our report.

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[25] In Chapter Three, we discuss in more detail the FBI's lack of strategic analysis capabilities prior to September 11, 2001.

[26] IRSs now are called "All Source Analysts."

B. Field offices and counterterrorism investigations

Prior to September 11, 2001, FBI counterterrorism investigations, whether intelligence or criminal, were opened and led by the FBI's 56 field offices. In many field offices, counterterrorism investigations were handled by a squad that focused on terrorism cases only. In the New York Field Office and other large offices, several squads were devoted solely to international terrorism matters. In smaller field offices, international terrorism and domestic terrorism investigations often were assigned to the same squad. FBI agents generally developed specialties within the terrorism field such as a particular terrorist organization. Each squad was led by an SSA who reported to an Assistant Special Agent in Charge (ASAC) who, in turn, reported to the Special Agent in Charge (SAC).[27]

As stated above, field offices opened international terrorism investigations as either a criminal investigation or an intelligence investigation. Attorney General Guidelines delineated the information or allegations that were necessary to open a criminal investigation or an intelligence investigation.[28]

For both criminal and intelligence cases, the Attorney General Guidelines set forth the criteria for opening two levels of investigations – a "preliminary inquiry" (PI) and a "full investigation" (also called a full field investigation or FFI). The Guidelines also specified what investigative techniques could be employed in preliminary inquiries or full investigations. Both sets of the

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[27] In larger field offices such as New York, several SACs report to an Assistant Director in Charge (ADIC).

[28] Separate Attorney General Guidelines regulate the FBI's conduct in criminal investigations, intelligence investigations, and the handling of informants, among other issues. The Attorney General Guidelines that addressed criminal investigations were called "The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations" (hereinafter "criminal AG Guidelines"). The Attorney General Guidelines in effect at the time that addressed intelligence investigations were labeled "Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations" (hereinafter "FCI AG Guidelines"). Revised criminal Attorney General Guidelines were issued on May 30, 2002, and new FCI Guidelines were issued on October 31, 2003.

Guidelines provided that preliminary inquiries were conducted to determine whether a basis existed for a full investigation. However, preliminary inquiries had to be closed when there was insufficient information after a certain period of time to support opening a full field investigation.

With respect to intelligence cases, agents could collect information by, among other methods, questioning sources, finding new sources, checking FBI and other agency databases, and reviewing intelligence information from other intelligence agencies. Information was recorded in the form of Electronic Communications (ECs) that became part of the case file. An EC is the standard form of communication within the FBI.

Before September 11, 2001, FBI international terrorism intelligence cases contained the case identifier number 199. Letter or "alpha" designations were also used, along with the case identifier, to further identify intelligence investigations. For example, intelligence investigations related to a particular terrorist organization were designated as 199N investigations. International terrorism intelligence investigations often are referred to as "a 199." A criminal international terrorism investigation had the FBI case identifier number 265; these investigations were commonly referred to as "a 265."[29]

C. The Department's Office of Intelligence Policy and Review

As mentioned above, when the FBI conducts intelligence investigations, a significant tool for uncovering information is the FISA statute. The FBI obtains an order from the FISA Court authorizing electronic surveillance and searches with the assistance of Department attorneys in the Office of Intelligence Policy and Review (OIPR). OIPR is under the direction of the Counsel for Intelligence Policy.[30]

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[29] Currently, the FBI uses only one designation for international terrorism investigations.

[30] We discuss in detail the process for obtaining FISA warrants and the role of FBI and OIPR personnel in this process in Section IV, B.

III. The wall between intelligence and criminal terrorism investigations

A. Introduction

This section summarizes the creation of the "wall" separating criminal and intelligence terrorism investigations in the Department of Justice. The wall began as a separation of intelligence investigators from contact with criminal prosecutors, and evolved to include a separation of FBI investigators working on intelligence investigations from investigators working on criminal investigations.

As discussed above, FBI terrorism investigations could be opened either as an intelligence investigation in which information was collected for the protection of national security, or as a criminal investigation to prevent a criminal act from occurring or to determine who was responsible for a completed criminal act. In the course of an intelligence investigation, information might be developed from searches or electronic surveillance obtained under FISA. That intelligence information also could be relevant to a potential or completed criminal act. However, concerns were raised that if intelligence investigators consulted with prosecutors about the intelligence information or provided the information to criminal investigators, this interaction could affect the prosecution by allowing defense counsel to argue that the government had misused the FISA statute and it also could affect the intelligence investigation's ability to obtain or continue FISA searches or surveillances. As a result, procedural restrictions – a wall – were created to separate intelligence and criminal investigations. Although information could be "passed over the wall" – i.e., shared with criminal investigators – this occurred only subject to defined procedures.

The wall separating intelligence and criminal investigations affected both the Moussaoui case and the Hazmi and Mihdhar case. As we discuss in detail in Chapter Four, in the Moussaoui case FBI Headquarters believed that the Minneapolis agents should not contact the local U.S. Attorney's Office to seek a criminal warrant to search Moussaoui's possessions because, under the standards prior to September 11, 2001, contact with the local prosecutor would undermine any later attempt to obtain a FISA warrant. And as we discuss in detail in Chapter Five, because of the wall – and beliefs about what the wall required – an FBI analyst did not share important intelligence information about Hazmi and Mihdhar with criminal investigators. In addition, also

because of the wall, in August 2001 when the New York FBI learned that Hazmi and Mihdhar were in the United States, criminal investigators were not allowed to participate in the search for them.

Because the wall between intelligence and criminal investigations affected these two cases, we provide in this section a description of how the wall was created and evolved in response to the 1978 FISA statute. We also describe the unwritten policy separating criminal and intelligence investigations in the 1980s and early 1990s, the 1995 Procedures that codified the wall, the FISA Court procedures in 2000 that required written certification that the Department had adhered to the wall between criminal and intelligence investigations, and the changes to the wall after the September 11 attacks.

1. The "primary purpose" standard

The FISA statute, enacted in 1978, authorizes the FISA Court to grant an application for an order approving electronic surveillance or a search warrant to obtain foreign intelligence information if there is probable cause to believe that the target of the surveillance or search warrant is a foreign power or an agent of a foreign power. 50 U.S.C. § 1805(a)(3). The statute requires that the government certify when seeking the warrant that "the purpose" of the FISA search or surveillance is to obtain "foreign intelligence information." The statute states that the certification must be made "by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate." 50 USC § 1804(a)(7). Within the Department, the certification is usually signed by the FBI Director.

While Congress anticipated that evidence of criminal conduct uncovered during FISA surveillance would be provided to criminal investigators, the circumstances under which such information could be furnished to criminal investigators were not provided for in the statute.[31] Defendants in criminal

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[31] The legislative history states that "surveillance to collect positive foreign intelligence may result in the incidental acquisition of information about crimes; but this is not its objective." Further, it states, "Surveillance conducted under [FISA] need not stop once conclusive evidence of a crime is obtained, but instead may be extended longer where (continued)

cases can challenge the government's use of information collected under a FISA warrant by arguing that the government's purpose in obtaining the information pursuant to FISA was not for collection of foreign intelligence, but rather for use in a criminal prosecution. Such a purpose would violate the Fourth Amendment's prohibition against warrantless searches, and could result in evidence obtained under FISA being suppressed in the criminal case. Alternatively, the FISA Court could reject an application for a FISA warrant because of concerns that the government's purpose for seeking the FISA warrant was for use in a criminal case rather than collecting foreign intelligence.

As a result, in interpreting FISA courts applied "the primary purpose" test. This allowed the use of FISA information in a criminal case provided that the "primary purpose" of the FISA surveillance or search was to collect foreign intelligence information rather than to conduct a criminal investigation or prosecution. The seminal court decision applying this standard to information collected in intelligence cases was issued in 1980. See United States v. Truong Dinh Hung, 629 F.2d 908 (4th Cir. 1980). In this case, the Fourth Circuit Court of Appeals ruled the government did not have to obtain a criminal warrant when "the object of the search or the surveillance is a foreign power, its agents or collaborators," and "the surveillance is conducted 'primarily' for foreign intelligence purposes." Id. at 915. However, the court ruled that the government's primary purpose in conducting an intelligence investigation could be called into question when prosecutors had begun to assemble a prosecution and had led or taken on a central role in the investigation.

Although the Truong decision involved electronic surveillance conducted before FISA's enactment in 1978, courts used its reasoning and applied the primary purpose test in challenges in criminal cases to the use of information gathered from searches or electronic surveillance conducted pursuant to FISA. See, e.g., United States v. Johnson, 952 F.2d 565 (1st Cir. 1991), cert. denied, 113 S.Ct. 58 (1992) ("[a]lthough evidence obtained under FISA subsequently may be used in criminal prosecutions, the investigation of criminal activity

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(continued)
protective measures other than the arrest and prosecution are more appropriate." S. 1566, 95th Congress, 2d Session, Report 95-701, March 14, 1978.

cannot be the primary purpose of the surveillance"); United States v. Pelton, 835 F.2d 1067 (4th Cir. 1987), cert. denied, 486 U.S. 1010 (1988).

In the 1980s, the Department also adopted the "primary purpose" standard contained in the Truong case.[32] It interpreted the FISA statute as requiring prosecutors not to have control in intelligence investigations in which information was being collected pursuant to FISA. The concern was that too much involvement by prosecutors in the investigation created the risk that a court would rule that the FISA information could not be used in a criminal case because the "primary purpose" of the search was not the gathering of foreign intelligence.

As a result, during the 1980s and through the mid-1990s, the Department's policy was that prosecutors within the Department's Criminal Division – not attorneys in the local United States Attorneys' Offices (USAOs) – had to be consulted in connection with intelligence investigations in which federal criminal activity was uncovered, or when legal advice was needed to avoid investigative steps that might inadvertently jeopardize the option of prosecution using information obtained from the intelligence investigation. Criminal Division attorneys were briefed by the FBI about ongoing intelligence investigations and were expected to provide advice geared toward preserving a potential criminal case, but they were not allowed to exercise control over the investigation. The Criminal Division and FBI Headquarters made the policy decision about when to involve the USAO in the investigation, since consulting with the USAO was viewed as a bright line signifying the transition from an intelligence investigation to a criminal investigation. However, during this time period, no formal written guidelines governed the contacts between the FBI and the Criminal Division.

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[32] The Foreign Intelligence Surveillance Court of Review later noted that while the Department adopted this policy in the 1980s, "the exact moment is shrouded in historical mist." See In Re Sealed Case, 310 F.3d 717, 727 (2002).

2. Institutional divide between criminal and intelligence investigations

The effect on FISA warrants or the legal restrictions on sharing intelligence information was not the only issue regarding sharing intelligence information with criminal investigators. Agents conducting intelligence investigations are generally wary about the impact of sharing intelligence information with prosecutors and criminal investigators. They expressed concerns about potential harm that disclosure would have on intelligence sources and methods, and the damage that such disclosure would have on future collection of intelligence information. Intelligence collection is dependent upon secrecy; investigators often rely upon clandestine sources or surveillance techniques that are rendered useless if they are exposed. In addition, most of the information collected is classified and cannot be made public. In contrast, criminal investigations are usually intended to result in a prosecution, which may require the disclosure of information about the source of evidence relied upon by the government. Thus, intelligence investigators' need to protect secret sources and methods may be at odds with criminal investigators' use of the information derived from those sources and methods.

3. The Ames case and concerns about the primary purpose standard

In February 1994, CIA employee Aldrich Ames was arrested on various espionage charges. The FBI pursued an investigation regarding Ames that involved several certifications to the FISA Court that the purpose of electronic surveillance was for intelligence purposes. At the time of the ninth certification in the Ames case, Richard Scruggs, the new head of OIPR, was concerned that no guidelines governed the contacts between the Criminal Division and the FBI that were permitted in intelligence investigations. Scruggs raised concerns with the Attorney General that the primary purpose requirement and FISA statute had been violated by the extensive contacts between the Criminal Division and the FBI in the Ames investigation.

To address these concerns about coordination between the Criminal Division and the FBI in intelligence investigations, in 1994 Scruggs proposed amending the Attorney General's FCI Guidelines to require that any questions in intelligence investigations relating to criminal conduct or prosecutions had to be raised first with OIPR, and that OIPR would decide whether and to what

extent to involve the Criminal Division and the USAO in the intelligence investigation. Scruggs' proposal also prohibited the FBI from contacting the Criminal Division or a USAO without permission from OIPR.

In one memorandum, Scruggs described this separation of criminal and intelligence investigations as a wall: "The simple legal response to parallel investigations is a 'Chinese Wall' which divides the attorneys as well as the investigators." Scruggs' use of the term "Chinese wall" is the first reference we found to the term "wall" in connection with separating intelligence and criminal investigations. In another memorandum discussing his proposal, Scruggs wrote that the goal of the changes was "not to prevent discussions with the Criminal Division" but "to regulate them so as to place the Department in the best possible legal posture should prosecution be undertaken." In addition, he wrote that the goal was to develop "a simple mechanism" to maintain the legal distinction between criminal investigations and intelligence operations.

Scruggs' proposal generated considerable controversy within the Department and the FBI. The Criminal Division and the FBI wrote position papers opposing the proposal. Although the Criminal Division and the FBI both agreed that some formal procedures were necessary to guard against abuses in the use of FISA and to rebut unwarranted claims of abuse, they argued that allowing OIPR to decide when prosecutors could be consulted was unnecessary and unduly burdensome, and would deter useful and productive contacts between investigators and prosecutors.[33] The Criminal Division also argued that it was "imperative" for any procedures to "allow for potential criminal prosecutions to be protected through early evaluation and guidance" and advocated continuing the requirement that the Criminal Division had to be advised any time the FBI uncovered evidence of federal criminal activity in the course of an intelligence investigation.

Also in response to Scruggs' proposal, the Executive Office for National Security, which was located in the Deputy Attorney General's Office, sought an opinion from the Office of Legal Counsel (OLC) whether a search under

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[33] The FBI agreed, however, that the rule preventing contact with a United States Attorney's Office without approval from the Criminal Division and OIPR should remain. The FBI stated that "the requisite sensitivity to these concerns and experience with treading this fine line will often be absent" in U.S. Attorney's Offices.

FISA could be approved "only when the collection of foreign intelligence [was] the 'primary purpose' of the search or whether it suffic[ed] that the collection of foreign intelligence [was] one of the purposes." In a memorandum that was circulated in draft in mid-January 1995, OLC concluded that while courts had adhered to – and were likely to continue to adhere to – the "primary purpose" test with regard to FISA information, the courts had shown great deference to the government in challenges to evidence gathered through intelligence searches that was used in criminal prosecutions. OLC opined that some involvement of prosecutors could be permitted to be involved with the FISA searches without running an "undue risk" of having evidence suppressed, but that there were "few bright line rules" for discerning when a "'primarily' intelligence search becomes a 'primarily' criminal investigation search." OLC wrote, "[I]t must be permissible for prosecutors to be involved in the searches at least to the extent of ensuring that the possible criminal case not be prejudiced." At the end of its opinion, OLC recommended that "an appropriate internal process be set up to insure that FISA certifications are consistent with the 'primary purpose' test."

4. The 1995 Procedures

a. Creation of the 1995 Procedures

In late December 1994, at the direction of Deputy Attorney General Jamie Gorelick, the Executive Office for National Security convened a working group to resolve the dispute between OIPR and the FBI and the Criminal Division concerning contacts between the FBI and the Criminal Division. The Criminal Division, OIPR, the FBI, OLC, and the Executive Office for National Security participated in the group. As a result of discussions within the working group, on February 3, 1995, the Executive Office for National Security circulated draft procedures for contacts between the FBI and prosecutors. The draft procedures, "Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations," were transmitted on April 12, 1995, by the Executive Office for National Security through the Deputy

Attorney General to the Attorney General for approval and implementation.[34] The Attorney General signed and issued the procedures on July 19, 1995. These procedures became known as "the 1995 Procedures."

b. Description of the 1995 Procedures

In general, the 1995 Procedures rejected OIPR's original proposal of giving it the sole authority to decide when FBI agents could consult with Criminal Division prosecutors on an intelligence investigation. However, the 1995 Procedures gave OIPR formal oversight over contacts between the FBI and the Criminal Division in intelligence cases, and the procedures formalized restrictions on the extent that Criminal Division prosecutors could be involved in intelligence investigations. The procedures applied to intelligence

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[34] At the time these draft procedures were being discussed, the FBI's New York Field Office was conducting at least two significant criminal terrorism investigations involving the World Trade Center bombing in 1993. Indictments had been returned in one of the cases. During the criminal investigation of these two cases, significant counterintelligence information was developed relating to foreign powers operating in the United States, and the FBI initiated a full field counterintelligence investigation. In a memorandum written to the FBI, the Southern District of New York (SDNY) USAO, OIPR, and the Criminal Division, and filed with the FISA Court on March 4, 1995, Deputy Attorney General Gorelick provided instructions for sharing information from these two terrorism investigations in the FBI's New York Field Office with intelligence investigators, and for separating the counterintelligence and criminal investigations. The memorandum stated that the procedures were designed to prevent the risk of creating an unwarranted appearance that FISA was being used to avoid the procedural safeguards that applied in criminal investigations. The memorandum, which acknowledged that the procedures went "beyond what [was] legally required," included having an Assistant United States Attorney (AUSA) not involved in the criminal cases but who was familiar with them act as "the wall" as well as ensure that information indicative of a crime obtained in the intelligence investigation was passed to the criminal agents, the USAO, and the Criminal Division. The memorandum also included several procedures to facilitate coordination and information sharing, including requiring intelligence investigators who developed information that reasonably indicated the commission of a crime to notify law enforcement agents and assigning an FBI agent involved in the criminal investigation to be assigned to the foreign counterintelligence investigation.

investigations both in which a FISA search or surveillance was being conducted and in which no FISA order had been issued.[35]

The 1995 Procedures formalized the unwritten policy that had existed since the 1980s requiring the Criminal Division, rather than the local USAO, to be consulted about intelligence investigations when questions of criminal activity or criminal prosecution arose.[36] The 1995 Procedures required that the FBI and OIPR notify the Criminal Division when "facts or circumstances [were] developed that reasonably indicate[d] that a significant federal crime [had] been, [was] being, or [might have been] committed."

In cases in which FISA surveillance was being conducted, the 1995 Procedures provided that OIPR as well as the Criminal Division had to approve an FBI field office's request to take an investigation to the USAO. Guidance

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[35] Part A of the 1995 Procedures applied to investigations in which a FISA order had been issued, and Part B applied to those investigations in which no FISA order had been issued.

[36] However, there was an exception for the USAO in the Southern District of New York (SDNY). While the 1995 Procedures were being considered in draft, Deputy Attorney General Gorelick had recommended that they be reviewed by U.S. Attorney for the SDNY Mary Jo White. White responded that the USAOs should be on equal footing with the Criminal Division, and she recommended changes to the 1995 Procedures to achieve this, such as requiring in intelligence cases notification of a crime to both the Criminal Division and to the USAO. White argued that "[a]s a legal matter, whenever it is permissible for the Criminal Division to be in contact with the FBI, it is equally permissible for the FBI to be in touch with the U.S. Attorneys' Offices." This suggestion was unanimously rejected by the FBI, OIPR, the Criminal Division, and the Executive Office for National Security, and the exception was not included in the 1995 Procedures. However, White continued to press this issue. In a memorandum faxed to Gorelick on December 27, 1995, White argued that the Department and the FBI were structured and operating in a way that did not make maximum legitimate use of all law enforcement and intelligence avenues to prevent terrorism and prosecute terrorist acts. She asserted that the 1995 Procedures were building "unnecessary and counterproductive walls that inhibit rather than promote our ultimate objectives" and that "we must face the reality that the way we are proceeding now is inherently and in actuality very dangerous." Eventually, on August 29, 1997, the Attorney General issued a memorandum creating a special exemption for the SDNY USAO in cases in which no FISA techniques were being employed. In those cases, the FBI was permitted to notify directly the SDNY USAO of evidence of a crime, and the USAO then was required to involve the Criminal Division and OIPR.

issued by the FBI Director that accompanied the 1995 Procedures instructed FBI field offices that any potential contact with prosecutors (either the Criminal Division or requests to consult with the USAO) had to be coordinated through FBI Headquarters.

In cases in which no FISA warrant had been issued, the 1995 Procedures required that the Criminal Division decide when it was appropriate to involve the USAO in the intelligence investigation, although notice of the decision had to be given to OIPR. For example, as discussed in Chapter Four, the FBI Minneapolis Field Office opened the Moussaoui investigation as an intelligence investigation, but then wanted to seek a criminal search warrant from the USAO. Since an intelligence investigation was opened but no FISA warrant had been issued, the Minneapolis FBI needed permission – which it was required to obtain through FBI Headquarters – from the Criminal Division in order to approach the USAO for a criminal search warrant.

Under the 1995 Procedures, the Criminal Division was responsible for notifying OIPR of, and giving OIPR an opportunity to participate in, all of the Criminal Division's consultations with the FBI concerning intelligence investigations in which a FISA warrant had been obtained. In intelligence investigations where no FISA warrant had been obtained, the Criminal Division had to provide notice to OIPR of its contacts with the FBI. In both types of cases, the FBI was required to maintain a log of all its contacts with the Criminal Division.

The 1995 Procedures provided that in intelligence investigations the Criminal Division could give advice to the FBI "aimed at preserving the option of a criminal prosecution," but could not "instruct the FBI on the operation, continuation, or expansion of FISA electronic surveillance or physical searches." In addition, the FBI and the Criminal Division were required to ensure that the advice intended to preserve the prosecution did not "inadvertently result in either the fact or the appearance of the Criminal Division's directing or controlling [the investigation] toward law enforcement objectives."

5. Additional restrictions on sharing intelligence information

In addition to the wall between FBI intelligence investigators and criminal prosecutors, a wall within the FBI between criminal investigations and

intelligence investigations also was created. Although it is unclear exactly when this wall within the FBI began, sometime between 1995 and 1997 the FBI began segregating intelligence investigations from criminal investigations and restricting the flow of information between agents who conducted intelligence investigations and agents who conducted criminal investigations.

As discussed above, in a position paper prepared by OIPR when the Department was considering the 1995 Procedures, OIPR recommended that the FBI be required to open separate and parallel criminal and intelligence investigations, and that the FBI place "a wall" between the two investigations by staffing the criminal investigation with FBI agents who did not have access to the intelligence investigation. This wall was intended to ensure that information from each investigation would be fully admissible in the other. OIPR proposed certain procedures for sharing information developed in the intelligence investigation that was relevant to the criminal investigation, a process that was referred to as "passing information over the wall."

The process for passing information from the intelligence investigation to the criminal investigation was that an FBI employee – usually the SSA of an international terrorism squad, the Chief Division Counsel of a field office, or an FBI Headquarters employee – would be permitted to review raw FISA intercepts or materials seized pursuant to a FISA and act as a screening mechanism to decide what to "pass" to the criminal investigators or prosecutors.

In March 1995, at the direction of the Department, the FBI established special "wall" procedures for the New York Field Office's handling of the criminal and intelligence investigations that arose out of the 1993 World Trade Center bombing. It is unclear when similar procedures were employed throughout the FBI. By 1997 OIPR was including a description of the screening or "wall" procedures in all FISA applications that were filed with the FISA Court when a criminal investigation was opened.[37] The particular

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[37] Neither OIPR nor the FBI had any written policy requiring the inclusion of such information in FISA applications until late 2000, after the discovery of several errors in FISA applications related to information about criminal investigations and wall procedures related to those criminal investigations. These errors are discussed below in Section III, B of this chapter.

screening mechanism proposed by OIPR and approved by the Attorney General depended on how far the criminal investigation had developed.[38] If the case had recently been initiated, the SSA was usually the screener. In a case in which the USAO already was involved, others could be the screener, such as an attorney in the FBI's Office of General Counsel, OIPR, or the Attorney General. According to James Baker, the current OIPR Counsel,[39] in late 1999 the Department proposed the use of the FISA Court as "the wall." The purpose of this proposal was to ensure that the FISA Court would approve FISA applications related to threats involving the Millennium where there was a substantial nexus with related criminal cases.

6. Reports evaluating the impact of the 1995 Procedures

Although the 1995 Procedures allowed for consultation between the FBI and the Criminal Division about intelligence investigations, and in some instances required contact by the FBI with the Criminal Division, the FBI dramatically reduced its consultations with the Criminal Division after the 1995 Procedures were issued. The FBI came to understand from OIPR that any consultation with Criminal Division attorneys could result in a FISA surveillance being terminated or in OIPR not agreeing to pursue a FISA warrant. As a result, the FBI sought prosecutor input only after it was prepared to close an intelligence investigation and "go criminal."

Three reports – a July 1999 OIG report on the Department's campaign finance investigation, a May 2000 Department report on the Wen Ho Lee case, and a July 2001 General Accounting Office (GAO) report – discussed these issues and the impact of the 1995 Procedures and the wall.

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[38] According to OIPR Counsel Baker, Attorney General Janet Reno directed the termination of certain FISA surveillances in 1998 based upon her determination that related criminal investigative activities called into question the primary purpose of the surveillance collection.

[39] Baker joined OIPR in October 1996 and became the Deputy Counsel in 1998. In May 2001, he was named Acting Counsel, and in January 2002 he became the Counsel.

a. The OIG's July 1999 report on the campaign finance investigation

The first report was the OIG's July 1999 report entitled "The Handling of FBI Intelligence Information Related to the Justice Department's Campaign Finance Investigation" (the Campaign Finance Report). The OIG report reviewed allegations that the FBI had failed to disclose certain intelligence information to Congress, FBI Director Louis Freeh, and Attorney General Janet Reno. This intelligence information related to the FBI's Campaign Finance Task Force, which had been created to investigate allegations of campaign finance violations during the 1996 presidential campaign. In connection with this review, the OIG examined issues concerning the implementation of the 1995 Procedures and the sharing of intelligence information with prosecutors and criminal investigators.

The OIG report found that the 1995 Procedures were largely misunderstood and often misapplied, resulting in undue reluctance by intelligence agents to provide information to criminal investigators and prosecutors. The report stated that "the tumult that accompanied [the] creation [of the 1995 Procedures] drastically altered the relationship between [the FBI] and prosecutors." The report found that because of OIPR's criticism of the FBI during the Ames investigation, FBI agents had become "gun shy" about conversations with Criminal Division attorneys, and the FBI's General Counsel's Office had recommended that FBI agents take a "cautious approach" by initially conferring with OIPR attorneys rather than Criminal Division attorneys. The report also noted that as a result of the FBI's concerns about OIPR's criticisms, the FBI had been "needlessly chilled" from sharing intelligence information with the Criminal Division. The report stated that the 1995 Procedures were vaguely written and provided ineffective guidance for the FBI. The report recommended that the Criminal Division, OIPR, and the FBI resolve conflicting understandings about the 1995 Procedures, and the FBI issue guidance to disabuse FBI personnel of "unwarranted concerns about contact with prosecutors."

b. The report of the Attorney General's Review Team on the Wen Ho Lee investigation

The second report addressing these issues was prepared by the Attorney General's Review Team (AGRT), which the Department established to review

the handling of the Wen Ho Lee investigation.[40] A chapter of the final AGRT report, issued in May 2000, discussed the 1995 Procedures. The AGRT report found that soon after the 1995 Procedures were implemented, OIPR prevented the FBI from contacting the Criminal Division in contravention of the requirements of the procedures. The report stated that FBI and Criminal Division officials believed that OIPR was discouraging contact by the FBI with the Criminal Division. Both FBI and Criminal Division officials believed that such contact would jeopardize existing or future FISA coverage because OIPR might not present the matter to the FISA Court or the FISA Court would deny the request if such contact occurred. The report stated, "It is clear from interviews that the AGRT has conducted that, in any investigation where FISA is employed or even remotely hoped for (and FISA coverage is *always* hoped for), the Criminal Division is considered radioactive by both the FBI and OIPR."

The AGRT report noted that OIPR Counsel Scruggs made it clear to the FBI that it was not permitted to contact prosecutors in FCI investigations without the permission of OIPR. The report stated that, as a result, former FBI Deputy Director Robert Bryant communicated to FBI agents that violating this rule was a "career stopper."

In October 1999, the AGRT made interim recommendations to the Attorney General. For example, the AGRT recommended that the FBI provide "regularly scheduled briefings" to the Criminal Division concerning FCI investigations that had the potential for criminal prosecution.

In response, in January 2000 Attorney General Reno established the "Core Group," which consisted of the FBI's Assistant Directors for counterterrorism and counterintelligence, the Principal Associate Deputy Attorney General, and the Counsel for OIPR. The FBI was supposed to provide monthly "critical case briefings" to the Core Group, and the Core Group was supposed to decide if the facts of the cases warranted notification to the Criminal Division as provided for in the 1995 Procedures. In addition, the

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[40] The team was led by Randy Bellows, an AUSA from the Eastern District of Virginia who was experienced in FCI cases. The AGRT report, which is entitled "Final Report of the Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation," is often called "the Bellows report."

Attorney General directed the FBI to provide the Criminal Division with copies of foreign counterintelligence case memoranda summarizing espionage investigations of U.S. citizens or lawful permanent residents.

In October 2000, the Core Group was disbanded because it was believed that the briefings were duplicative of sensitive case briefings that the FBI provided to the Attorney General and the Deputy Attorney General on a quarterly basis. Around the same time a working group that had been formed months earlier in response to the interim recommendations of the AGRT report developed two decision memoranda for the Attorney General's approval, one in October 2000 and one in December 2000. The memoranda included several options for addressing the FBI's lack of notification to the Criminal Division regarding evidence in intelligence investigations of significant federal crimes and the lack of coordination with the Criminal Division, and they delineated the type and extent of advice the Criminal Division could provide the FBI. The December 2000 memorandum also described a strategy for presenting new procedures for coordination between intelligence and law enforcement to the FISA Court, and it discussed the possibility of an appeal to the FISA Court of Review if the FISA Court rejected the new coordination procedures. Although the Criminal Division, OIPR, and the FBI reached an agreement on steps to liberalize information sharing, the components could not agree on what kind of advice by the Criminal Division to the FBI was permissible. The Attorney General never issued or signed either memorandum.

c. The GAO report

In the third report, the GAO reviewed the policies, procedures, and processes for coordinating FBI intelligence investigations where criminal activity was indicated. In its July 2001 report, the GAO found that the FBI had little contact with the Criminal Division about intelligence investigations because of the FBI and OIPR's concern about the potential for "rejection of the FISA application or the loss of a FISA renewal" or "suppression of evidence gathered using FISA tools." See "FBI Intelligence Investigations: Coordination within Justice on Counterintelligence Criminal Matters is Limited," GAO-01-780, July 2001. The GAO report recommended, among other things, that the Attorney General establish a policy and guidance clarifying the expectations regarding the FBI's notification of the Criminal Division about potential criminal violations arising in intelligence

investigations. According to the GAO report, while there were some improvements in the coordination between the FBI and the Criminal Division after the remedial actions in response to the AGRT report were implemented, coordination impediments remained.

B. FISA Court's concern about accuracy of FISA applications

1. Errors in FISA applications

Around the time of these two reviews on problems of coordinating criminal and intelligence information, the FISA Court imposed additional restrictions on the passing of intelligence information to criminal investigators. The FISA Court took this action after it learned in 2000 and 2001 of errors in approximately 100 FISA applications that had been filed with the Court.[41] Approximately 75 of the errors were contained in FISA applications relating to targets with connections to a particular terrorist organization, which we will call "Terrorist Organization No. 1," and the other errors were contained in FISA applications relating to a different terrorist organization, which we will call "Terrorist Organization No. 2."

In the summer of 2000, OIPR first learned of the errors in several FISA applications related to Terrorist Organization No.1. OIPR verbally notified the FISA Court of the errors and, together with FBI Headquarters employees, conducted a review of other FISA applications involving Terrorist Organization No. 1 that had been submitted since July 1997. In September and October 2000, OIPR filed two pleadings with the FISA Court advising of errors in approximately 100 FISA applications related to Terrorist Organization No. 1.

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[41] As discussed in detail below, FISA applications were submitted by field offices to FBI Headquarters for preparation of the documentation that would be presented to OIPR for finalization and submission to the FISA Court. The documentation prepared by FBI Headquarters and finalized by OIPR often was reviewed or edited by different persons, including an SSA, IOS, Unit Chief, and a National Security Law Unit attorney. The documentation included an affidavit signed by the SSA at FBI Headquarters containing the facts in support of the FISA warrant. The errors arose in these SSA affidavits.

Many of these errors in the FISA applications involved omissions of information or misrepresentations about criminal investigations on the FISA targets. In applications where criminal investigations were identified, inaccurate information was presented in FISA applications about the "wall" procedures to separate the criminal investigation from the intelligence investigation. For example, the description of the wall procedures in the majority of FISA applications involving Terrorist Organization No. 1 stated that the FBI New York Field Office had separate teams of agents handling the criminal and intelligence investigations. While different agents were assigned to the criminal and intelligence investigations, they were not kept separate from each other. Instead, the criminal agents worked on the intelligence investigation, and the intelligence agents worked on the criminal investigation. This meant that, contrary to what had been represented to the FISA Court, agents working on the criminal investigation had not been restricted from the information obtained in the intelligence investigation.

2. FISA Court's new requirements regarding the wall

As a result of the FISA Court's concerns about the mistakes in the FISA applications, the FISA Court began requiring in October 2000 anyone who reviewed FISA-obtained materials or other intelligence acquired based on FISA-obtained intelligence (called "FISA-derived" intelligence[42]) to sign a certification acknowledging that the Court's approval was required for dissemination to criminal investigators. The FBI came to understand that this meant that only intelligence agents were permitted to review without FISA Court approval all FISA intercepts and materials seized by a FISA warrant, as well as any CIA and NSA intelligence provided to the FBI based on information obtained by an FBI FISA search or intercept.[43]

Because FISA-obtained information often was passed from the FBI to the NSA and the CIA, the Department asked the FISA Court whether the FBI was

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[42] FISA-obtained information was often passed to the NSA and CIA for further use, which could result in "FISA-derived" information.

[43] As stated above, in late 1999, the Court had become the screening mechanism or "the wall" for all investigations involving FISA techniques on al Qaeda in which the FBI wanted to pass intelligence information to a criminal investigation.

also required to obtain the newly required certifications from any NSA or CIA employees who reviewed the FISA-obtained material. The Court exempted the NSA and CIA from the certification, but required that the two agencies note on any intelligence shared with the FBI if it was FISA-derived. According to the NSA, when made aware of this requirement, it reported to the Department that, in the interest of providing as much intelligence as quickly as possible to the FBI, the NSA would place a caveat on all counterterrorism-related intelligence provided to the FBI. The caveat indicated that if the FBI wanted to pass NSA intelligence to criminal investigators, it had to involve the NSA General Counsel's Office to determine whether the information was in fact FISA-derived. According to the NSA, the other alternative would have been to slow the dissemination while the NSA checked whether the intelligence was derived from a FISA.[44]

The caveat language used by the NSA stated: "Except for information reflecting a direct threat to life, neither this product nor any information contained in this product may be disseminated to U.S. criminal investigators or prosecutors without prior approval of NSA. All subsequent product which contains information obtained or derived from this product must bear this caveat. Contact the Office of General Counsel of NSA for guidance concerning this caveat."[45]

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[44] This was not the first caveat on dissemination of NSA information. In late 1999, Attorney General Reno authorized a warrantless physical search under authority granted to the Attorney General by Section 2.5 of Executive Order 12333, unrelated to FISA. The Attorney General directed that the fruits of the physical search could not be disseminated to any criminal prosecutors or investigators until copies of the information were provided to OIPR and the approval of the Attorney General had been obtained. Questions were raised about dissemination of NSA's information based upon the fruits of a Section 2.5 search. The NSA – after working with OIPR to determine what language to use – decided to put a caveat on all of its Bin Laden related reporting to the FBI indicating that further dissemination to law enforcement entities could not occur without approval from OIPR.

[45] In Chapter Five, the chapter about Hazmi and Mihdhar, we discuss the separation of criminal investigators from intelligence investigators and the requirement that NSA information be reviewed by the NSA to determine whether it was FISA-derived or otherwise subject to limited dissemination. We describe how these restrictions affected the FBI's ability to share important intelligence information. For example, in early summer 2001 an FBI Headquarters IOS met with New York criminal agents who were working on the FBI's (continued)

3. Additional FISA errors and DOJ OPR's investigation

The Deputy Attorney General's Office referred to the DOJ Office of Professional Responsibility (OPR) a memorandum prepared by OIPR regarding the errors in the approximately 75 Terrorist Organization No. 1-related FISA applications that had been raised to the FISA Court. In November 2000, OPR opened an investigation to determine whether any FBI employees had committed misconduct in connection with these errors.

In March 2001, OIPR also became aware of an error in a FISA application related to Terrorist Organization No. 2. The error concerned the description of the wall procedures in several FBI field offices. This description also had been used in 14 other applications related to Terrorist Organization No. 2. After the FISA Court learned of these errors, it stated that it would no longer accept any FISA application in which the supporting affidavit was signed by the SSA who had presented that Terrorist Organization No. 2 FISA application to the Court.

To address the issue of the accuracy of the information in the FISA affidavits, FBI ITOS managers began requiring that FISA affidavits contain certain information, such as the signature of the field office SSA and any AUSA involved in the case indicating that they had read the affidavit and agreed with the facts as they were written. In April 2001, the entire FBI Counterterrorism Division was instructed to comply with these procedures. On May 18, 2001, the Attorney General issued additional instructions to improve the accuracy of FISA affidavits, including requiring direct communication between OIPR attorneys and the field office on whose behalf the FISA application was being prepared and establishing a FISA training program at the FBI's training academy in Quantico, Virginia. In addition, the Attorney

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Cole investigation. During this meeting, they discussed certain information obtained from the CIA about Mihdhar. Although the IOS had information from the NSA about Mihdhar, the IOS did not reveal this information to the FBI criminal agents at the meeting because it had not yet been approved for dissemination by the NSA. In addition, in August 2001, once the FBI opened an intelligence investigation to locate Mihdhar, the same IOS and a New York criminal agent involved in the earlier meeting discussed and disagreed about whether a criminal agent would be permitted to participate in the intelligence investigation trying to locate Mihdhar or to participate in any interview with Mihdhar.

General asked OPR to expand its investigation to include a review of the errors made in FISA applications related to Terrorist Organization No. 2.

OPR's report, which was issued on May 15, 2003, concluded that "none of the errors in the [Terrorist Organization No. 1] and [Terrorist Organization No. 2] related FISA applications were the result of professional misconduct or poor judgment by the attorneys or agents who prepared or reviewed them." The report concluded that "a majority of the errors were the result of systemic flaws in the process by which those FISA applications were prepared and reviewed." These systemic flaws included, among other things, a lack of a formal training program for attorneys in OIPR or agents at the FBI to learn about the FISA application process, a lack of policies or rules regarding the required content of FISA applications, and a lack of resources for handling FISA applications.

C. Deputy Attorney General Thompson's August 2001 memorandum

On August 6, 2001, Deputy Attorney General Larry Thompson issued a memorandum to the Criminal Division, OIPR, and the FBI regarding the Department's policies governing intelligence sharing and establishing new policy. It stated that the 1995 Procedures and the additional 2000 procedures remained in effect. The memorandum stated that "the purpose of this memorandum is to restate and clarify certain important requirements imposed by the 1995 Procedures, and the [January 2000 measures issued in response to the AGRT report], and to establish certain additional requirements."

The memorandum reiterated the requirement that the Criminal Division had to be notified when there were facts or circumstances "that reasonably indicate that a significant federal crime has been, is being or may be committed." The memorandum emphasized the notification was mandatory and that the "reasonable indication" standard was "substantially lower than probable cause."

In addition, the memorandum stated that the FBI was required to have monthly briefings with the Criminal Division on all investigations that met the notification standards. The memorandum added that the Criminal Division should identify the investigations about which it needed additional information, and the FBI was required to provide this information. The memorandum did

not address the issue of the type of advice that was permissible by Criminal Division attorneys to the FBI.

D. The impact of the wall

The actions of the Department, including OIPR, the implementation of the 1995 Procedures, the additional requirements created by the FISA Court, and the OPR investigation had several effects on the handling of intelligence and criminal investigations. First, witnesses told the OIG that the concerns of the FISA Court, the banning of the SSA from the FISA Court, the OPR investigation, and the additional requirements for sharing information imposed by the FISA Court contributed to a climate of fear in ITOS at FBI Headquarters. SSAs and IOSs at FBI Headquarters were concerned about becoming the subject of an OPR investigation and the effect that any such investigation would have on their careers.

They said they were concerned not only about the accuracy of the information they provided to the Court, but also about ensuring that intelligence information was kept separate from criminal investigations. A former ITOS Unit Chief and long-time FBI Headquarters SSA told the OIG that the certification requirement was referred to as "a contempt letter." He explained that FBI employees began fearing that they would lose their jobs if any intelligence information was shared with criminal investigators.

Second, the restrictions imposed by the FISA Court – the requirement that anyone who received intelligence sign the certification and the screening procedures applicable to both FISA-obtained and FISA-derived material – created administrative hurdles for the FBI in handling intelligence information. For example, the new requirements were imposed in December 2000, just two months after the bombing of the *U.S.S. Cole*, and during the time the FBI was actively pursuing its criminal investigation. Given the new requirements, the FBI employed several IOSs on the Cole investigation just to track all of the required certifications.

Consistent with the conclusions of the AGRT report, employees at FBI Headquarters and in the Minneapolis Field Office who we interviewed told us that before September 11, 2001, there was a general perception within the FBI that seeking prosecutor input or taking any criminal investigative step when an intelligence investigation was open potentially harmed the FBI's ability to

obtain, maintain, or renew a FISA warrant. FBI Headquarters employees described cases in which OIPR required that electronic surveillance obtained under FISA be "shut down" and that the FBI "go criminal" because permission had been requested to approach the USAO or because some other criminal step had been taken. In addition, FBI attorneys told the OIG that, in their experience, OIPR would not consider applying for a FISA warrant in a case in which OIPR determined that there was "too much" criminal activity.

OIPR Counsel Baker told the OIG that the primary concern of the FISA Court was the direction and control of the intelligence investigation by prosecutors, not sharing of intelligence information with law enforcement agents. Baker stated that the FISA Court had approved FISA applications in which there was extensive interaction between prosecutors and FBI agents, provided that OIPR was present during the interactions, there was a separation between the prosecutors and intelligence investigators, and that the FISA Court was apprised of the FBI's intended use of the FISA information.

E. Changes to the wall after September 11, 2001

Shortly after the September 11, 2001, terrorist attacks, the Department proposed lowering the wall between criminal and intelligence information by changing the language in the FISA statute from "the purpose" of the surveillance or search (for the collection of foreign intelligence information) to only "a purpose."[46] In October 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act (the USA PATRIOT Act or the Patriot Act) was enacted, which changed the requirement from "the purpose" (for obtaining foreign intelligence) to "a significant purpose." Pub. L. No. 107-56, 115 Stat. 272, Section 218. The Patriot Act also specified that federal officers who conduct electronic surveillance or searches to obtain foreign intelligence information may consult

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[46] The Department had been considering seeking this change to FISA prior to September 11. In August 2001, the Office of the Deputy Attorney General asked the Office of Legal Counsel (OLC) for advice on whether FISA could be amended by Congress to require that the collection of foreign intelligence information be "a purpose" of a FISA warrant rather than "the purpose." That request was under review by OLC on September 11, 2001.

with federal law enforcement officers to coordinate their efforts to investigate and protect against actual or potential attacks, sabotage, or international terrorism. Id. at Section 504.

Although the Patriot Act amendments to FISA expressly provided for the consultation and coordination between prosecutors and FBI intelligence investigators, in November 2001 the FISA Court issued an order requiring that the 1995 Procedures, as revised by Attorney General Reno's January 2000 changes and the August 2001 Thompson memorandum, be applied in all cases before the FISA Court.

In March 2002, the Attorney General issued new guidelines on intelligence sharing procedures that superseded the 1995 Procedures. The 2002 Procedures effectively removed "the wall" between intelligence and criminal investigations. The 2002 Procedures explained that since the Patriot Act allowed FISA to be used for a "significant purpose" rather than the primary purpose of obtaining foreign intelligence, FISA could "be used primarily for a law enforcement purpose, as long as a significant foreign intelligence purpose remain[ed]." (Emphasis in original.)

The 2002 Procedures also directed that the Criminal Division and OIPR shall have access to – and that the FBI shall provide – all information developed in full field foreign intelligence and counterintelligence investigations, particularly information that is necessary to the ability of the United States to investigate or protect against foreign attack, sabotage, terrorism, and clandestine intelligence activities; and information that concerns any crime which has been, is being, or is about to be committed. The 2002 Procedures provided that USAOs should receive information and engage in consultations to the same extent as that provided for the Criminal Division.

In addition to these information sharing requirements, the 2002 Procedures provided that intelligence and law enforcement officers may exchange a "full range of information and advice" concerning foreign intelligence and foreign counterintelligence investigations, "including information and advice designed to preserve or enhance the possibility of a criminal prosecution." The 2002 Procedures noted that this extensive coordination was permitted because the Patriot Act provided that such coordination shall not preclude the government's certification of a significant foreign intelligence purpose for the issuance of a warrant by the FISA Court.

The Department immediately tested the new 2002 Procedures with the FISA Court. In an opinion issued on May 17, 2002, the FISA Court accepted the information-sharing provisions of the new Procedures. However, the FISA Court rejected the Department's position that criminal prosecutors should be permitted to have a significant role in FISA surveillances and searches from start to finish. See In Re All Matters Submitted to Foreign Intelligence Surveillance Court, 218 F.Supp.2d 611 (2002). The Department appealed the Court's ruling to the Foreign Intelligence Surveillance Court of Review, the appellate court for the FISA Court. This was the first appeal ever to the FISA Court of Review.

The Court of Review rejected the FISA Court's findings, as well as the 1995 Procedures and the "primary purpose standard" that had been applied before the Patriot Act revision. See In Re Sealed Case, 310 F.3d 717 (2002). The Court of Review concluded that the restrictions of the wall imposed by the Department and the FISA Court were never required by FISA or the Constitution.[47] The Court ruled that FISA permitted the use of intelligence in criminal investigations, and that coordination between criminal prosecutors and intelligence investigators was necessary for the protection of national security. The Court concluded that while the FBI had to certify that the purpose of the FISA surveillance was to obtain foreign intelligence information, FISA did not preclude or limit the use of intelligence information in a criminal prosecution. The Court wrote, "[E]ffective counterintelligence, we have learned, requires the wholehearted cooperation of all the government's personnel who can be brought to the task." Id. at 743.

IV. The process for obtaining a FISA warrant

In this section, we describe the legal and procedural requirements for obtaining a FISA warrant prior to September 11, 2001, focusing on the requirement for a warrant to conduct a physical search like the warrant that the

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[47] The Court of Review noted, "We certainly understand the 1995 Justice Department's effort to avoid difficulty with the FISA court, or other courts; and we have no basis to criticize any organization of the Justice Department that an Attorney General desires." Id. at 727 n. 14.

FBI's Minneapolis Field Office sought in the Moussaoui investigation, which we discuss in detail in Chapter Four.

A. Legal requirements for a FISA warrant

As noted above, FISA allows the FBI to conduct electronic surveillance and physical searches in connection with counterespionage and counterterrorism investigations. Rather than showing that the subject of the surveillance or the physical search is potentially connected to a crime, the FBI must show that there is probable cause to believe that the subject of the surveillance or search is an "agent" of a "foreign power." With respect to a warrant for a physical search, the FBI also must show that there is probable cause to believe that the property to be searched is owned, used, possessed by, or in transit to or from an "agent of a foreign power" or "a foreign power." 50 U.S.C. § 1824(a)(3).

1. Agent of a foreign power

"Foreign power" as defined in the FISA statute has several meanings, most of which pertain to the governance of a foreign nation, such as "a foreign government or any component thereof, whether or not recognized by the United States" and "an entity that is directed and controlled by a foreign government or governments." 50 U.S.C. § 1801(a)(1) & (2). The definition most applicable in the Moussaoui investigation is "a group engaged in international terrorism or activities in preparation therefor." 50 U.S.C. § 1801(a)(4). With respect to terrorism, before September 11, 2001, foreign powers that were used in requests for FISA warrants to the FISA Court included foreign governments as well as terrorist organizations not controlled by any foreign government, such as al Qaeda and Hizbollah.

Whether a terrorist organization qualified as a "foreign power" under the FISA statute depended upon the intelligence developed about the group and its activities, and whether the FISA Court was convinced that the government had proven that the entity existed and was engaged in international terrorist activities. In practice, once the FBI developed the necessary intelligence about the existence of a terrorist organization, a particular subject was used as a "test subject" for pleading to the FISA Court that the organization was a foreign power. Although not dispositive, FISA applications might reference the fact

that the State Department had designated an entity as a "foreign terrorist organization" (FTO).[48]

An "agent" of a foreign power also has several definitions in the statute. An agent can be a person who has an official connection to a foreign power, such as an employee of a foreign government or an official member of a terrorist organization. With respect to terrorism, an agent can be anyone who engages in international terrorism (or in activities that are in preparation for international terrorism) "for or on behalf of a foreign power." 50 U.S.C. § 1801(b)(2)(C).

Aside from stating that a person must be acting "for or on behalf of" a foreign power, the FISA statute does not further define when a person is an "agent." The legislative history of FISA states that there must be "a nexus between the individual and the foreign power that suggests that the person is likely to do the bidding of the foreign power," and that there must be a "knowing connection" between the individual and the foreign power. H.R. 7308, 95th Congress, 2d Session, Report 95-1283, Pt. 1, p. 49, 44 (June 8, 1978). The legislative history also states that more than evidence of "mere sympathy for, identity of interest with, or vocal support for the goals" of a terrorist organization is required to establish agency between the group and the potential subject. Id. at p. 42. The Attorney General's FCI Guidelines in effect in 2001 stated in the definition section that determining whether an individual is acting "for or on behalf of a foreign power" is based on the extent

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[48] FTOs are foreign entities that are designated as terrorist organizations by the Secretary of State in accordance with the Antiterrorism and Effective Death Penalty Act, signed into law in April 1996. The criteria for this designation include: that the entity is a foreign organization, that the organization is engaged in terrorist activity, and that the organization's terrorist activity must threaten the security of U.S. nationals or the national security of the United States. FTO designations expire automatically after two years but may be redesignated. It is unlawful for anyone to assist an FTO, representatives and members of FTOs are not admissible into the United States, and U.S. financial institutions that become aware of possession of funds of an FTO must report this information to the government. The first 30 FTO designations were made in October 1997. As of March 2004, 37 FTOs were on the State Department list, including al Qaeda, Ansar al-Islam, and the Revolutionary Armed Forces of Columbia.

to which the foreign power is involved in controlling, leading, financially supporting, assigning or disciplining the individual.

2. The application filed with the FISA Court

To obtain an order from the FISA Court authorizing either electronic surveillance or a physical search, the FBI – through DOJ OIPR – submits to the FISA Court an application containing three documents. The first document, labeled "application," is a court pleading that contains the government's specific request for a FISA warrant and includes the required approval by the Attorney General or the Deputy Attorney General. See 50 U.S.C. § 1804(a) (electronic surveillance) and § 1823(a) (physical search). The second document is a certification by the FBI Director or other Executive Branch official that the information sought is foreign intelligence information and that the information cannot reasonably be obtained by normal investigative techniques. At the time of the Moussaoui investigation, as discussed above, the certification also had to contain a statement that the purpose of the search or surveillance was to obtain foreign intelligence information.[49] See 50 U.S.C. § 1804(a)(7) (electronic surveillance) and § 1823(a)(7) (physical search).

The third required document is an affidavit signed by an SSA from FBI Headquarters, which satisfies the FISA statute's requirement that the application be made "by a Federal officer in writing upon oath or affirmation." 50 U.S.C. § 1804(a) (electronic surveillance) and § 1823(a) (physical search). The affidavit must contain "a statement of the facts and circumstances relied upon by the applicant to justify his belief" that the foreign power identified in the application is in fact a foreign power and that there are sufficient connections between the foreign power and the individual targeted to establish that the individual is acting as an agent of the foreign power. Id. With respect to a physical search, the affidavit also must show that the property to be searched contains foreign intelligence information, and the property to be

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[49] As previously discussed, the Patriot Act amended this section of the FISA statute to require that the certification state that "a significant purpose" of the surveillance or search is to obtain foreign intelligence information.

searched is owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power. 50 U.S.C. § 1823(a)(4).[50]

The FISA statute also provides that in order for a judge to issue an order approving the FISA application, the judge must find that "on the basis of the facts submitted by the applicant there is probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power." 50 U.S.C. § 1805(3).

B. Assembling an application for submission to the FISA Court

Prior to September 11, 2001, the FISA application process involved several layers of review and approval at FBI Headquarters and at OIPR before presentation to the FISA Court. The process began when the field office submitted an EC or letterhead memorandum (LHM) to FBI Headquarters setting forth the supporting evidence for the FISA warrant.[51] An SSA and IOS in FBI Headquarters worked with the field office in reviewing, editing, and finalizing the LHM. An NSLU attorney reviewed, edited, and approved the LHM, then obtained several ITOS management approvals before sending the request to OIPR for consideration. Using the information provided in the LHM, an OIPR attorney drafted the FISA application and other required documents, which were reviewed in draft by the OIPR attorney's supervisor. The documentation drafted by OIPR was provided to the SSA, IOS, and NSLU attorney for their review before being finalized by the OIPR attorney and filed with the FISA Court. This process normally took several months to complete, although we were told a FISA warrant could be obtained in a matter of several hours or a few days if needed.

We describe below in more detail each step in the process, with special attention to the role of each person involved in the process.

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[50] OIPR also submits to the FISA Court a draft order or orders for the FISA judge's completion and signature.

[51] An LHM is a memorandum on FBI letterhead stationery that is used to communicate to the Attorney General, other Department officials, or persons or agencies outside the FBI.

1. Investigation and LHM prepared by field office

An application for a FISA warrant normally originated from the investigative work conducted by a field office. During the investigation, the field office typically developed information about the subject of the investigation by checking FBI indices and files, reviewing publicly available records, and inquiring with domestic and foreign law enforcement and intelligence agencies – such as the CIA and NSA – about the subject. In addition, the field office could conduct other investigative activities. The field office also could obtain the subject's records of telephone calls, computer transactions, and financial information through National Security Letters (NSLs).[52] This phase of collecting information can last anywhere from several days to several months.

If a field office wanted to obtain a FISA warrant and thought it had sufficient information to support a FISA warrant, the field office prepared an LHM setting forth as specifically as possible the supporting information. The LHM was sent to the appropriate unit at FBI Headquarters, where it was assigned to a particular SSA for handling.

2. Role of SSAs and IOSs at FBI Headquarters

At the time of the Moussaoui investigation in August 2001, once the LHM was received in FBI Headquarters by the appropriate SSA, that SSA was responsible for ensuring that the FISA request was adequately supported and complete before it was presented to OIPR. To do this, the SSA – working in conjunction with the assigned IOS – reviewed the documentation to assess whether it contained sufficient information for a FISA or whether there were questions that would have to be answered before the request could be

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[52] NSLs are issued in intelligence investigations to obtain telephone and electronic communications records from telephone companies and internet service providers (pursuant to the Electronic Communications Privacy Act, or ECPA, 18 U.S.C. § 2709), records from financial institutions (pursuant to the Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)), and information from credit bureaus (pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681u and 1681v). They do not require approval of a court before issuance by the FBI. Prior to September 11, the process for issuing NSLs could take several months. We discuss this issue in Chapter Four of the report.

completed. The SSA also assessed whether the appropriate foreign power was being pled and whether there was sufficient information connecting the subject to the foreign power.

The SSA and the IOS communicated with the field office directly about any problems or for additional information. In problematic cases, the SSA would consult with an NSLU attorney for advice and suggestions.

The SSA and the IOS used the documentation submitted by the field office and often edited the document. In some instances, the FISA request was completely rewritten, and in other instances few changes were made.

With respect to the information supporting the existence of the foreign power, the SSA or IOS typically inserted language used in other FISA applications involving the same foreign power. If the SSA or IOS acquired additional information to support the application, such as information indicating connections between the subject and the foreign power, that information was also included in the LHM.

At the time of the Moussaoui investigation, the SSA would normally review the edited version of the LHM with the field office to ensure the factual accuracy of the LHM.[53] Once the field office and the SSA agreed on the final version of the LHM, the SSA sought review and approval by an NSLU attorney and finally obtained the appropriate signatures within FBI Headquarters management, such as the signatures of the Unit and Section Chiefs. This editing process could last from several days to several months.

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[53] Such consultations with the field office about edits arose primarily because of the problems the FBI had encountered with the FISA Court in the fall of 2000 and spring of 2001 over inaccuracies in the affidavits signed by SSAs and filed with the FISA Court. In March 2001, the FBI adopted procedures requiring the SSA at FBI Headquarters handling a FISA request to review OIPR's draft affidavit with the field office to ensure the factual accuracy of the affidavit before it was filed with the FISA Court. Because of these requirements and other concerns about the accuracy of the affidavits, SSAs spent more time than they had in the past discussing drafts of FISA documents with field offices.

3. Role of NSLU attorneys

At the time of the Moussaoui investigation in August 2001, two attorneys in the National Security Law Unit (NSLU) of the FBI's Office of the General Counsel were assigned full-time to counterterrorism matters.[54] No attorney was assigned responsibility for a particular FISA request from beginning to end.

The two NSLU attorneys assigned to counterterrorism matters had two functions with respect to FISA requests submitted by field offices. First, they functioned in an advisory capacity. The SSA would consult with an NSLU attorney if a question or problem arose or if the SSA needed legal advice. NSLU attorneys also were consulted when there was a disagreement between the field office and FBI Headquarters about a particular issue, such as whether there was sufficient support for a FISA warrant. SSAs often discussed with NSLU attorneys whether the threshold of probable cause had been met for supporting that a subject was an agent of a foreign power. The former head of the NSLU told the OIG, however, that in "slam dunk" cases, FBI Headquarters would deal directly with OIPR without consulting an NSLU attorney.

The second function of NSLU attorneys with respect to FISA requests was to review the LHM once it was finalized and to advise whether they believed OIPR would accept the LHM as having sufficient evidence to obtain a FISA warrant. If the NSLU attorney did not believe that the LHM contained sufficient evidence, the NSLU attorney would advise the SSA what additional information was needed and make suggestions about how the additional information could be acquired. Once the LHM was finalized and approved by the NSLU attorney, the signatures of the Unit Chief and the Section Chief were obtained, and the LHM was sent to OIPR.

The NSLU attorney and the SSA also could make recommendations to the field office about how to acquire any additional information that was needed. If the field office provided additional information to support the FISA request, the LHM was revised and the FISA request was reviewed again. This process would continue until the NSLU attorney was satisfied that the

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[54] Other NSLU attorneys primarily worked counterintelligence matters, although some of them assisted with counterterrorism matters when necessary.

standards for obtaining the FISA warrant were met. This step in the process also could last from several days to several months.

4. Role of OIPR attorneys

Once the SSA obtained the necessary FBI Headquarters approvals, the LHM and its supporting documents were provided to OIPR for preparation of the required pleadings. An OIPR attorney would review the LHM and determine whether there was sufficient evidence to obtain a FISA warrant. The OIPR attorney would consult with the FBI Headquarters SSA about any questions and would sometimes prepare a list of questions for the SSA to answer in writing. The SSA often consulted with the field office to obtain the information requested by the OIPR attorney and sometimes asked the field office to conduct additional investigation. This process also could take anywhere from several days to several months.

Once the OIPR attorney was satisfied that there was sufficient evidence to support the FISA application, an OIPR attorney prepared the draft pleadings. A supervisory attorney in OIPR would review the draft pleadings and make recommendations and revisions. The final draft was provided to the SSA and the NSLU attorney for review. After finalizing the pleadings and obtaining the signatures of the FBI Headquarters SSA who signed the affidavit, the Attorney General, and the FBI Director, the OIPR attorney filed the pleadings with the FISA Court, along with a draft order for the judge's signature. The FISA Court would then schedule a hearing, which was attended by the OIPR attorney and the SSA.

If the FISA Court approved the warrant, it issued an order authorizing the surveillance or search. Orders authorizing surveillance were for a specific period, beginning and ending on a certain day and time. The order was transmitted to the field office responsible for conducting the surveillance or search.

5. Expedited FISA warrants

In the Moussaoui investigation, the Minneapolis Field Office requested an "emergency FISA," which was a FISA that could be obtained in an

expedited manner.[55] The SSAs and NSLU attorneys we interviewed told us that what rose to the level of "expedited" depended on what the field office and ITOS management deemed to be an immediate priority. According to these witnesses, in the summer of 2001 expedited FISA requests normally involved reports of a suspected imminent attack or other imminent danger.

Although the normal processing time for a FISA application was several weeks or months, FBI Headquarters working with an NSLU attorney and OIPR could prepare an expedited FISA application for presentation to the FISA Court in a matter of several hours or days, depending on the circumstances giving rise to the expedited request.

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[55] Although expedited FISA requests were commonly referred to as "emergency FISAs," the statute provided for an "emergency FISA" that was different from an expedited FISA. The statute stated that an emergency FISA allowed the Attorney General - *without* prior approval of the FISA Court - to authorize the execution of a search warrant or electronic surveillance if the Attorney General determined that "an emergency situation exists" and there was a "the factual basis for issuance of an order" in accordance with the statute. See 50 U.S.C. § 1805(e) (electronic surveillance) & § 1824(e) (physical search warrant). The government was required to present an application to the FISA Court with respect to any such warrantless search or electronic surveillance within 24 hours of the execution of the search or surveillance. 50 U.S.C. § 1805(e) (electronic surveillance) & § 1824(e) (physical search warrant). This type of emergency FISA rarely was used before September 11, 2001.

CHAPTER THREE
THE FBI'S HANDLING OF THE PHOENIX ELECTRONIC COMMUNICATION AND OTHER INFORMATION RELATING TO USE OF AIRPLANES IN TERRORISTS ATTACKS

I. Introduction

In this chapter of the report, we examine allegations that the FBI failed to act prior to September 11, 2001, on intelligence information that warned of potential terrorists training in aviation-related fields of study in the United States. The focus of these allegations concerned an Electronic Communication (EC) dated July 10, 2001, that was written by Kenneth Williams, a special agent in the FBI's Phoenix Division. In his EC, Williams wrote that he believed that there was a coordinated effort by Usama Bin Laden to send students to the United States to attend civil aviation universities and colleges. He suggested that the purpose of these students would be to one day work in the civil aviation industry around the world to conduct terrorist activity against civil aviation targets. Williams wrote that he was providing the information in the EC for analysis and comments. Williams addressed the EC to several people in FBI Headquarters and in the FBI's New York Division.[56]

After September 11, 2001, the FBI has acknowledged several problems in how the Phoenix EC was handled. The FBI stated that the information raised in the EC should have been analyzed by the FBI, but that such analysis did not occur before September 11. In addition, the FBI acknowledged that the Phoenix EC should have been disseminated to other intelligence agencies and to the FBI's field offices for their consideration, but it was not disseminated before September 11.[57]

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[56] A redacted copy of this document is attached in the Appendix.

[57] Director Mueller's written statement for his October 17, 2002, testimony before the Joint Intelligence Committee Inquiry (JICI) stated: "We have heard, and we acknowledge, the valid criticisms, many of which have been reiterated by this Committee. For example, the Phoenix memo should have been disseminated to all field offices and to our sister agencies." Former ITOS Section Chief Michael Rolince testified before Congress that the (continued)

In this chapter we analyze the FBI's handling of the Phoenix EC. We first provide background on how leads were communicated and assigned in the FBI before September 11, 2001. We then summarize the contents of the EC. Next, we describe in detail how the Phoenix EC was handled within the FBI before September 11. In the analysis section, we examine problems in how the Phoenix EC was handled, first focusing on the systemic problems that affected the way the FBI treated the EC and then on the performance of the individuals involved with the EC. Finally, at the end of the chapter we discuss several other pieces of information in the possession of the FBI before September 11 that also noted connections of potential terrorists to flight schools or the use of airplanes.

II. The Phoenix EC

A. Background

In this section, we first provide the key terminology and a description of FBI processes that are relevant to the handling of the Phoenix EC.

1. Assigning leads in the FBI

When an FBI field office needs assistance or information from another office or from FBI Headquarters, it "sets a lead" for the assistance. Leads are initially written out in ECs, hard copies of which are mailed to the appropriate offices. In addition, when the EC is "uploaded" to the FBI's Automated Case Support (ACS) system, leads associated with the EC are "set" electronically in ACS system. We describe both processes below.

a. The manual process

The specific action requested in an EC is stated in the lead section, which is at the end of the document. In the "To:" section of the EC, the author specifies the offices to which the EC is addressed. In the "Attention:" section,

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Phoenix EC should have been provided to the personnel assigned to FBI Headquarters from other agencies, such as the INS, the CIA, the FAA, and others, for their assessment.

the author specifies the persons who the author believes should receive a copy of the EC.

ECs have a line marked "Precedence." There are three options on the precedence line: "Immediate," "Priority," and "Routine." The FBI's investigative manual states that "immediate" precedence should be used "when the addressee(s) must take prompt action or have an urgent need for the information." The manual states that "priority" precedence should be used when information is needed within 24 hours, and "routine" precedence should be used when information is needed within the normal course of business. The time frame for responding to "routine" requests is not specified.

The office preparing an EC that sets a lead normally sends a hard copy of the EC to the offices with leads mentioned in the EC. The paper EC is normally sent through "Bureau mail," which is the FBI's interoffice mail delivery system.

The distribution of the hard copy EC in the receiving office varies from office to office. In most offices, the EC is routed to an administrative employee assigned to the substantive program that is the subject of the EC, such as the squad secretary for the counterterrorism squad if counterterrorism is discussed in the EC. The administrative employee decides who should receive the hard copy EC, whether copies will be made, and for whom. All individuals listed on the attention line of a hardcopy EC do not necessarily receive a copy of the EC through the manual distribution process.

b. The electronic process

Leads contained in ECs also are set electronically in ACS when the EC is completed and is "uploaded" to ACS. The office requesting the lead can enter in ACS a deadline for handling the lead. If no deadline is set, the default deadline in ACS for action is 60 days.

ACS contains an "electronic routing table" for each office that receives leads electronically through ACS. FBI offices set up the electronic routing table to assign leads to a particular person's "lead bucket" based on the case number provided in the "Case ID #" field of the EC. For example, a field office may program its electronic routing table to direct all leads associated with cases having international terrorism identifiers to the secretary for the international terrorism squad. The secretary would then be responsible for

checking the "lead bucket" and determining to whom to assign the lead electronically.

FBI employees are responsible for checking ACS periodically and accessing their lead bucket to see if any leads have been assigned to them. ACS does not notify users when leads are assigned to them. Only persons who are assigned a lead will see a notification of an EC associated with the lead when they check their lead buckets. All other persons listed on the attention line of the EC must search ACS for their names by conducting text searches and other kinds of searches to determine if there are any ECs containing their names.

In ACS, leads may be "reassigned" or may be "closed." When leads are closed, the person closing the lead fills in the field labeled "disposition" to indicate what action was taken with respect to the lead. However, ACS does not require this field to be completed in order to close the lead.

c. Persons responsible for assigning leads

At FBI Headquarters, the Radical Fundamentalist Unit (RFU) and the Usama Bin Laden Unit (UBLU) were the two units in the International Terrorism Operations Section (ITOS) involved in the handling of the Phoenix EC. Within the RFU and UBLU, Intelligence Assistants, called IAs, were responsible for many duties, including distributing hard copy ECs to the appropriate persons in the units, assigning leads in ACS, conducting name checks in ACS, and preparing ECs. In addition, before September 11, 2001, an IA assigned to an administrative unit in ITOS was responsible as a collateral duty for assigning leads that had been routed to ITOS' general lead bucket in ACS. During the time period relevant to our investigation, this IA could assign leads from ACS directly to analysts in the section, called Intelligence Operations Specialists (IOSs). The IA also could route ECs directly to IOSs without any supervisor's input or knowledge.

IAs within the RFU and the UBLU normally determined to whom to assign a lead based on the case identifier, which is one of the required fields on an EC. For example, 199M matters, called "IT-Other," were investigations related to terrorist groups that were not associated with one of the FBI's 17 other specific case identifiers. 199M or IT-Other matters normally were

assigned to the RFU. The case identifier associated with the Phoenix EC was 199M, which fell under the RFU.

Within a particular unit, the specific case number would also be used to determine whether an IOS or Supervisory Special Agent (SSA) was working on the designated case and therefore would be responsible for the lead.

d. "Read and clear"

A common type of lead is a "read and clear" lead. According to FBI procedures, "read and clear" leads are for informational purposes and do not require any action, other than "clearing" the lead in ACS by closing the lead. Witnesses told the OIG that setting a "read and clear" lead is similar to sending a "cc:" copy of a document to someone to read for their information.

e. Persons responsible for conducting analysis in the FBI

As discussed in Chapter Two, analysis of counterterrorism information normally was conducted in two places in the FBI. Operational or case-related analysis was performed primarily by IOSs who worked in ITOS, located in the Counterterrorism Division. Broader, strategic analysis was performed by Intelligence Research Specialists (IRSs) who at the time worked in the FBI's Investigative Services Division (ISD), a separate division from the Counterterrorism Division.[58]

As discussed in more detail below, the Phoenix EC was addressed to several SSAs and IOSs in ITOS. It was not addressed to any IRSs or anyone in the Investigative Services Division.

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[58] ISD was created in November 1999 and housed the FBI's analytical resources, such as the IRSs who handled counterintelligence matters, organized crime and white-collar crime matters, and domestic and international terrorism matters. In addition, ISD included an Intelligence and Operations Support Section that was responsible for administering the field's analytical program and training and automation requirements. ISD was eliminated in the beginning of 2002.

B. The Phoenix EC

Kenneth Williams, the special agent who wrote the Phoenix EC, joined the FBI in 1990, and was assigned to the Phoenix Division. He worked his first year and a half on white-collar matters. Since then, he was assigned to work on international terrorism matters. Williams told the OIG that while working on international terrorism matters, he spent almost all of his time on a terrorist organization that was not connected to Al Qaeda or Bin Laden. At FBI Headquarters, responsibility for this terrorist organization fell under the jurisdiction of a unit in ITOS other than the Usama Bin Laden Unit (UBLU). Williams said that he had not had any contact with the UBL unit. At the time of the EC, Williams reported to an SSA who we call "Bob," who was responsible for the Phoenix counterterrorism squad.

The Phoenix EC was dated July 10, 2001, and was addressed to the Counterterrorism Division at FBI Headquarters and to the New York Division. The precedence line on the EC was marked "routine."

Williams wrote in the opening paragraph of the EC that its purpose was to advise FBI Headquarters and the New York Division of his belief that there was the possibility of a coordinated effort by Bin Laden to send students to the United States to attend civil aviation universities and colleges. The EC stated that there was an inordinate number of individuals of investigative interest who were attending or had attended civil aviation universities and colleges in Arizona. Williams also wrote that there was reason to believe that a coordinated effort was under way to establish a cadre of individuals who one day would be working in civil aviation around the world, and these individuals would be in a position in the future to conduct terror activity against civil aviation targets.

1. Information on individuals

As the basis for his concerns, Williams summarized in the EC the results of four Phoenix intelligence investigations of four subjects who we will call "Subject No. 1," "Subject No. 2," "Subject No. 3," and "Subject No. 4."[59] The

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[59] Williams was responsible for the Subject No. 1 investigation, which was summarized in the EC. The other three investigations were international terrorism intelligence cases (continued)

other persons of investigative interest were described as seven "associates" of Subject No. 1. The Phoenix Division had opened a "preliminary inquiry" for an intelligence investigation about each of these persons but had not yet developed sufficient information to open a full investigation.

Williams identified the connections of these individuals to aviation as follows: (1) Subject No. 1 was an aeronautical engineering student at Embry-Riddle Aeronautical University (ERAU) in Prescott, Arizona;[60] (2) Subject No. 2 took classes at Cochise College, located in Douglas, Arizona, in the late 1990s to obtain an FAA certificate in airframe and power plant operations;[61] and (3) Subject No. 3 and Subject No. 4 were known to associate with a person we will call Subject No. 5, whose telephone number was associated with a known supporter of an African Muslim terrorist organization and who reportedly left the United States in the late 1990s after graduating from Westwind Aviation in Phoenix, Arizona.[62]

(continued)
handled by other agents on Williams' squad and another squad in the Phoenix Division. Subject No. 2 also had been the subject of a separate investigation in an FBI field office in the western part of the United States before he moved to Arizona in the late 1990s. This field office's investigation of Subject No. 2 was closed at the time the Phoenix EC was written.

[60] Williams stated in the EC that Subject No. 1 was enrolled in aeronautical engineering. ERAU offers a degree in aerospace engineering with a concentration in aeronautical engineering. Aeronautical engineering is the study of aircraft design.

[61] A certificate in airframe and power plant operations allows an individual to become an aviation maintenance mechanic. The courses for this certificate deal largely with maintaining aircraft in airworthy condition.

[62] The Phoenix EC does not state what courses Subject No. 5 took at Westwind Aviation. The Phoenix EC also does not state whether the FBI had an investigation open on Subject No. 5 at the time; however, according to Williams, the FBI did not have any investigation open on Subject No. 5 at the time because he was not in the United States. Subject No. 5's name had surfaced in another FBI investigation involving the same African Muslim terrorist organization that Subject No. 5 was believed to be connected to. After September 11, Subject No. 5 was arrested on terrorism charges related to the September 11 attacks, but he was released when a court found that the prosecutors lacked any evidence connecting Subject No. 5 to the events of September 11.

With respect to the seven associates of Subject No. 1, Williams wrote that three were enrolled in pilot training at ERAU, and three were enrolled in an aeronautical engineering program at ERAU. For the seventh, Williams had no record of classes taken.[63]

Williams also reported in the EC the connections of Subject No. 1, Subject No. 2, Subject No. 3, and Subject No. 4 to Bin Laden and to each other, which we describe below.

Subject No. 1: The Subject No. 1 investigation was designated by Williams as a 199M or "IT-Other" matter.[64] Williams told the OIG that he had opened the Subject No. 1 case under this designation after obtaining material in Subject No. 1's garbage relating to Ibn Khattab, who Williams believed had a connection to Bin Laden. As discussed in more detail in Chapter Four, Ibn Khattab was a Jordanian-born, Islamic extremist who was the leader of a large group of Chechen rebels that had many successes in clashes with Russian forces.[65]

In summarizing his investigation of Subject No. 1, Williams wrote in the EC that Subject No. 1 came to the United States in the late 1990s, and that in April 2000 one of Williams' sources reported that Subject No. 1 was a supporter of Bin Laden. In addition, the EC stated that the source told Williams that Subject No. 1 was involved in the Al-Muhjiroun,[66] a Muslim fundamentalist organization that Williams described as "dedicated to the overthrow of Western society" and as "an ardent supporter of [Bin Laden]." As further support for a connection between these persons and civil aviation,

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[63] We asked Williams to confirm the courses these individuals took. After reviewing their files, Williams told the OIG that only two of the individuals were enrolled in pilot training and the other four were enrolled in aeronautical engineering.

[64] An EC requires a case number field to be completed. Williams used the Subject No. 1 case number in the case number field of the Phoenix EC.

[65] Chechnya is a republic of the former Soviet Union. Since the collapse of the Soviet Union in 1991, Chechen separatists – both Islamic and non-Islamic – have sought independence from Russia.

[66] We observed several spellings for this organization in FBI documents, including Al-Muhajiroun and Al-Mouhajiroun.

Williams noted that the spiritual leader of the Al-Muhjiroun had issued a religious degree (or "fatwa") in February 1998 in which he declared a "jihad" or "holy war" against the United States and British government, armies, interests, and **airports**." (Emphasis in original.)

Williams wrote in the EC that he had interviewed Subject No. 1 in the spring of 2000 and that during these interviews, which were conducted in Subject No. 1's apartment, Williams observed photographs on the walls of Bin Laden, Ibn Khattab, and wounded Muslim separatists from Chechnya. Williams wrote that Subject No. 1 admitted during these interviews to being involved in the Al-Muhjiroun, and that he considered the U.S. government and military forces to be "legitimate military targets of Islam." Williams noted in the EC that his investigation of Subject No. 1 was continuing.

Subject No. 2: Williams reported in the EC that Subject No. 2 was known to have contact with Bin Laden lieutenant Abu Zubaida. Williams wrote that Subject No. 2 had moved to Arizona in 1998, but had left the United States in October 1999.[67]

Williams also wrote that two persons arrested in June 2001 in Bahrain had admitted to being members of al Qaeda and had been planning an operation to bomb the U.S. embassy and military forces in Saudi Arabia. At the time of their arrest, they had in their possession a passport of a man who was believed to be a relative of Subject No. 2. Williams wrote that the man who was believed to be a relative of Subject No. 2 previously had entered the United States in 1998 with this passport and was associated with an address known to be that of Subject No. 2. Williams wrote that he had not been able to establish a connection between Subject No. 1 and Subject No. 2.[68]

Subject No. 3 and Subject No. 4: Williams reported in the EC that investigations of Subject No. 3 and Subject No. 4 had been opened based on

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[67] The FBI field office that had been investigating Subject No. 2 had closed its investigation of Subject No. 2 at the time the Phoenix EC was written.

[68] Williams wrote in the EC that Subject No. 1 arrived in the United States in August 1999 and that Subject No. 2 left the United States in October 1999. Williams also wrote that "Subject No. 2 had departed the U.S. prior to Subject No. 1's arrival." Williams told the OIG that this last statement was in error.

information from foreign governments demonstrating that they were both involved with African Islamic extremist/terror activity and had associated with individuals who had associated with Ahmed Ressam. Ressam was arrested on December 14, 1999, attempting to cross the border from Canada into the United States with chemicals and detonator materials in his car.[69]

Williams wrote that Subject No, 3 and Subject No. 4 were friends with Subject No. 5, whose telephone number had been associated with a known supporter of an African Islamic terrorist organization. Williams noted that Subject No. 3, Subject No. 4, and Subject No. 5 had not been linked to Subject No. 1 or Subject No. 2. The EC did not state whether the FBI had an investigation open on Subject No. 5 or provide any further details on him. The EC reported that Subject No. 5 had left the country in November 1997 after graduating from Westwind Aviation. The EC did not describe the connections between the African Islamic terrorist organization and Bin Laden or al Qaeda.

2. Recommendations in the Phoenix EC

The Phoenix EC made four recommendations:

- "[T]he FBI should accumulate a listing of civil aviation universities/colleges around the country";
- "FBI field offices with these types of schools in their area should establish appropriate liaison" with the schools;
- "[FBI Headquarters] should discuss this matter with other elements of the U.S. intelligence community and task the community for any information that supports Phoenix's suspicions"; and
- "[FBI Headquarters] should consider seeking the necessary authority to obtain visa information from the [Department of State] on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility."

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[69] The Phoenix EC did not state Ressam's affiliation with Bin Laden or al Qaeda.

In the lead section of the EC, Williams wrote that he was requesting that FBI Headquarters consider implementing the suggested actions. The New York Division lead was designated as a "read and clear" lead. At the end of the EC, Williams wrote that the information was "being provided to receiving offices for information, analysis and comments."

3. Addressees on the Phoenix EC

The attention line of the EC contained the names the unit chief of the RFU, who we call "Don"; an IOS in the RFU who we call "Ellen"; the acting unit chief of the UBLU, who we call "Rob"; and UBLU IOSs who we call "Jane," "Matthew," and "Frank."[70] The RFU and the UBLU were the two units with program responsibility for the two primary organizations discussed in the EC: Al-Muhjiroun and Bin Laden/al Qaeda.

The attention line also contained the names of two Special Agents who worked on two different international terrorism squads in the New York Division: an agent who worked on the New York FBI's Bin Laden squad who we call "Jay", and an agent who we call "Mark" and who worked on a New York squad that handled investigations that fell under the RFU.

Williams told the OIG that his prior experience did not involve Bin Laden or Al Qaeda and instead centered on another terrorist organization which was managed by a unit other than the Bin Laden Unit at FBI Headquarters. He said that he was therefore not familiar with the personnel in the other units within ITOS, except for one long-time RFU IOS, who we call Frank. Williams said that he called Frank to obtain the names of the persons working in the RFU and the UBLU, and that he put in the attention line of the EC the names he had obtained by calling Frank.

Frank told the OIG that he recalled talking to Williams about the EC and recommending several potential points of contact. Frank said that based on his understanding of what Williams was writing about, several people needed to

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[70] Williams mistakenly identified the IOSs as IRSs in the Phoenix EC. In addition, at that time Matthew and Frank worked in the RFU, not the UBLU. At the request of the FBI, we have omitted the true names of most of the agents and the analysts who are discussed in this report.

see the EC because more than one program was involved. He said that because the New York Field Office was the primary field office that handled the FBI's Bin Laden-related investigations, he likely recommended that Williams also address the EC to a point of contact in New York.

When asked why he did not recommend including any IRSs on the attention line, Frank told the OIG that the Investigative Services Division was "on its last legs" at the time and that there were very few IRSs in the ISD still working on analysis. He explained that any work of the IRSs would have to be coordinated through an IOS, so it made sense to route the EC through an IOS in the first instance.

Williams also told the OIG that at the time he was familiar by name with Ellen because, prior to writing the Phoenix EC, he had accessed in ACS an EC she had written on the Al-Muhjiroun in 1999. Ellen told the OIG that Williams called her on July 9, 2001, to tell her that he had used her paper in writing his EC and that he had included her name on the attention line. She said that he also asked her if she recommended anyone to include on the attention line and that she gave him the name of Mark, one of the New York Division agents who had been the case agent for the FBI's investigation of the Al-Muhjiroun.

C. Williams' theory

Williams told the OIG that in the EC he was putting forth "an investigative theory" or "hunch" about Bin Laden sending students to attend civil aviation schools ultimately to conduct terror activity against civil aviation targets, and he was seeking an analytical product or feedback in response to his theory. He said that he was basing the theory on his almost ten years of experience in international terrorism cases and his knowledge that al Qaeda had a presence in Arizona. He said that he had learned in squad meetings about Subject No. 2, and he thought it was "unusual" that Subject No. 2 would come across the world to study aircraft maintenance in the United States. Williams said that at the time, he also was working the investigation of Subject No. 1 and he began thinking that he should look to see how many other investigations were being handled in Arizona that involved individuals with Islamic militant viewpoints who also were enrolled in civil aviation colleges or universities. He said that after he did and learned about several others of interest to the FBI, he decided to put his thoughts and recommendations on paper.

Williams explained that he was not focused on flight schools, but instead focused on colleges and universities where individuals could earn degrees in aviation-related subjects and then obtain jobs in the civil aviation industry in this country. He also said that he was not contemplating in the EC that there was a plot to use airplanes as missiles. Rather, he believed that there could be an effort under way to develop expertise about where to put an explosive device on an airplane or how to mechanically alter an airplane in order to cause it to crash. Williams told the OIG that he did not have information of a specific threat or pending attack, which is why he marked the EC's precedence as "routine."

Williams told the OIG that he did not know at the time whether Subject Nos. 3 and 4 discussed in the EC or the African Islamic terrorist organizations were connected to Bin Laden or al Qaeda. Williams said that he was trying to "paint a picture of people associated with radical Islam" who were also associated with aviation. Williams said he wanted FBI Headquarters to look at his EC and answer the question: "Is there something to this, that all of these people were involved in aviation?" He stated that he did not expect an immediate response and believed that it would take at least a couple of months for FBI Headquarters to review the EC, because he knew that resources for this kind of analytical project at FBI Headquarters were limited. In addition, he said that he wanted FBI Headquarters to share his theory with other elements of the Intelligence Community to see if anybody else had any information to corroborate his theory.[71]

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[71] In the summer of 2003, the OIG received new allegations from a former FBI confidential informant whose control agent had been Williams. The former informant alleged that he had informed Williams in October 1996 that he was concerned that a terrorist could use crop duster airplanes as weapons and that one of the subjects of the Phoenix EC and other Middle Easterners were attending flight schools in Arizona. The former informant also said that he believed Williams had written the Phoenix EC because in May 2001 the informant had raised complaints with the Phoenix FBI about how it handled him as an informant and why he was closed as an informant in 1999. The former informant also alleged that a reporter had called Williams in June or July 2001 about the former informant's information concerning Middle Eastern matters.

We reviewed the former informant's allegations and did not find evidence to support them. There is no mention in a May 2001 memorandum that describes the FBI interview of (continued)

Williams stated that he also knew that there were some "inherent legal issues" with the recommendations in the EC because he believed that concerns about racial profiling would have to be addressed. Moreover, he said that he was not aware at the time whether the FBI had the authority to review the visa information of thousands of people applying to civil aviation universities and colleges in the United States, as he had recommended in the EC.

After the Phoenix EC was completed and sent, Williams did not contact anyone at FBI Headquarters or in New York to discuss its contents or check the status of the leads in ACS.

D. FBI Headquarters' handling of the Phoenix EC

Although the EC is dated July 10, the Phoenix Division did not upload the EC into ACS until the afternoon of Friday, July 27, 2001. The Phoenix FBI also mailed the paper copy to FBI Headquarters around July 27.

ACS records show that, because of the case designation listed on the Phoenix EC, the lead for FBI Headquarters was initially routed electronically through the ITOS electronic routing table to a general ITOS lead bucket that was handled by an ITOS administrative unit. The lead was not directly routed to the RFU or the UBLU.[72] An IA in the administrative unit in ITOS was responsible for checking the ITOS general lead bucket regularly and electronically assigning these kinds of leads to the appropriate person within ITOS.

(continued)
the former informant that the former informant claimed he had provided information to Williams about terrorists using planes as weapons or Middle Easterners in flight schools. Williams also told us that the former informant never discussed any concerns about terrorists using airplanes as weapons or concerns about Middle Easterners in flight schools. The former informant's informant file contained no information about reports regarding Middle Easterners and flight schools. In addition, Williams said that he never spoke to the reporter who the former informant said had called Williams, and that he was not prompted to write the Phoenix EC because of a phone call from any such reporter.

[72] At the time, the electronic routing table in ACS for the Counterterrorism Division was set up to automatically route leads associated with cases with the type of case number designated on the Phoenix EC to an administrative unit in ITOS rather than to a particular operational unit.

1. Assignment to the RFU

On the morning of Monday, July 30, 2001, the ITOS IA accessed in ACS the text of the Phoenix EC. ACS shows that on that same day the ITOS IA assigned the lead in ACS to Ellen, an IOS in the RFU who was listed second on the attention line of the EC.

The ITOS IA told the OIG that he did not recall the Phoenix EC or assigning the lead, but that his practice was to review the text of the lead and the person or persons listed on the attention line to determine to whom to assign the lead. The EC indicated that it related to an "IT-Other" matter and these cases fell under the RFU. The ITOS IA said that he sometimes consulted with his unit chief if he was unsure to whom to assign the lead, but he said he did not recall whether he did so in this case.

Ellen told the OIG that she pulled the Phoenix EC up in ACS, printed a copy, and read it.[73] She said that, after reading it, she thought that the EC should be reviewed by the UBLU, not by her unit, because the EC discussed Bin Laden and al Qaeda, which were the responsibility of the UBLU.

Ellen therefore discussed the EC with one of the IOSs who worked in the UBLU, who we call Jane. Ellen said she recalled asking Jane if she should transfer the lead to Jane, and that Jane stated that she did not have time to look at it then. Ellen said that Jane asked if she could get back to Ellen in a week.

Ellen said that she therefore consulted with Jane about a week later. ACS records show that Jane downloaded the Phoenix EC from ACS on August 7, 2001. According to Ellen, she and Jane discussed the tremendous effort that they thought would be needed to implement the recommendations in the EC. Ellen said that they also discussed whether they would be able to implement the recommendations because they believed that the FBI's attorneys in the NSLU would consider it racial profiling to send leads to the field to collect information about Middle Eastern men who happened to be attending schools related to civil aviation.

Ellen said that Jane agreed that Jane should handle the Phoenix EC. Ellen told the OIG that she remembered Jane saying she wanted to do more

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[73] Ellen told the OIG that she never received a hard copy of the Phoenix EC.

research on FBI investigations to determine what other connections might exist between Bin Laden, al Qaeda, and aviation, and then, depending upon the results of that research, perhaps disseminate it. Ellen said that Jane also told her that she also wanted to speak with her supervisor and decide what action to take on the Phoenix EC.

Ellen said that, after talking with Jane, she closed the lead in ACS on August 7, 2001, indicating in ACS that Jane was planning to conduct additional research before proceeding. ACS shows that Ellen wrote in the "disposition" field for the lead that the lead was "covered-consulted with UBLU, no action at this time, will reconvene on this issue." Ellen said that after she and Jane discussed the issue, they agreed to "revisit" the issue later once Jane had done some research and had a better idea of how to proceed. Ellen also said that she closed the lead rather than asking an IA to reassign the lead to Jane because she knew that it would take some time for the necessary research to be done, and that the RFU unit chief – Don– had instructed RFU employees that leads had to be closed in a timely manner.

Ellen told the OIG that she thought that the theory presented in the EC was "interesting," but that she, like Jane, believed that further research needed to be conducted before any action was taken on the Phoenix EC. Ellen also asserted, "It was a theory that certainly needed to be explored more fully before disseminating it to the [Intelligence Community] as fact or not." In addition, Ellen said that she believed that attorneys in the FBI's National Security Law Unit (NSLU) would have had to review the Phoenix EC before any action could be taken on it because the issue of racial profiling was "hot."

When we asked Ellen whether she considered referring the Phoenix EC to the ISD to research and analyze, she stated that the RFU did not have an ISD analyst assigned to it at the time. Ellen acknowledged that it would have been possible for the ISD to assign an IRS analyst to do strategic research regarding the EC, but she believed the EC should first be referred to the UBLU, since the EC's focus was al Qaeda and it was the UBLU's prerogative to decide how to proceed on it.

Ellen told the OIG that she did not recall consulting with her supervisor in the RFU, an SSA who we call "Chris," about how to handle the Phoenix EC, or showing it to him. She said that she might have mentioned it in passing to Chris, but it was common for IOSs to close leads without supervisory input.

Chris was an SSA assigned to the RFU from the summer of 2000 until September 10, 2001, when he left FBI Headquarters. Chris told the OIG that he never saw or discussed the Phoenix EC with anyone prior to September 11.

Don was the unit chief of the RFU at this time. He joined the FBI in 1987 and was assigned to the RFU in May 2001. Don said that he first learned of the Phoenix EC only after the September 11 attacks. He indicated that neither Ellen nor anyone else mentioned the EC to him before September 11. He said that on average he reviewed 30 to 45 ECs a day that were assigned to the RFU, and because of the vast amount of intelligence data that had to be analyzed by the seven IOSs in the RFU, the RFU had to rely on their judgment to accurately prioritize the information. Don stated that if he had seen the Phoenix EC before September 11, he would have discussed its recommendations with his UBL counterpart, then forwarded the EC to the ITOS Section Chief, Michael Rolince, for a decision on the course of action to take on the EC.

2. Assignment to the UBLU

a. Jane's handling of the EC

As noted above, Ellen reassigned the Phoenix EC to Jane, an IOS in the UBLU. In addition, the hard copy version of the EC, which Phoenix had mailed to FBI Headquarters, also was assigned to Jane. According to Jane, on or about July 30, an IA in the RFU delivered the hard copy of the Phoenix EC to Jane. Jane provided the OIG with the copy that she received from the IA, which Jane had initialed to indicate receipt.

Jane told the OIG that she also recalled discussing the EC with Ellen. Jane said that after she read the EC, she told Ellen that she agreed that it made more sense for the UBLU, rather than RFU, to handle it because of the references to Bin Laden.

Jane told the OIG that she did not believe that there was a sufficient "factual predicate" to justify taking any immediate action on the EC, such as disseminating it to the Intelligence Community. Jane asserted that based on what was in the EC she did not believe that Subject No. 1 had a strong connection to Bin Laden. She said that the investigation of Subject No. 1 was opened as an Islamic Army of the Caucuses/Ibn Khattab matter, and, according

to Jane, "Ibn Khattab has never taken operational directions from Usama Bin Laden." She said that, according to the EC, the primary evidence of the connection was that Subject No. 1 was a member of Al-Muhjiroun and had a picture of Bin Laden on his wall. She stated that she confirmed with Ellen that while Al-Muhjiroun verbally supported Bin Laden, the FBI had not developed any evidence that Al-Muhjiroun had provided any operational support to Bin Laden.[74]

In addition, Jane told the OIG that she recalled concluding that the factual predicate was weak because many of the individuals who were listed in the EC as associated with Subject No. 1 were the subjects of only preliminary inquiries, not full investigations. Jane said that based on what she saw in the EC and knew about Bin Laden, she did not see the connection between Bin Laden and Subject No. 1 or the other subjects of the EC. She stated that she did not feel "comfortable at this stage going forward with the theory that we think these individuals from these countries are coming here sent by UBL, when the preponderance of evidence indicates that these people are aligned with Al-Muhajiroun and Ibn Khattab." She said that being associated with Ibn Khattab "did not equate" with being associated with Bin Laden.

Jane said that the fact that the Phoenix EC reported that a large number of Middle Eastern men were training in U.S. aviation-related schools did not strike her as significant because it was well known that Middle Eastern men have historically trained in U.S. flight schools because they are cheaper and better than other flight schools around the world. She suggested that before September 11, even someone of investigative interest training in a U.S. school in an aviation-related field did not necessarily raise a red flag.

Jane said that she told Ellen that she needed to do some research before she took any action on the EC. According to Jane, she initially thought of a handful of steps she wanted to take based on her knowledge of ongoing cases within the FBI. Jane said that she wrote a "to do" list on a yellow post-it note and attached it to her copy of the EC. She said she thought that there were at

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[74] Mark, who had been the case agent in New York on the FBI's investigation of the Al-Muhjiroun, told the OIG that the New York Division had closed its case on Al-Muhjiroun long before September 11 because the FBI was not able to establish that Al-Muhjiron had engaged in terrorist activities or supported terrorist activities.

least four items on the list, but she could not specifically remember all of them.[75] However, she said she recalled that one of the items on the list was to review the FBI's information on Essam Al Ridi, a former personal pilot for Bin Laden who testified for the government in the trials against the persons responsible for bombing the U.S. embassies in East Africa in August 1998, to see if al Qaeda had undertaken any similar initiatives as those discussed in the Phoenix EC.

Because the EC included information about Subject No. 2, who had previously lived and studied in the United States and had ties to suspected terrorists arrested a few weeks prior, Jane said that she immediately thought of an issue being researched by an IRS in an FBI field office. We call the IRS "Lynn."[76] Lynn had been involved with the field office's intelligence investigation of Subject No. 2 when he lived in the area. As noted in the EC, two al-Qaeda operatives were arrested in Bahrain at the end of June 2001 who had been planning an operation to bomb the U.S. embassy and military forces in Saudi Arabia. At the time of their arrest, they were in possession of a passport containing the name of a person believed to be a relative of Subject No. 2.

In June 2001, Jane had asked Lynn to review her field office's case file on Subject No. 2 to try to find connections between Subject No. 2 and his associates in the state where the field office was located and the two al Qaeda operatives arrested in Bahrain. Jane told the OIG that she was familiar with this field office's investigation of Subject No. 2 and several of his associates who were living in the area. She said that she knew that Subject No. 2 and his associates had attended civil aviation school in the United States and were employed by a Saudi airline company, although she did not believe that

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[75] In November 2001, Jane was interviewed about the EC by an OIG Special Agent who conducted a preliminary review regarding the Phoenix EC. Jane said that she gave the EC with the post-it note on it to the OIG Special Agent. The Special Agent confirmed that Jane gave him the EC along with the note, but he was not able to locate the post-it note when he retrieved the original EC several months later.

[76] Lynn had been an IRS with the FBI for approximately two years at the time of the Phoenix EC. She handled all counterterrorism-related analytical work for the FBI field office in which she was employed.

Subject No. 2 was a pilot. She said that she thought that Lynn might be aware of something in what she was researching about Subject No. 2's contacts in the area of the field office that could support the theory in the Phoenix EC.

As a result of the arrest of the two al Qaeda operatives in Bahrain, Jane also was dealing with Williams' supervisor who we call "Bob," and with agents in the Phoenix Division other than Williams on Phoenix's Subject No. 2 investigation, which was closed at the time. She stated that the FBI Phoenix Division had been asked to follow up on matters in the Subject No. 2 investigation that had been left unfinished, such as documents that had been collected from several sources but never read or analyzed. In addition, Jane stated that she had been in contact with the Phoenix Division about locating a source who previously had been married to a woman who was married to a family member of Subject No. 2.

However, Jane told the OIG that she did not have any contact with Williams about the Phoenix EC and that her only contact with Bob about the EC was via e-mail. On August 6, 2001, Jane sent an e-mail to Bob asking if he had any objection to her sending the Phoenix EC to Lynn. Bob replied via e-mail the same day that he did not have any objection.

The next day, Jane sent the Phoenix EC to Lynn. In an e-mail message attached to the EC, Jane stated: "I thought it would be interesting to you considering some of the stuff you were coming up with in [your field office]. Let me know if anything strikes you." Jane told the OIG that she wanted to know if Lynn saw any similar patterns between the associates of Subject No. 2 that she was researching in her area and the individuals discussed in the Phoenix EC. However, Jane did not assign a lead to Lynn, nor did she call Lynn about the Phoenix EC either before or after she e-mailed it to her.

b. Lynn's response

Lynn told the OIG that she received the Phoenix EC and Jane's e-mail, and she read them. Lynn stated that she believed that Jane sent her the EC because Jane was aware of her field office's earlier investigation of Subject No. 2 and several of his associates. Lynn said that in these investigations, the FBI observed some trends, such as that all of the subjects were of Saudi descent, were employed by Saudi airlines, and were involved with aircraft maintenance or had pilots' licenses, and that the Saudi airline company was

paying for their training. Lynn said that the investigation also had revealed that the subjects were calling various gun dealers and gun shops. She said that the FBI personnel involved in the investigation questioned whether the subjects were using Saudi airlines to transport weapons, but that nothing further had developed in the investigations to support this theory and that the field office investigation was closed. According to Lynn, by the time the name of Subject No. 2 resurfaced in June 2001 based on the arrest of the two al Qaeda operatives in Bahrain, he had not been in her area for approximately three years.

Lynn said that, although she did not recall speaking with Jane about the EC, she believed that Jane was passing the EC to her for informational purposes. Lynn said that she was interested in whether there was any information in the EC that would inform the work that she was doing on Subject No. 2 at the time, but that after reading the EC, she concluded that it did not affect her investigation. She said she considered it good information to know and that it was a "piece of the puzzle." She said that based on her work on the matter of Subject No. 2, she was not aware of any information supporting Williams' theory that Middle Easterners were receiving aviation training for the purpose of conducting terrorist activity. She stated that it was "no big secret" that Arab nationals received aviation training in the United States. She said that for these reasons, she did not respond to Jane's e-mail.

c. UBLU

Jane said that, in addition to sending the EC to Lynn, she talked to the SSA with whom she worked in the UBLU who we call Rob, and told him briefly about the EC. Jane told the OIG that she could not recall whether she provided a copy of the EC to him.[77] She said that she explained to Rob that she believed that she should do some research before deciding to act on the EC. According to Jane, Rob concurred with her course of action.

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[77] Jane later informed the OIG that she handed the Phoenix EC to Rob, that he skimmed the synopsis, and that he listened to her summary of the document and proposed course of action.

Rob was Jane's SSA and also the Acting Unit Chief of the UBLU at the time. Rob, an FBI agent since 1990, had been assigned to the UBLU since 1999. He was the Acting Unit Chief of the UBLU from June 28, 2001, until September 10, 2001. He told the OIG that he routinely reviewed dozens of ECs on any given day, and he often relied on the judgment of Jane and other IOSs concerning intelligence decisions.

Rob said that he remembered Jane coming to him in the second week of August 2001 and telling him briefly about the Phoenix EC. He said that he also recalled her saying that she believed some preliminary research needed to be done before proceeding. He said that he did not see a copy of the EC, but based on Jane's description, concurred with her decision to conduct some initial research before taking any other steps. Rob said he did not discuss the Phoenix EC with anyone else.

According to Jane, she intended to address the Phoenix EC as time permitted. However, she said that she believed it would take a significant amount of time to do the research necessary to determine an appropriate response to the EC. She said that she was not able to return to the EC between August 7 and September 11 because of her heavy workload at the time. In addition to the work generated by the al Qaeda operatives arrested in earlier in the summer in Bahrain, she said that other matters at the time were of a higher priority than the Phoenix EC, such as another would-be al Qaeda "bomber" who was arrested in a foreign country, analysis of information received from a number of sources on the brother of a key Bin Laden lieutenant, and several al Qaeda-related threats of imminent attack. She stated that the entire UBLU was flooded with leads and requests concerning Bin Laden and also was handling "dozens" of leads on a daily basis associated with the attack on the *U.S.S. Cole* that had occurred in Yemen in October 2000.

When we asked Jane why she did not refer the Phoenix EC to the ISD for analysis, she said she did not recall ever thinking that she should refer the EC to the analytical unit within the ISD. Jane noted that at the time the Phoenix EC was sent to FBI Headquarters, no IRS was assigned to the UBLU from the ISD. The last IRS assigned to the UBLU had arrived in February 2001, but had transferred in early July 2001 to another unit. The ISD had not replaced her.

Jane, who had been an IRS for approximately six months before becoming an IOS, told the OIG that she had planned to conduct the necessary analysis with respect to the theory presented by Williams because she did not believe there was anyone in the ISD to do this kind of research and analysis. When asked if she could have made a request of the ISD for assistance despite no one being specifically assigned to UBL matters, Jane responded that in other instances where her unit had asked for research from the ISD, it was not able to provide the support requested because it lacked adequate personnel to do so.

Jane said that she did not recall seeing the Phoenix EC again until after September 11.

The two other individuals in the UBLU who were listed on the attention line of the EC – Frank and Matthew – told the OIG that they did not see the Phoenix EC before September 11. ACS records also show that they did not access the Phoenix EC before September 11. ACS records also show that no other FBI Headquarters employees accessed the Phoenix EC before September 11.

E. The New York Division's handling of the EC

The Phoenix EC also was routed by hard copy and through ACS to the FBI's New York Division. Williams told the OIG that he sent the EC to the New York Division because it was the focal point for Bin Laden matters in the FBI. At the time, the New York Division was working several criminal and intelligence cases related to Bin Laden's terrorist activities.

Williams told the OIG that, by sending the EC to the New York office, he was seeking the expertise and knowledge of the office, not simply informing it of his theory. Williams said that he was anticipating an analysis of his theory from those in the FBI with more expertise and experience with Bin Laden matters, including the New York Division.

The "attention" field of the EC contained the names of two New York FBI agents, who we call Jay and Mark, and the lead was designated as "read and clear." As discussed above, within the FBI read and clear leads are considered for informational purposes and do not require any specific action.

Based on the electronic routing table in ACS, in New York the lead was initially routed to the Assistant Special Agent in Charge (ASAC) for the New York FBI's Counterterrorism Program. The ASAC's secretary was responsible for assigning leads routed to the ASAC. On July 30, 2001, she assigned the lead to a New York international terrorism squad based on the case number.

According to witnesses we interviewed in New York, the volume of read and clear leads received each day by the New York office was enormous.[78] Squad secretaries were usually responsible for assigning "read and clear" leads directed to their squads. Leads were assigned to specific agents based on the names listed in the "attention" section of the EC, the case number, or the content of the EC. The Phoenix EC lead, however, was never assigned in ACS to a particular agent. The secretary of the New York international terrorism squad that had been assigned the lead closed the lead in March 2002.[79]

The New York office's hard copy of the Phoenix EC was routed to the international terrorism squad that handled Bin Laden investigations, where it was provided to Jay, the first New York agent listed on the EC. Jay had been a special agent with the FBI since 1976 and had worked on international terrorism matters since 1984. Since 1996, he was assigned to the squad that handled Bin Laden-related investigations, working primarily criminal investigations.[80]

Jay told the OIG that the Phoenix EC was routed to his mail folder by the squad secretary. He said he recalled reading it in August 2001. He said that he did not know Williams and never spoke to him either before or after Williams wrote the EC. Jay said he assumed that Williams listed his name on the EC because he was one of the agents who worked on the Bin Laden squad in New York.

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[78] We were told that in 2003 the squad that handled Bin Laden matters received approximately 3,300 leads.

[79] We were told that "read and clear" leads often were not closed in ACS for several months due to the lack of clerical support.

[80] The Phoenix EC addressed Jay as the SSA of the squad. He was one of two "relief" supervisors who filled in for the SSA when he was not in the office. At the time, the SSA was out of the office on extended medical leave.

Jay told the OIG that he did not believe that Williams' theory was based in fact. He asserted that a "glaring deficiency" was the implication that Bin Laden had a support network in Arizona. He asserted that there had been a terrorist cell that was active in Arizona, but that this was in the 1980s before al Qaeda existed. He said that based on what was written in the EC about Subject No. 1's connections to Bin Laden – that Williams was basing the connection on what Subject No. 1 had said in two interviews – Jay believed that Subject No. 1's connection to Bin Laden was "tenuous, at best." Jay stated that if it had been his responsibility to address the Phoenix EC, he would have "taken issue" with it and would have written back that he believed that the theory and conclusions were "faulty." He added that the FBI was well aware that Bin Laden had individuals working for him with pilot training and that Middle Easterners commonly received flight training in the United States. He said he was not aware of anything that supported the theory espoused in the EC.

Jay said that he reviewed the recommendations and saw that the requested actions in the EC were for FBI Headquarters to address. He said that he believes he may have discussed the EC with some of his colleagues and that they agreed that the recommendations were something for FBI Headquarters to address. Jay told the OIG that he did not contact Williams or anyone else in Phoenix to discuss the EC.

Mark, the other agent listed on the attention line on the Phoenix EC, was assigned to the international terrorism squad that handled cases that were managed by the RFU. Mark told the OIG that he did not see the Phoenix EC until after September 11, 2001. ACS records confirm that he did not access the Phoenix EC until after September 11.

Except for an analyst and an auditor in New York who reviewed the Phoenix EC in connection with searches unrelated to the Phoenix EC, and the secretary who accessed the EC to assign the lead, we found no evidence that anyone else in New York read the Phoenix EC or did anything with regard to it.[81]

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[81] ACS shows that an auditor and an IRS on a squad not related to Bin Laden cases accessed the Phoenix EC during this time period. They both said the EC did not relate to what they were researching, and they did not do anything with it.

III. OIG analysis

This section analyzes the handling of the Phoenix EC by the FBI. We believe, and the FBI has acknowledged, that the Phoenix EC did not receive the sufficient or timely analysis that it deserved, and it was not disseminated, as it should have been, for consideration and input by others in the FBI and the Intelligence Community.

While the FBI analysts who reviewed the EC did not give it timely attention, we do not believe their individual failings were the main source of the problem with the handling of the EC. Rather, the deficiencies in its handling were caused in greater part by critical systemic failings in the way that intelligence information and requests for assistance were handled by the FBI prior to September 11. In this section, we discuss these systemic problems before evaluating the actions of the individual employees who came in contact with the EC.

A. Systemic problems

Before discussing the systemic failings evidenced by the handling of the Phoenix EC, it is important to note what the Phoenix EC was not. It was not an immediate warning about a terrorist plot, and it did not reveal information about the September 11 attacks or those who committed the attacks.[82] The EC itself was worded to convey that Williams was proposing a theory rather than a warning or a threat. Williams designated it as "routine" because he did not have any information of a specific threat or pending attack. He said that he was putting forth "an investigative theory" or "hunch," and he was seeking an analytical product or feedback in response to his theory. He did not expect that to happen immediately.

Yet, even though it did not contain an immediate warning and was marked routine, Williams' information and theory warranted strategic analysis from the FBI, which it did not receive, and timely distribution, which it did not

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[82] In prepared remarks for congressional testimony on May 8, 2002, former ITOS Section Chief Michael Rolince noted that "it should be stressed that none of the individuals identified by Phoenix were connected to the 9/11 attacks, nor did the leads stemming from that EC uncover the impending attacks." (Emphasis in original.)

receive. While we cannot say that better handling of the Phoenix EC would have uncovered the September 11 plot, the EC should have been handled differently.

1. Ineffective system for assigning and managing work

The lead from the Phoenix EC was assigned by an administrative employee directly to an IOS in the RFU, Ellen, who discussed the matter with another IOS in the appropriate unit, Jane. They decided that Jane would handle the Phoenix EC. Thereafter, Ellen closed the lead in ACS and noted that she and Jane would discuss the matter further in the future. Although Jane briefly mentioned the Phoenix EC to her supervisor, the IOSs made independent judgments about what needed to be done to address the requests in the Phoenix EC and who to notify about it. Jane also decided when she would work on the Phoenix EC. We found that neither Ellen's direct supervisor (Chris) nor Jane's supervisor (Rob) ever received or reviewed the Phoenix EC. Nor did any other supervisor in FBI Headquarters. And as of September 11, Jane had not completed any work on the Phoenix EC.

We found that the assignment of the lead from the Phoenix EC, the handling of the Phoenix EC independently by an IOS, and even the closing of the lead did not violate any FBI policies or practices at the time. In instances where IOSs received leads or intelligence information directly, they were not required to seek any supervisory input on the information that they were handling. Witnesses stated that more significant threat information or leads related to important cases usually were discussed with the SSAs, but that this did not occur with every lead or assignment, and it was not required.

For example, Rob , the acting unit chief of the UBLU at the time, told the OIG that he often relied on the judgment of IOSs in how they handled their work. As a result, IOSs regularly handled most intelligence information and other assignments without supervisory input or knowledge.

Much also was left to the IOS's discretion in deciding what was a priority and which projects to focus on. Don, the unit chief of the RFU, said that at the time, managers relied on IOSs to exercise their judgment in how to prioritize their work. The IOSs we interviewed stated that the priorities were determined by the nature of the work. For example, they said they gave a threat of a terrorist attack or an emergency FISA request the highest priority. In addition,

if information was requested by higher level FBI officials or a Section Chief, that assignment was given priority. IOSs explained that, because of the crush of immediate projects, they were operating with a "triage" approach to their workload in which they dealt with crises or problems as they arose and thereafter dealt with routine matters. As with how they handled their leads and other assignments, we found that IOSs consulted with their supervisors about prioritizing their work only when they deemed it necessary.

We believe that although the assigning of the lead and handling of the Phoenix EC was in accord with UBLU and RFU practices at the time, these practices were significantly flawed. Assigning work directly to IOSs with no requirement of supervisory input or review resulted in a lack of accountability for addressing leads and intelligence information. Without supervisory involvement, IOSs were permitted to determine what was a priority, and even when and whether work would be completed. As a result, there often was no check on the decisions being made by IOSs and no way to ensure that work or intelligence that was deemed of a lesser priority – such as the Phoenix EC – was ever addressed. This system was one in which important information could easily "fall through the cracks," not receive timely attention, or not be brought to the attention of those inside and outside the FBI who had a reason and a need to know the information.

The lack of accountability and supervisory involvement was compounded by the fact that the FBI's computer system, ACS, was not set up to ensure that all addressees on an EC were even made aware of the EC. Only individuals assigned leads associated with the EC would be notified electronically of the document's existence. This meant that when the EC and leads were uploaded, the EC would not be seen by a supervisor, even if the supervisor was an addressee on the attention line, unless the supervisor searched ACS for the document. Nor was there any assurance that the persons listed on the attention line of the EC would ever receive notification about it. Since FBI employees did not search ACS on a regular basis for documents that might be addressed to them, they did not learn about leads or other intelligence information assigned to them.

As a result, we found that none of the supervisors listed on the Phoenix EC saw it before September 11. Important judgments were made about how to handle the Phoenix EC – which IOS would address the Phoenix EC, closing the lead instead of reassigning it, sending the EC to only one person for review, not

conducting any research on the recommendations suggested in the EC while other matters were being handled – none of which involved any supervisory input. This, in our view, is not an appropriate system for handling such important information.

The FBI recognized this problem after September 11 and changed the way it handled such information. Rolince told the OIG that once he became aware of the Phoenix EC after September 11 and learned how it had been handled, he instructed that leads in ITOS had to be assigned to supervisors and could not be assigned only to IOSs.

In addition to deficiencies in the supervisory process, we also believe that the FBI's practice and policies regarding closing of leads were faulty. As evidenced by the handling of the Phoenix EC, leads could be closed without any work being done on them, other than reassignment to someone else.

A contributing factor to the ineffective management of the work assignments in ITOS was the FBI practice of rotating supervisors through FBI Headquarters on a relatively short basis. We found that supervisors typically stay in FBI Headquarters for two years or less, and SSA positions and unit chief positions often remain unfilled for months at a time. By contrast, IOSs remain in ITOS on a permanent basis and are therefore relied upon for their expertise and institutional knowledge about counterterrorism programs, intelligence on FBI targets, relationships with other intelligence agencies, and how FBI Headquarters works. As a result, IOSs sometimes manage themselves. While we believe that many IOSs are capable and dedicated FBI employees, the turnover of managers in FBI leaves a gap in IOSs' supervision, in addition to making it difficult for managers to be effective and knowledgeable about their subject areas before they are sent to a new assignment.

2. Lack of adequate strategic analytical capabilities

We believe the Phoenix EC warranted strategic analysis. It never was subjected to any such analysis before September 11. Ellen and Jane agreed that Jane would handle the Phoenix EC, but Jane did not refer it to the entity at the FBI that was assigned to conduct strategic analysis, the ISD. She said she decided not to refer it to the ISD for analysis and instead keep it for herself to work on when she had time. She believed that the ISD did not have sufficient

capability to perform timely analysis. At the time, the FBI had no IRS in the ISD specifically assigned to handle matters involving Bin Laden, despite the importance of that assignment. As we discuss in more detail below, while the handful of analysts who worked in the ISD were supposed to perform strategic analytical functions, most of their time was spent assisting on case-related matters.

This was a significant failing. A critical component of the work of the FBI's Counterterrorism Division is analysis. Although case-related analysis – also called "tactical" or "operational" analysis – is crucial to bringing criminal cases to the point of arrest and prosecution and to determining through intelligence information whether a particular target or group may be planning an imminent terrorist act, strategic analysis is equally important to the FBI's counterterrorism mission. Strategic analysis involves drawing conclusions and predictions about terrorist organizations and likely methods of attack based on all sources of information. It is critical to the FBI's ability to be proactive instead of reactive as well as to set investigative priorities. It is also critical for identifying intelligence gaps in information about a terrorist group or target.

Since September 11, the FBI has acknowledged that it lacked an effective strategic analysis program for international terrorism prior to September 11. In congressional testimony, Director Mueller acknowledged the FBI's analytical capabilities prior to September 11 were "inadequate." He stated that the FBI's analytical capability "[was] not where it should be." Since then, the FBI has focused attention on improving its analytical functions.[83]

Prior to September 11, the FBI's strategic analytical capabilities were extremely limited. The FBI did not regularly prepare analytical products that predicted trends, explained patterns, or identified national security vulnerabilities with respect to international terrorism.[84]

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[83] The OIG is in the process of completing a comprehensive review of FBI's analyst program and it is tentatively scheduled to be completed in September 2004.

[84] A striking example of the FBI's failing in this regard is documented in a September 2002 OIG audit report which found that the FBI had not performed a comprehensive national-level assessment of the threat and risk of terrorist attack, despite having promised Congress that it would do so following a September 1999 General Accounting Office (GAO) report. As of September 11, 2001, the FBI had developed a draft of a report that was (continued)

This lack of strategic analytical capability undoubtedly affected how the Phoenix EC was handled. Instead of being able to send the EC to a unit that had sufficient expertise and resources to assess the theory laid out by Williams, Jane kept it to herself, hoping to find the time to turn to it amid the crush of other duties. She was not able to do so before September 11.

Part of the problem was that, in the past, the FBI did not adequately value or support an analytical program. This problem was aptly described by one CIA official – one of several CIA managers enlisted by the FBI after September 11 to help turn around the FBI's analytical program – as "a lack of a culture of analysis." The FBI was composed predominantly of agents who performed criminal investigative work and who did not appreciate the value of strategic analysis. This was particularly acute in the FBI's Counterterrorism Program. As a result, FBI counterterrorism IOSs, SSAs, and managers had a tendency to rely on their own experience and professional judgment rather than seeking strategic analysis, and the Counterterrorism Program focused on immediate, short-term operational priorities rather than strategic analysis.

Strategic analysis was viewed as a support function rather than its own discipline. IOSs and agents employed IRSs primarily to conduct research and analysis projects in support of on-going investigations or prosecutions. While this research and analysis often involved complex and time-consuming work, such as reviewing information collected as a result of a FISA warrant or establishing the connections between targets in a case based on a review of telephone records, it was normally in furtherance of a specific investigation.

Furthermore, several IRS employees we interviewed told the OIG that IRSs often were used to perform the work that IOSs did not like to do, such as conducting name searches in ACS or performing research on the Internet. A

(continued)
purportedly the threat assessment. The OIG reviewed a draft of the report in May 2002. We concluded that it was not a threat assessment because it did not describe the nature of the terrorist threat, identify critical intelligence requirements, or make recommendations to any level of FBI management. See "A Review of the Federal Bureau of Investigation's Counterterrorism Program: Threat Assessment, Strategic Planning, and Resource Management" (May 2002). In January 2003, the FBI issued an intelligence assessment entitled "The Terrorist Threat to the U.S. Homeland: An FBI Assessment," which responded to the recommendations in our September 2002 audit report.

CIA manager detailed to the FBI told the OIG that IRSs were considered "second class citizens" at the FBI. This view of analysts reduced the ability of the FBI to conduct the strategic analysis that was needed on projects such as the Phoenix EC.

Another example of how the strategic analytical function was subordinate to the operational function in the FBI's Counterterrorism Program is evident in the fact that 5 IRSs were absorbed into an operational unit in late 2000, when there were fewer than 20 IRSs devoted to international terrorism at the time. These IRSs were assigned in late 1998 to the UBLU to conduct research and complete other tasks in support of the investigation and prosecutions stemming from the embassy bombings in East Africa. These were important assignments that needed to be done, but they made it more unlikely that strategic analysis, such as the kind warranted by the Phoenix EC, would be accomplished.

In addition, the primacy of the operational units was further demonstrated by the fact that the judgments and conclusions of IRSs set forth in analytical products could be overruled or blocked from dissemination by the managers in the operational units or the ITOS section chief. Witnesses told the OIG that operational personnel were permitted to prevent dissemination of analytical products. For example, IRSs told the OIG that a proposal for an analytical report that would have discussed signs that al Qaeda was planning a terrorist attack was stopped by a New York Field Office supervisor because of concerns that the information could be subject to discovery in a prosecution.

Witnesses also told the OIG that operational units' ability to override the conclusions of the IRSs was demoralizing to the analytical component. CIA analysts detailed to the FBI after September 11 to revamp its analytical program asserted to the OIG that operational personnel, whose expertise is case-oriented and therefore tactically based, should be involved in checking the facts presented in the analytical product but should not be able to alter or block the dissemination of analytical results.

While there are legitimate tensions between operational and analytical personnel, the FBI had no process before September 11 for addressing conflicts that arose out of this tension.

3. Resources and training for analysts

The FBI's strategic analytical function also was under-resourced. This was demonstrated by the shortage of IRSs and the lack of training offered to them. We interviewed former IRS managers about the resources of the ISD prior to September 11. The FBI acknowledged that the number of IRSs working on counterterrorism matters had dwindled prior to September 11, and that the few remaining IRSs were not sufficient to address the analytical needs of the ISD.

In 1996, the FBI had hired 36 IRSs in an effort to bolster its international terrorism analytical program. According to witnesses, within a year approximately half of the IRSs had left the program. By mid-1999, there were only approximately 15 international terrorism IRSs, and by mid-2000 there were only 10 IRSs devoted to counterterrorism analysis.[85] Former IRS managers confirmed to us that only one IRS was assigned to UBL matters in 2001, but she transferred to another unit in July 2001. Thus, in the summer of 2001 when the Phoenix EC was received, no IRS was assigned to work on Bin Laden matters. Jane pointed to this void as one reason she did not seek analysis of the Phoenix EC.

In addition, we found that training for analysts at the FBI was ad hoc and untimely. While special agents were sent to Quantico to the FBI Training Academy for a 16-week course, IRSs did not receive equivalent training at Quantico or elsewhere. IRSs received mostly on-the-job training until they could attend a CIA or Defense Intelligence Agency course on international terrorism. For some IRSs, this did not occur until they had been working for a year or more. In addition, IRSs told us they had to seek training on their own, and if they changed program areas they also had to find appropriate training in the new subject matter.[86]

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[85] Some IRSs left the FBI, while others transferred to other positions within the FBI. FBI documents show that 10 IRSs became IOSs in ITOS, 8 moved to other positions within the FBI, and 13 left the FBI. In addition, as discussed above five of the IRSs who became IOSs were administratively transferred to the UBLU after working on a task force in support of the embassy bombings case.

[86] While this section of the report primarily focuses on resource and training issues for IRSs, IOSs also were not provided with adequate resources and training.

Counterterrorism IRSs also lacked a clear career path. They usually were supervised and managed by agents, who were not trained about the IRS position, mission, or work product. Moreover, CIA managers detailed to the FBI to improve its strategic analytical capabilities told the OIG that in order for analysts to be taken seriously, they had to hold positions of authority. As an example, they stated that in the CIA one of the Deputy Directors was an analyst.[87] According to another CIA manager, the lack of a career path for IRSs was a clear indication that IRSs were not valued by the FBI.

The result of these deficiencies was a weak and underutilized analytical function, which in our view contributed to the lack of attention that the Phoenix EC received when it was sent to FBI Headquarters.

4. Poor information flow and information sharing

The FBI also has acknowledged that the Phoenix EC contained information that should have been disseminated and reviewed by other parts of the FBI and the Intelligence Community. While the Phoenix EC did not contain information that constituted an imminent threat or warning of a terrorist attack, the FBI should have obtained input from within and outside the FBI to properly analyze Williams' theory. However, before September 11 the Phoenix EC was not disseminated widely within or outside of the FBI.

When Jane received the EC, she decided not to disseminate it immediately. She believed it lacked sufficient factual support to warrant immediate dissemination, and she said she decided to conduct some initial research before deciding whether to invest additional resources on the EC. Because of her other work, she did not begin the research prior to September 11.

Her actions were consistent with the FBI's policies and procedures at the time. As noted above, IOSs were permitted to exercise discretion in handling their assignments, including determining what information to share both within and outside the FBI, without supervisory approval. The FBI provided them no guidance or requirements on what type of information should be shared, either

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[87] Within the Counterintelligence Program, the highest position held by an analyst was Section Chief.

inside or outside the FBI. This left to the discretion of the individual analyst decisions about what to do with intelligence information, such as the Phoenix EC.

We believe exercise of such significant discretion resulted in a failure to share important information such as the Phoenix EC. Fundamental to the effectiveness of an intelligence operation is its ability to collect and disseminate information within and outside the agency. Such information is needed by operational personnel to inform their investigations or other operational goals. Moreover, in the analytical process, the more information that is available about a terrorist organization or a target, the better informed conclusions and predictions about the likely actions of the person or organization. Information should be reviewed, among other things, to determine what would be useful in other FBI investigations, what other personnel or offices within the agency should be provided with the information, what would be useful for other government agencies, what would be useful and appropriate to disseminate to foreign governments, and what can be declassified for use in public alerts.

But information sharing within and outside the FBI's Counterterrorism Program prior to September 11 was piecemeal and ad hoc rather than systematic. Several of the CIA managers detailed to the FBI told the OIG that there was no "information flow" within the FBI. The FBI's process for disseminating information was to route information primarily to IOSs, who then used their own judgment and experience to decide what needed to be disseminated and to whom. As discussed above, IOSs were operating with a "triage" approach to their workload. They had to identify what information was the most significant and deal with the crises or problems as they arose. As a result, information that did not demand immediate attention or did not relate to a crisis took significant time to be addressed, if it was addressed at all.

The CIA managers we interviewed asserted that an intelligence agency must set priorities to identify what its information needs and intelligence gaps are. They said that once priorities and intelligence gaps are identified, decisions can be made about what information should be collected and who should receive the information. They explained that these decisions should then be communicated throughout the agency as "requirements."

Several of the CIA managers also noted that the FBI lacked any priorities or requirements for the dissemination of information once it was collected. For example, there was no guidance concerning what types of information were required to be disseminated or included in reports to other intelligence agencies. Moreover, there were no requirements that certain types of information be routed to analysts or that analysts be copied on particular kinds of communications. IOSs simply shared or disseminated the information they believed needed to be shared based primarily on their prior experience.[88]

IOSs we interviewed told the OIG that they spent a majority of their time preparing documentation for requests for FISA warrants. They also were responsible for providing advice and assistance to the field offices in connection with ongoing investigations and with responding to threats of terrorist acts. They also had to obtain resources to support investigations, such as arranging for translators or preparing documentation for re-allocation of money. They needed to respond to requests to check telephone numbers, names, and other identifying information about targets of investigations in FBI and CIA databases. While the IOSs acknowledged that collection and dissemination of intelligence information was one of their responsibilities, they stated that as a job function it was not a priority before September 11.

Several IOSs stated that it was impossible for IOSs to be aware of and disseminate every piece of information generated by every lead because of the demands of the other responsibilities of their jobs. As a result, they said that they had to focus on the most significant information that was generated from important cases or credible threats. Jane, other IOSs, and special agents told us that the type of intelligence information that received immediate attention was that generated from explicit threats of an attack or other terrorist act, information that a terrorist who was in custody was being brought to the United States, or intelligence intercepts by another agency that led to a name and phone number in the United States of a target. Other information was handled if there was time.

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[88] We also discuss the FBI's lack of policies and procedures for information sharing in our December 2003 OIG audit report, "The Federal Bureau of Investigation's Efforts to Improve the sharing of Intelligence and Other Information" (December 2003) at 19-20.

By contrast, according to the CIA personnel, the dissemination of intelligence information requires full-time personnel trained solely for that purpose. In the CIA, dissemination of intelligence information is handled by "reports officers" who are professional employees trained in analysis and information collection and dissemination.

It also was clear in our review of the Phoenix EC that the FBI's procedures for disseminating information internally were cumbersome. At the FBI, many layers of review were required to distribute an EC to multiple field offices. Disseminating an EC to all FBI field offices required approval from several supervisors and managers, including the FBI Director. Several witnesses stated that the review and approval process normally took several weeks to complete. The CIA employees detailed to the FBI to improve the analytical program who we interviewed told the OIG that they found the process for completing an EC was "difficult" and "hard."

We believe that the Phoenix EC should have been shared with the Intelligence Community or parts of the Intelligence Community for their input and analysis. While Williams had advanced only a theory, and there needed to be more analysis of the recommendations before they were adopted, the EC should have been presented to others in the FBI and the Intelligence Community for their information and analyses. The fact that it was not disseminated reflected the longstanding problem within the FBI of information sharing being ad hoc and piecemeal. Rather than relying on the judgment of IOSs about what information should be disseminated as they juggle their other job duties, the FBI should have a system in place to guide, identify, and prioritize the kinds of information that need to be shared.

5. General complaints about the difficulties of working in ITOS

We also heard consistently from witnesses in ITOS that working there before September 11 was extremely chaotic and difficult. They complained that all aspects of their jobs – from putting FISA packages together to disseminating intelligence to sending out ECs to the field – were hampered by the lack of resources and poor technology.

IOSs, agents, and managers uniformly told the OIG that IOSs did not have sufficient time to handle the workload in ITOS, and that because of the lack of resources in ITOS and the demands of operational matters in the

section, they worked extremely long hours on a regular basis, including nights and weekends. They described being overwhelmed with work, including intelligence information that needed to be disseminated. For example, they said that hundreds of leads could be generated by any one case. They stated that the demands of a particular case or a particular threat sometimes consumed all of their time and attention for several days or even weeks. As previously discussed, they were operating with a "triage" approach to their workload in which they dealt with crises or priority problems as they arose. We found that as a result, issues that they considered to be non-priority matters, such as the Phoenix EC, often were placed on the backburner.

FBI and CIA witnesses also uniformly complained that the FBI's computer system – ACS – impeded the flow of information. As we have discussed in several other OIG reports, ACS is a very cumbersome and non-user-friendly system that discourages its use.[89] To disseminate information within the FBI was not simply a matter of forwarding an electronic document in a point and click e-mail environment. Rather, an IOS would have to prepare an EC, which required accessing several different screens in ACS to complete and then upload the EC.[90] In addition, witnesses complained that ACS especially hampered the flow of information because it was not a system designed to "push" information out to the user. Instead, the user had to know that information existed in order to find it. As discussed above, this resulted in the Phoenix EC not being reviewed by the appropriate individuals, even when their names were on the attention line.

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[89] See, e.g., OIG reports entitled, "The Federal Bureau of Investigation's Implementation of Information Technology Recommendations," (September 2003); "FBI's Management of Information Technology Investments" (December 2002); "An Investigation of the Belated Production of Documents in the Oklahoma City Bombing Case" (March 2002); and "The Handling of FBI Intelligence Information Related to the Justice Department's Campaign Finance Investigation" (July 1999).

[90] Also, as stated above, ECs that were addressed to all field offices required several layers of management approval, which also slowed down the process.

B. Individual performance

We now turn to the actions of the individuals who were involved with the Phoenix EC. While the systemic problems hampered FBI employees in handling information such as the Phoenix EC, and explained to some extent the reasons that FBI employees did not adequately respond to it, these systemic problems do not explain all the deficiencies we found in the handling of the Phoenix EC. While we do not believe that anyone involved with the Phoenix EC at FBI Headquarters committed misconduct, we believe that some of them made errors in judgment with respect to some of their actions on the Phoenix EC.

1. Kenneth Williams

First, we believe that Williams should be commended for his initiative and for his attempts to apply broad analytical thinking to his casework. He prepared the Phoenix EC based on his experience, intuition, and expertise, and he sought assistance through the proper channels at FBI Headquarters in pursuing his theory. It was FBI Headquarters' responsibility – not a field office's responsibility – to decide what strategic analysis was needed to address the issues Williams raised and to ensure that appropriate attention was directed to the analysis of those issues. Williams deserves praise for, in the midst of handling cases in the field, discerning a pattern that he thought warranted review and seeking to bring that to the attention of others in the FBI.

2. FBI Headquarters

a. Jane

Jane's decision not to refer the Phoenix EC to the ISD and instead to conduct the necessary research herself did not violate any FBI policies and procedures at the time. Leads could be assigned and handled without supervisory input, and much was left to IOSs' discretion and judgment about how assignments were handled and prioritized.

However, we question Jane's decision not to refer the Phoenix EC to the ISD for analysis. While the FBI's strategic analytical capabilities were extremely limited, as we have described above in detail, and no IRS was specifically assigned to Bin Laden matters, Jane could have, and should have, referred the Phoenix EC to the ISD for analysis. By all accounts, Jane was

hard working and conscientious. But the press of other work prevented her from addressing the Phoenix EC sufficiently. While she said that she did not think that the ISD could do what was necessary to analyze the Phoenix EC because no IRS was specifically assigned to Bin Laden matters, she could have raised the problem to her supervisor's attention in an attempt to have resources assigned to analyze the Phoenix EC. Instead, she kept the Phoenix EC to herself, hoping to get to it when time allowed. But she did not have time for it. We believe that, even if she intended to conduct research on it when time permitted, she should have provided it to members of the Intelligence Community for their input on the theories and recommendations it advanced.

b. Ellen

Ellen recognized that the Phoenix EC pertained more to the UBLU than the RFU, and she appropriately discussed it with Jane and had the matter reassigned to her. She also noted in the disposition field of ACS how the lead was being handled. Ellen closed the lead, but rather than closing the lead, she should have reassigned the lead to Jane. While this was not inconsistent with how leads were handled in ITOS, given the pressure to close leads in the system, it misrepresented the status of the lead since the necessary research had not yet been completed.

c. Rob

We believe that Jane's supervisor – Rob – should have recognized that the requests in the Phoenix EC were not typical requests for operational support in the field and should have directed the matter to the ISD. Although we recognize that the FBI left much to the discretion and judgment of IOSs about how they handled their work, it was Rob's responsibility as a supervisor to ensure that Jane was handling requests appropriately. Jane briefly mentioned the Phoenix EC to Rob, but said he did not review it, and we do not believe he sought to ensure that it received adequate attention. We believe that Rob should have been more actively involved in Jane's handling of the Phoenix EC. If he had decided that resources did not exist to address the EC for several months, we believe that he should have brought the matter to the attention of his section chief.

3. Lynn

Jane sent the EC to Lynn, the IRS who works counterterrorism matters in a field office that had had an investigation of Subject No. 2, with a note that read, "I thought it would be interesting to you considering some of the stuff you were coming up with in [your field office]. Let me know if anything strikes you." Jane did not call Lynn to discuss the Phoenix EC prior to sending Lynn the e-mail, and Lynn was not assigned a lead with respect to the Phoenix EC. Lynn read the Phoenix EC, but did not respond to Jane's e-mail, and Jane did not otherwise contact her about the Phoenix EC.

As discussed above, Lynn had several years earlier worked on an investigation in which Subject No. 2 had been central, and Subject No. 2's name had resurfaced in June of 2001 when two individuals were detained in Bahrain who admitted to being al Qaeda operatives and possessed a passport containing the same last name as Subject No. 2 and a previous address of Subject No. 2. Lynn told the OIG that after Subject No. 2's name resurfaced, at the request of Jane she researched their associates from when they had lived nearby. Lynn told the OIG that she believed Jane had sent her the Phoenix EC because Subject No. 2 was mentioned in the EC. Lynn explained that because the information in the EC about Subject No. 2 did not impact what she was working on and because she was not aware of any information that supported Williams' theory, she did not respond to the e-mail.

Lynn was not required to respond to the e-mail by any formal FBI policy. Her actions were consistent with others in the FBI, who did not address an issue unless a lead was assigned to them. But we believe that Jane's request for Lynn to let her know if anything struck her warranted some response, even if the response was that Lynn had nothing to support the theory espoused in the Phoenix EC. Instead, Lynn did nothing in response to the e-mail. A response from Lynn may have caused Jane to take some other step, to seek further input from someone else, or to alert Phoenix of the status. Instead, Lynn did not communicate with Jane, and the Phoenix EC languished.

4. Jay

Jay, an agent on the Bin Laden squad in the FBI's New York Field Office, received and read the Phoenix EC. He told the OIG that he was not aware of any information that supported the theory in the EC, and he therefore

did not respond to it, either in writing or by contacting anyone in the Phoenix office. He also stated that he would have "taken issue" with the conclusions if he had responded. Jay was not required to respond to the Phoenix EC, and he did not violate any FBI policies and procedures by not responding.

Yet, although Jay was not required to respond to the lead set for the New York Field Office in the Phoenix EC, Williams had asked for analysis and comments on his proposal in the text of the EC. Since Jay told us he felt strongly that the theory in the Phoenix EC was not supported by the facts, we believe he should have contacted Williams or someone in FBI Headquarters to discuss the EC to provide his view, given the expertise of the New York office on issues involving Bin Laden. But given the disorganization and convoluted way that leads were assigned, and the prevailing practice not to respond to leads that were not specifically assigned to an agent, it is not surprising that Jay did not respond.

5. FBI management

Finally, we believe it important to state that the failings in this case go well beyond any failings of those individuals who came in contact with the Phoenix EC. In our view, the failings were caused in much larger part by the FBI's inadequate and inefficient system for analyzing intelligence information, and the lack of attention paid by many levels of FBI managers to strategic analysis. This was the responsibility of many FBI managers and employees, from the top down, over many years. We believe that the FBI's lack of focus on strategic analysis and its failure to provide sufficient resources and priority to analysis were problems attributable to the FBI and many FBI senior managers. While some of the individuals who handled the Phoenix EC did not do all they should have to address it in a timely way, the larger and more important failure was the way the FBI handled intelligence analysis for many years before the September 11 attacks.

C. Other pieces of intelligence concerning airplanes as weapons

We also reviewed allegations that the FBI had other pieces of intelligence information prior to September 11 that indicated connections between persons of interest to the FBI and airplanes or flight schools.

The FBI provided to the OIG documents relating to possible terrorists with connections to airplanes and flight schools that the FBI gathered in response to requests from the Joint Inquiry Committee Staff. The FBI conducted searches in its computer systems for references to "flight schools," "airplanes," "hijackings" and other related terms in an attempt to collect information that the Joint Inquiry Committee Staff had indicated it was interested in reviewing but had not specifically requested. The FBI collected the documents retrieved in its electronic searches and provided them to the Joint Inquiry Committee Staff and also to the OIG.

We reviewed the information provided by the FBI that referenced a connection between airplanes or flight schools and persons of interest to the FBI. The information was from as early as 1983, although most of it was from 1998 and 1999. Below we briefly describe four of the pieces of information that are representative of the kinds of information contained in FBI files about airplanes and flight schools at the time the Phoenix EC was received at FBI Headquarters:

- The FBI received an intelligence report in mid-1999 stating that the leadership of a terrorist organization other than Al Qaeda had met and planned to use students in the United States to gather intelligence on infrastructure facilities and public places frequented by Jews. It was also reported that students also would be selected to participate in terrorist training camps and would be encouraged to attempt to obtain private pilot licenses. The intelligence report noted that it was unclear why the students would be asked to obtain pilot licenses. In addition, it was reported that these students would be instructed to master at least two or more different aircraft. It was reported further that the leadership of the terrorist organization viewed this requirement as being "particularly important" and were believed to have approved an open-ended amount of funding to ensure its success.[91]
- In August 1998, an intelligence agency advised the FBI's New York Division of an alleged plan by unidentified Arabs to fly an explosive

[91] The FBI later said that in 2002, in connection with the JICI Review, it researched this issue and concluded that the information reported was likely a fabrication.

laden aircraft from Libya into the World Trade Center. The New York Division sent out leads in an attempt to obtain more information about the source of the reporting.

- On May 18, 1998, a Special Agent on the FBI's Oklahoma City Division's counterterrorism squad prepared an EC documenting his contact with an agent from that Division's surveillance squad, who also was the Division's chief pilot. In the EC, the agent noted that the Division pilot had observed "large numbers of Middle Eastern males receiving flight training at Oklahoma airports in recent months." The agent also reported that the pilot speculated that light planes would be an ideal means of spreading chemical or biological agents.

- In January 1995, Philippine authorities responded to a small fire and several explosions in an apartment in Manila. Inside the apartment, authorities discovered bomb-making equipment and terrorist literature. The resulting investigation revealed a plot to place explosive devices in 12 American passenger aircraft. As a result of the FBI's investigation into this matter, Abdul Murad, Wali Shah, and Ramzi Yousef were subsequently indicted and convicted in the United States for their involvement in the conspiracy. Yousef later was convicted on November 13, 1997, for his involvement in the bombing of the World Trade Center on February 23, 1993.

  During investigative interviews, Murad described general conversations with Yousef in which they discussed the potential use of aircraft to commit terrorist acts. According to Murad, he discussed with Yousef the ease with which a pilot could conduct a suicide attack by crashing an explosive-laden aircraft into a building. Murad mentioned CIA Headquarters as a potential target. Murad contended in investigative interviews that there was no specific planning in relation to any of these acts. Murad also described other general conversations with Yousef concerning potential non-aircraft related terrorist acts, such as bombing a nuclear facility, utilizing poison gas, and bombing the World Trade Center a second time.

As discussed above, the FBI conducted little strategic analysis before September 11, and it never attempted to connect any of these disparate pieces of information. For this reason, these pieces of information and all of the other

information in the FBI's possession that might have been used to analyze the use of airplanes and civil aviation for terrorist purposes was never considered systematically or analytically.

D. Conclusion

In sum, our examination of the FBI's handling of the Phoenix EC found that the individuals who handled it did not violate FBI policies and practices at the time, but they did not do all they could have, and should have, to respond to it or the recommendations in it. They should have sought input from others in the FBI, assured that the EC received the necessary analysis, and also sought input from the Intelligence Community about the theories and suggestions contained in it.

But we believe that their actions were not surprising, given that the policies and practices under which they operated were extremely flawed. We found that IOSs were not properly managed and that supervisors should have been more actively involved in the work assigned to IOSs. In addition, as an institution, the FBI was focused on its operational priorities at the expense of conducting strategic analysis. Furthermore, the FBI lacked a systematic approach to information sharing and lacked adequate tools to facilitate such information sharing both within and outside the FBI. As a result of these systemic failures, the FBI did not give the Phoenix EC the consideration that it deserved.

We cannot know for certain what the FBI would have concluded prior to September 11 if the FBI had applied strategic analysis to the theory posed by the Phoenix EC or what information may have been uncovered in support of the theory if the Phoenix EC had been shared with the Intelligence Community or within the FBI. We also cannot know what role, if any, the pieces of other information described above would have played in the analysis of this question. What we do know is that the FBI was not adequately analyzing information for the purpose of drawing conclusions and making predictions. This was a significant intelligence failure, which hindered the chances of the FBI being able to detect and prevent the September 11 attacks.

CHAPTER FOUR
THE FBI'S INVESTIGATION OF ZACARIAS MOUSSAOUI

I. Introduction

This chapter examines the FBI's investigation of Zacarias Moussaoui. In August 2001, Moussaoui enrolled in flight training lessons at a school in Minneapolis, Minnesota. On August 15, 2001, the flight school reported its suspicions about Moussaoui to the FBI, including that he only wanted to learn how to take off and land the airplane, that he had no background in aviation, and that he had paid in cash for the course. The FBI interviewed Moussaoui's flight instructor, his roommate, and then Moussaoui. The INS and the FBI detained Moussaoui for a violation of his immigration status and seized his belongings, including a computer and personal papers.

The Minneapolis FBI opened an investigation on Moussaoui, believing that he was seeking flight training to commit a terrorist act. Over the next several weeks, the Minneapolis FBI and FBI Headquarters had many discussions – and disputes – about the investigation. Minneapolis wanted to obtain a warrant to search Moussaoui's computer and other belongings that were seized at the time of Moussaoui's arrest, either a criminal warrant or Foreign Intelligence Surveillance Act (FISA) warrant. The Minnesota FBI and FBI Headquarters differed as to whether a warrant could be obtained and what the evidence in the Moussaoui case suggested. FBI Headquarters did not believe sufficient grounds existed for a criminal warrant, and it also concluded that a FISA warrant could not be obtained because it believed Moussaoui could not be connected to a foreign power as required under FISA. The Minneapolis FBI disagreed and became increasingly frustrated with the responses and guidance it was receiving from FBI Headquarters.

In late August 2001, after FBI Headquarters concluded that it could not obtain a FISA warrant, the Minneapolis FBI began plans to deport Moussaoui to France, which had issued Moussaoui's passport. They planned to ask the French authorities to search his belongings if he was deported to France. However, the September 11 terrorist attacks occurred while the FBI was in the process of finalizing the deportation plans. On September 11, after the attacks, the FBI obtained a criminal warrant to search Moussaoui's possessions. On

December 11, 2001, Moussaoui was charged in an indictment alleging that he was a co-conspirator in the September 11 attacks. He currently is awaiting trial.

On May 21, 2002, Coleen Rowley, the Minneapolis FBI's Chief Division Counsel (CDC), sent a letter to FBI Director Mueller in which she criticized FBI Headquarters for the way it had handled the Moussaoui case. Among other things, her letter disputed the way the FBI was describing its Moussaoui investigation, and she asserted that FBI Headquarters had prevented the Minneapolis FBI from seeking a criminal search warrant. In addition, she alleged that FBI Headquarters inappropriately failed to seek a FISA warrant even though probable cause for the warrant was "clear." She also alleged that FBI Headquarters had intentionally raised "roadblocks" and "undermined" the Minneapolis FBI's "desperate" efforts to obtain a FISA warrant. She added that the Phoenix EC had not been provided to the Minneapolis FBI, and that the Minneapolis FBI's assessment of Moussaoui as a potential threat had not been shared with other intelligence and law enforcement authorities.

Upon receipt of Rowley's letter, Director Mueller referred it to the OIG and asked the OIG to conduct a review of the issues raised in the letter, the Phoenix EC, and other matters related to the FBI's handling of intelligence information that was potentially related to the September 11 attacks.

In this chapter, we describe in detail the facts regarding the FBI's investigation of Moussaoui and the interactions between the Minneapolis FBI and FBI Headquarters on the request to obtain a warrant to search Moussaoui's belongings.[92] We then provide our analysis of these actions. Our analysis discusses systemic problems that this case revealed, and it also assesses the

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[92] While there are some notes and e-mails relating to the conversations that took place between FBI Headquarters and the Minneapolis FBI, and within FBI Headquarters, about the Moussaoui investigation, many conversations were not documented. Witnesses could not recall the exact content of some of the conversations, the number of conversations, whether specific topics were discussed, or the dates of conversations. The following narrative is our best reconstruction of those conversations and events, when they occurred, and what was said, based on the documentary evidence and the recollections of the participants.

performance of the FBI offices and employees who were involved in the Moussaoui investigation.

We show a timeline of the FBI's investigation of Moussaoui on the next page of the report.

II. Statement of facts related to the FBI's Moussaoui investigation

A. Moussaoui's background

Zacarias Moussaoui was born in France on May 30, 1968, and is of Moroccan descent. Prior to 2001, he lived in the United Kingdom. On February 23, 2001, he legally entered the United States in Chicago, Illinois, using a French passport. He entered under the Visa Waiver Program, which allows citizens of 27 countries, including France, to enter the United States without a visa for stays of up to 90 days.[93] Moussaoui's entry was therefore valid until May 22, 2001.

In late February 2001 Moussaoui enrolled in a beginner pilot course at the Airman Flight School in Norman, Oklahoma. He did not complete the training and stopped taking lessons there in late May 2001. However, he remained in the United States after dropping out of the course and overstayed his allowed length of stay.

On May 23, 2001, Moussaoui e-mailed the Pan Am International Flight Academy, a private aviation school based in Miami, Florida, which had several campuses around the country. On August 9, 2001, Moussaoui enrolled in a flight simulator training course at a Pan Am facility near Minneapolis, Minnesota. Pan Am's Minneapolis facility used flight simulators only, and the training there usually consisted of initial training for newly hired airline pilots or refresher training for active pilots. Moussaoui's flight simulator course was part of a comprehensive training program designed to provide instruction to licensed pilots on how to fly commercial jets.

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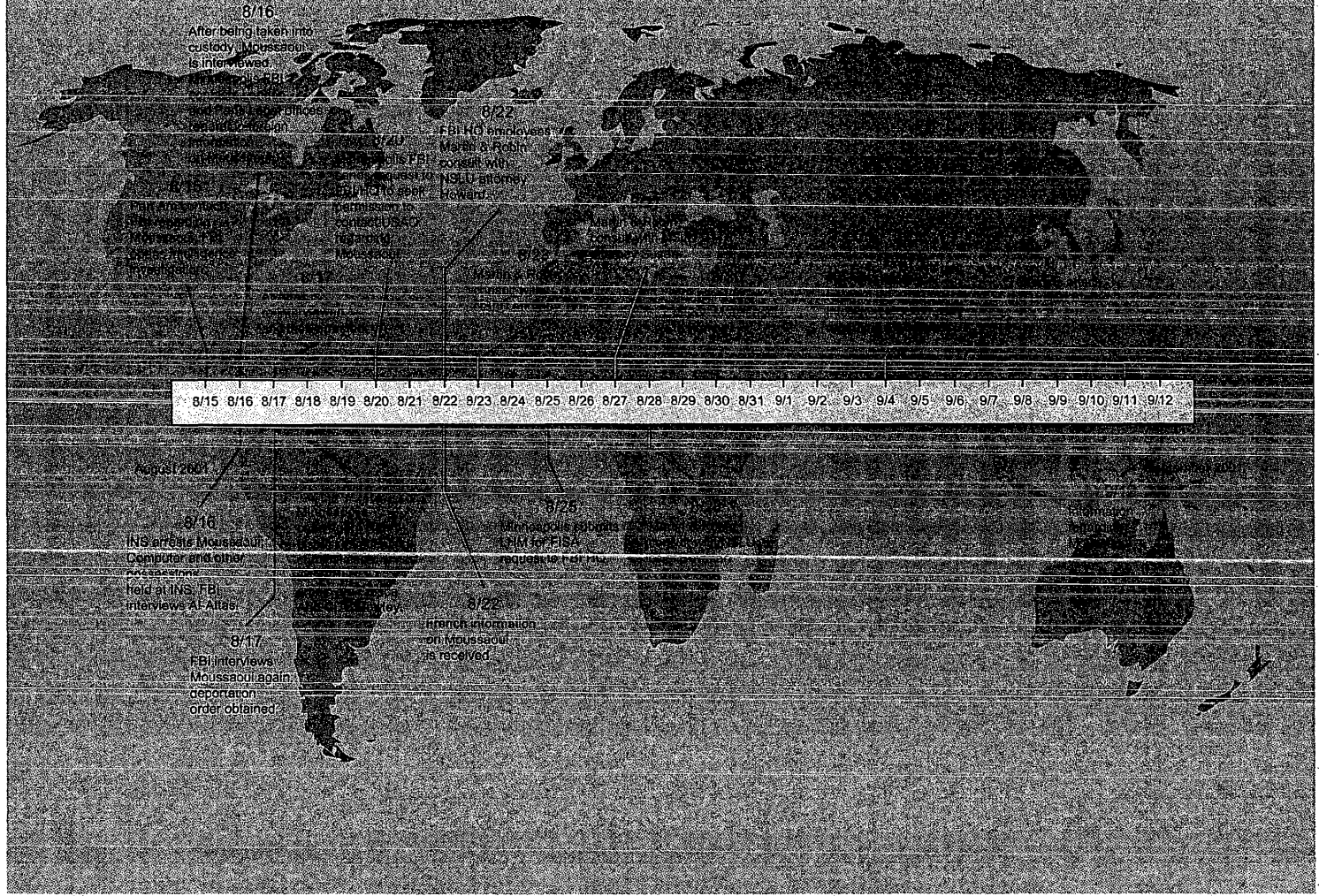
[93] For a description of the Visa Waiver Program, see the OIG report entitled "Follow-up Report on the Visa Waiver Program" (December 2001).

The FBI's Moussaoui Investigation



B. The FBI receives information about Moussaoui

Moussaoui had completed two days of classroom instruction and one flight simulator training session to fly a 747-400 airplane (out of a scheduled four or five sessions) when a manager at the Minneapolis Pan Am flight school contacted the FBI about him. On August 15, 2001, the Pan Am manager called the FBI's Minneapolis Field Office to report that he and his co-workers were training a student, Moussaoui, who they considered suspicious.

According to the Pan Am manager, they considered it odd that Moussaoui said that all he wanted to learn was how to take off and land the plane, giving the reason that it was "an ego boosting thing."[94] In addition, the FBI learned that Moussaoui had no background in aviation and did not have a private pilot's license.[95] It was also unusual that Moussaoui had paid $8,000 – $9,000 in cash for the course. The Pan Am manager reported that Moussaoui appeared to be of Middle Eastern descent and that he had said he grew up in France. The manager said that Moussaoui had completed two days of classroom instruction and was scheduled for four or five sessions in the flight simulator.

The FBI agent who took the telephone call was assigned to the Minneapolis FBI's international and domestic terrorism squad. Immediately following the telephone call, the agent discussed the call with the Acting Supervisory Special Agent (SSA) on the Minneapolis FBI's international and domestic terrorism squad, who we call "Gary," and another agent on the squad who handled international terrorism investigations. We call this agent "Henry."

Gary had become the Acting SSA of the terrorism squad in late July 2001. Prior to being named the acting supervisor, during his five years as an FBI special agent Gary had worked for two years on bank robberies and other

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[94] Media reports later incorrectly reported that Moussaoui had stated that he did *not* want to learn to take off or land a plane. In fact, according to the FBI, the Pan Am manager reported that Moussaoui *only* wanted to learn to take off and land the plane.

[95] Although Pan Am's typical students were commercial pilots receiving initial or refresher training, this was not a prerequisite to taking the training course.

violent crime investigations, two years in the unit responsible for investigating fugitives, and one year as the coordinator of the FBI's Joint Terrorism Task Force (JTTF) for the Minneapolis Field Office.[96] Gary also had served as the relief supervisor for the international and domestic terrorism squad. However, he had no field experience in terrorism matters and no experience in working with FISA.

Henry had joined the FBI as a special agent in January 1999 and had been assigned to work on international terrorism matters since his arrival at the Minneapolis office in the spring of 1999. In August 2001, Henry and two other agents on the squad handled international terrorism and foreign counterintelligence investigations. By virtue of his assignment on the counterterrorism squad, Henry also worked on the local JTTF. Prior to joining the FBI, Henry served as a naval intelligence officer for almost ten years. In the Navy, he specialized in aviation-related intelligence issues, including a detail to the Canadian Navy and Air Force, and he was also an intelligence officer on staff at the navy fighter weapon school commonly referred to as "Top Gun." Henry said that he had a private pilot's license and that he flew for the FBI as a collateral duty. Henry described himself as having a "working knowledge" of aviation.

When Gary was named the Acting SSA of the squad in late July 2001, he was assigned to report to one of two ASACs in the Minneapolis Field Office who we call "Roy." On August 3, 2001, Roy was named the Acting SAC of the office and remained in that position until December 2001. Roy had no previous experience in terrorism matters. Gary continued to report directly to Roy even after he was named Acting SAC.

In July 2001, an SSA who we call "Charles" became an ASAC in the Minneapolis FBI office. For three years, he had been the supervisor of the Minneapolis international and domestic terrorism squad. Prior to becoming the supervisor, Charles had been an SSA at FBI Headquarters in the domestic terrorism section, and he had worked both foreign counterintelligence and

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[96] JTTFs combine investigators from the FBI and various federal, state, and local agencies in FBI field offices throughout the country to combat terrorism.

international terrorism matters in the Los Angeles Field Office for six years before his assignment to FBI Headquarters.

When Charles became an ASAC in Minneapolis in July 2001, he was no longer assigned to oversee the counterterrorism programs; that responsibility was given to Roy. According to Charles, this was done so that Charles would be seen as an ASAC rather than as the supervisor of the office's terrorism programs. When Roy became the Acting SAC, he maintained responsibility for the counterterrorism and foreign counterintelligence programs. In August 2001, when the Moussaoui matter was reported to the Minneapolis office, Charles was at a management training class at the FBI Academy in Quantico, Virginia.

C. The Minneapolis FBI's investigation

1. The Minneapolis FBI opens an intelligence investigation

Henry told the OIG that within a half hour of receiving the telephone call from the Pan Am manager, the Minneapolis FBI filled out the paperwork to open a full field intelligence investigation of Moussaoui. According to Henry, the case was opened as an intelligence matter and not a criminal matter because, based on the telephone call, the FBI did not have information indicating criminal predication, which Henry said in this case would have been "something in furtherance of terrorism." Henry said that, as an initial matter, the case was a "classic" intelligence investigation.

Gary assigned the case to Henry and not the agent who had taken the call from Pan Am, because Henry had international terrorism experience and the other agent did not. Henry told the OIG that based on his own knowledge of aviation, he was concerned about Moussaoui. He said he questioned whether it was normal for a person with no previous experience in aviation to be training to fly a 747-400 commercial airplane. In addition, Moussaoui's lack of aviation experience made Henry suspicious, because Henry knew that the 747-400 airplane had become very automated since the 1970s, could be flown by as little as two people, and had user-friendly computer screens rather than the many dials and gauges that were in the earlier versions of the airplane. Henry said that because of these suspicions, he asked the agent who had initially taken the call to call the Pan Am manager back and ask some follow-up questions, such as how automated a 747-400 airplane was.

2. Initial checks for information

Henry also ran name searches in ACS and learned that the name "Moussaoui" was predominantly Lebanese. Henry did not find any information in ACS about Zacarias Moussaoui. Henry learned that the last name "Moussaoui," which did appear in ACS records in several places, was most often attached to individuals from Lebanon and the terrorist organization Hizbollah.

Henry contacted an SSA in FBI Headquarters who he knew and who we call "Jack." He worked in the unit in ITOS that handled cases dealing with Hizbollah. In addition, Gary notified Jack that the Minneapolis FBI had opened a full field intelligence investigation on Moussaoui.

Henry obtained from Pan Am Moussaoui's passport information and learned that Moussaoui had entered the U.S. on a French passport from London, England. Henry sent an e-mail on August 15 to the FBI's Paris Legat requesting any available information on Moussaoui from the French authorities. Henry also requested similar information from the FBI's London Legat.

Also on August 15, at the request of the FBI an INS agent assigned to the Minneapolis JTTF ascertained from INS records that Moussaoui had stayed beyond the 90-day time limit allowed by his entry into the United States under the Visa Waiver Program. The INS agent reported to Henry that Moussaoui therefore was subject to arrest on immigration charges for overstaying his permitted time of entry.

3. The investigation continues

On August 16, Henry and two INS agents who worked on the JTTF began conducting interviews and collecting information about Moussaoui. The FBI interviewed Moussaoui's flight instructor at Pan Am, an experienced pilot and flight instructor for several years. He characterized Moussaoui as unlike any other student with whom he had ever worked. He told the agents that Moussaoui seemed to have a genuine interest in aviation but Moussaoui had no background in any type of sophisticated aircraft systems and had only approximately 50 hours of flight training in light civil aircraft that did not resemble a 747-400 plane. The agents also learned that Moussaoui had stated that he was attending flight school to go on a "joy ride" and that he claimed

that he would "love" to fly a simulated flight from London's Heathrow Airport to New York's John F. Kennedy Airport in one of his scheduled simulator sessions.

According to the flight instructor, Moussaoui also showed a particular interest in the "mode control panel" of the flight simulator, which is the machinery that enables computerized flying. Moussaoui had demonstrated that he already knew how to use the mode control panel during the one simulator session that he had completed. Henry told the OIG that he found this information ominous because of Moussaoui's statement that he was attending flight school to go on a "joy ride." This concerned Henry because, based on his experience as a pilot, he knew that a joy ride consists of actually flying the plane, not allowing the computer to do the flying.

The flight instructor also reported that although he had initially raised the subject, Moussaoui had seemed extremely interested in the aircraft doors and their operation and that Moussaoui seemed surprised to learn that the doors could not be opened during flight because of the air pressurization in the cabin.

The flight instructor described Moussaoui as amiable but also "extremely reticent" to discuss his background. The flight instructor said that in a conversation in which he told Moussaoui about a well-known aviation accident involving a group of Muslims, the flight instructor asked Moussaoui whether he was Muslim. After reacting with surprise and caution, Moussaoui stated that he was not.

The flight instructor provided the agents with the name of the hotel where Moussaoui was staying. The flight instructor said that he had seen Moussaoui in the company of another Middle Eastern male and gave a description of their vehicle.

4. The decision to arrest Moussaoui

On August 16, the agents learned that Moussaoui's next scheduled training session was that evening. Henry asked the INS agents to arrest Moussaoui in order to prevent him from receiving any further training. Henry said that he was concerned that if Moussaoui completed the training and was later arrested and deported, he would be able to use his training in the future. Henry said that he wanted to arrest Moussaoui because "there were enough indications that [Moussaoui's behavior] was sinister." Henry also noted that

Moussaoui had paid for his training in cash, which Henry described as "unusual," since most of the students are pilots whose training is paid for by the airline which employs them. In addition, Henry said that the fact that Moussaoui was not a typical student, since he was not a new or experienced pilot and did not even have a pilot's license, was another factor that made Henry suspicious of him. These characteristics were inconsistent with students the Pan Am representatives had dealt with before.

Henry spoke on the telephone with SSA Jack in FBI Headquarters about the decision to arrest Moussaoui. According to Henry, Jack suggested that it would be better to conduct surveillance of Moussaoui and his companion rather than to immediately arrest Moussaoui. This surveillance would allow Henry to collect more information about Moussaoui's connections to others and his intentions. Henry told Jack, however, that the decision already had been made to arrest Moussaoui because the Minneapolis FBI was concerned about him receiving any more flight training.

Jack told the OIG that, in most cases, conducting surveillance and asking the CIA to check its records on information already collected, such as the hotel records, is advisable because it results in obtaining additional information about the subject. However, Jack said that he also understood the Minneapolis FBI's position that it wanted to arrest Moussaoui immediately to prevent him from receiving additional training.

After discussing the issue with Jack, Henry called his supervisor, Gary, to discuss Jack's position that Moussaoui should be put under surveillance. Gary told the OIG that he also believed that it was necessary to arrest Moussaoui to prevent him from receiving further training. In addition, Gary believed that it was appropriate for the field office to decide to make an arrest, even if FBI Headquarters disagreed, and he advised Henry to go ahead with the arrest.[97]

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[97] We recognize that there were good arguments to be made for either arresting Moussaoui or for conducting additional surveillance on him. For example, if the agents had waited to arrest Moussaoui and conducted surveillance, they may have uncovered more information about his associates and his plans. On the other hand, there are serious risks involved in trying to surveil an individual – especially a transient one like Moussaoui – who could slip away and be lost altogether. Further, as Henry noted, if Moussaoui were allowed (continued)

5. Moussaoui's arrest

At approximately 5:00 p.m. on August 16, Henry and three other agents, two of who were INS agents, went to Moussaoui's hotel to arrest him. They stopped Moussaoui and another man as they were getting into a car outside of their hotel. Henry and one of the INS agents questioned Moussaoui about his immigration status. Moussaoui claimed that he was in the country legally and that he had a paper in his hotel room that would prove this.

In response to questions about his immigration status, Moussaoui presented his passport case to the agents. The passport case contained a bank statement indicating that Moussaoui had deposited $32,000 in cash upon arriving in the United States. The passport contained a Pakistani visa indicating that Moussaoui had been in Pakistan for two months – December 9, 2000, to February 7, 2001.

The agents accompanied Moussaoui into his hotel room where Moussaoui produced an INS document. The document indicated that Moussaoui had filed with the INS an application for an extension of stay, but there was no evidence that any extension had been granted.[98]

Moussaoui's hotel room was scattered with papers. Henry asked if the agents could search the room to see if they could find additional documents that would indicate Moussaoui was in the country legally. Moussaoui refused this request and refused to allow the agents to search the room or his possessions.

Because it was clear at that point that Moussaoui was in the country illegally, the INS agents arrested him. Incident to the arrest, they searched Moussaoui and the bag he had been carrying. They found a knife in his pocket, cash in his money belt, and flight-training materials from Pan Am in the bag.

(continued)
to continue his training and later was deported without any criminal charges, he would have achieved his goal of obtaining flight training that could be used at a later time.

[98] In certain circumstances non-immigrant visitors are permitted an extension to stay beyond the initial period allowed by the INS upon entry into the country. Pursuant to the requirements of the Visa Waiver Program, however, Moussaoui would not have been eligible for such an extension.

The other man with Moussaoui at the time of his arrest was Hussein Ali Hassan Al-Attas (Al-Attas), the owner of the car. The agents detained Al-Attas, who consented to a search of his car. The agents found in the car another knife, which Moussaoui admitted was his.

Henry and one of the INS agents remained at the hotel to conduct an interview of Al-Attas in the hotel room. The other two agents took Moussaoui into custody and transported him to the INS District Office for processing.

6. Search of hotel room and Al-Attas' possessions

According to FBI documents, prior to interviewing Al-Attas the agents asked for and received his permission to search some bags that were within his reach in the hotel room. To check for weapons, the agents opened several bags that Al-Attas told them belonged to Moussaoui. The agents noticed in the bags a laptop computer, spiral notebooks, numerous aviation study materials, a cellular telephone, and a small "walkie-talkie" radio. The agents did not search these items further.

With the assistance of Al-Attas, the agents collected Moussaoui's belongings, including his bags and papers, from the hotel. Moussaoui subsequently gave verbal permission for the FBI to store his belongings at the INS District Office, but he refused to allow his belongings to be searched.

At the hotel, Al-Attas gave the agents permission to search the room and Al-Attas' belongings in the room. From the search of Al Attas' belongings, the agents obtained telephone numbers, personal address books, credit card and bank records, and numerous personal documents. The agents found several sheets of paper written in Arabic, which Al-Attas identified as his will, and a pamphlet advising how to prepare a will.[99] In addition, the agents found a partially completed application for a Pakistani visa, padded gloves, shin guards, binoculars, hiking boots, Power Point 2002 computer software, and a document indicating that Moussaoui intended to purchase a handheld Global Positioning System receiver and rent a camcorder.

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[99] The sheets of paper identified by Al-Attas as his will were in a mailing envelope.

7. Interview of Al-Attas

Henry and an INS agent interviewed Al-Attas at the hotel. During the interview, Al-Attas – a 21-year-old Yemeni citizen whose family was living in Saudi Arabia – stated that he was in the United States on a student visa and had been an undergraduate student at the University of Oklahoma for several years. He provided documentation to the agents indicating that he had a valid student visa that had first been issued in 1995 and that he met the requirements for residing in the United States with the student visa.

Al-Attas stated that approximately one month earlier, he had moved into an apartment near the University of Oklahoma, in Norman, Oklahoma, with an acquaintance. Unbeknownst to Al-Attas, Moussaoui had just before that moved into the apartment with the same acquaintance.[100] Al-Attas said that he had known Moussaoui for six months and had met him through the mosque in Norman that Al-Attas attended regularly. He said that Moussaoui was studying aviation in Norman at the time that they first met.

Al-Attas said that he had accompanied Moussaoui to Minnesota as a friend and was not enrolled in any flight school. Al-Attas also stated that he knew Moussaoui only by the name of "Shaqil." and that Moussaoui did not reveal his last name.

Al-Attas described Moussaoui as an extremely religious Muslim who had gained a reputation at the mosque for being too hard-line and outspoken. According to the EC prepared by Henry about the interview, Al-Attas was asked if he had ever heard Moussaoui "make a plan to kill those who harm Muslims and in so doing become a martyr." Al-Attas responded that he "may have heard him do so, but that because it is not in his [Al-Attas'] own heart to carry out acts of this nature, he claimed that he kept himself from actually hearing and understanding."

The Minneapolis agents determined that Moussaoui had traveled to Pakistan, as well as to Morocco, Saudi Arabia, and Europe. They also obtained the first and last names of one associate of Moussaoui's in Oklahoma and the

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[100] The acquaintance was an Indian Muslim. The FBI ran a name check in its computer records for Ali but found no information on him.

first name of another of Moussaoui's associates in Oklahoma.[101] When Al-Attas was asked to explain why he and Moussaoui had padded gloves and shin guards, he responded that Moussaoui had purchased a set of each for them so that they could train to protect themselves against crime in the United States. Al-Attas also stated that Moussaoui advocated that "true Muslims must prepare themselves to fight," and that, at Moussaoui's urging Al-Attas had begun martial arts training.

Henry asked Al-Attas if he would be willing to go on jihad, which Henry told the OIG he defined for Al-Attas as "holy war." Al-Attas said he knew what it meant, and he would be willing to fight, but currently he was studying.

Al-Attas also stated that Moussaoui believed it is the highest duty of Muslims to know of the suffering of Muslims in the lands where they are oppressed, and because the United States is full of unbelievers Muslims should not reside in the United States.

In response to questions about his will, Al-Attas said that it was common for Muslims to write their wills and that he had written his a long time ago. Al-Attas also was asked why he was in possession of a partially completed visa application to travel to Pakistan. He responded that he had been asked by his family to go there to research treatments for liver cancer to assist an uncle living in Saudi Arabia.

Al-Attas said that he and Moussaoui planned to travel around the United States for two weeks after Moussaoui's training was completed. According to Henry's EC, Al-Attas could not explain how he would be able to start his college classes at the end of the month if he was planning to travel with Moussaoui.

Al-Attas was not detained but was asked to come to the INS District Office the next day for further questioning, which he agreed to do.

Henry told the OIG that after the Al-Attas interview, he was unequivocally "convinced . . . a hundred percent that Moussaoui was a bad actor, was probably a professional Mujahedin and this wasn't a joyride, that he

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[101] FBI records show that these two names were later checked in ACS, but no information was found on them.

was completely bent on use of this aircraft for destructive purposes." Henry also stated that he believed that Al-Attas was "telling us as much as he could culturally" that Moussaoui was involved in a "plot."

8. Interview of Moussaoui

After interviewing Al-Attas on August 16, Henry and an INS agent interviewed Moussaoui that same evening in detention in the INS offices near Minneapolis. Henry told the OIG he believed that Moussaoui was "combative" and "deceptive" throughout the interview.

According to Henry's later 26-page EC documenting the Minneapolis FBI's investigation of Moussaoui (which we discuss in detail in Section E below), Moussaoui stated he had come to the United States to be a pilot and had been a student at the Airman Flight School in Norman, Oklahoma. He said that he had taken the Federal Aviation Administration (FAA) written exam to become a pilot but had failed it. Moussaoui said the instructors in Oklahoma told him that he was not cut out to be a pilot. He said that he was determined to "follow his dream" of flying a "big airplane," and for pure enjoyment he had enrolled in the flight simulator training course at Pan Am in Minneapolis. He said that once he completed the simulator course, he planned to return to his efforts to obtain a pilot's license. Moussaoui stated several times during the interview that it was very important for him to return to finish the flight simulator training.

Henry reported that Moussaoui could not identify his source of income. Moussaoui claimed to have worked as a freelance marketing researcher and at various other business ventures, one of which involved an Indonesian telephone card company. According to Henry, however, Moussaoui could not provide a convincing explanation for the $32,000 in his checking account, and he was unable to provide an approximate income for the previous year.

Moussaoui said that he had traveled to Malaysia, Indonesia, and Pakistan in connection with an Indonesian business, as well as to Morocco, Saudi Arabia, and all over Europe. When asked why his passport did not reflect entry or exit stamps for Indonesia or Malaysia, Moussaoui stated that the passport had been issued recently to replace one that had been ruined in the washing machine. Moussaoui refused to answer whether he went anywhere else outside of Pakistan while he was in Pakistan and, according to Henry, became upset

that he was being asked about his travels to Pakistan.[102] Moussaoui denied that he had ever had any weapons training, but Henry believed he was deceptive in this response.

Moussaoui was questioned about his religious beliefs. He stated that he considered himself a religious Muslim and that he followed the Islamic practice of praying five times per day and helping his fellow Muslim brothers. When asked about his feelings about the treatment of Palestinians in Israel, Moussaoui said that it made him sad but denied that it made him angry. When asked whether he had spoken openly about hurting people in retaliation for what was happening in Israel, he stated that he needed to think about the question, and ultimately he refused to answer it.

When asked what his immediate plans had been after his flight simulator training, Moussaoui stated that he and Al-Attas had planned to travel to New York to see the sights and to Denver, Colorado, to do some unspecified business with United Airlines. He said he then planned to go to Oklahoma and then return to the United Kingdom.

9. Minneapolis FBI's consultation with Minneapolis United States Attorney's Office

During the evening of August 16, after Moussaoui's arrest, Gary paged the "duty attorney" at the Minneapolis United States Attorney's Office (USAO), who that evening was an Assistant United States Attorney (AUSA) who we call "Wesley." Gary left a message for Wesley stating that he needed to discuss a criminal search warrant. According to Wesley, when he called Gary back around 8:00 p.m., Gary told him that the FBI no longer needed a search warrant immediately because the FBI was holding onto his belongings while he was being detained. Gary told him that he would get back in touch the next day to discuss the issue further. Wesley told Gary that when he called back the next day he should talk to the supervisor who was the coordinator for terrorism matters, an AUSA who we call "Megan."

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[102] Henry said he knew that persons interested in attending terrorist training camps in Afghanistan were known to enter Pakistan first and cross the border into Afghanistan, with no indication on their passports of having traveled to Afghanistan. (U)

Gary told the OIG that he had called the USAO because he was unsure whether a criminal search warrant could be obtained, since Moussaoui was arrested by the INS on an immigration violation. According to Gary, he provided Wesley with a hypothetical with little information, because Gary was not sure how much information he was permitted to share with the USAO in light of the fact that the investigation was opened as an intelligence investigation and not a criminal investigation. Gary said that he asked Wesley if they were "close" to getting a criminal search warrant, and Wesley told him that it "sounds close" but that Gary should "freeze the scene" and call Megan the next day, since Wesley was not familiar with that type of case.

Wesley told the OIG that, based on what he was told at the time, he had believed that there was sufficient probable cause to obtain a criminal search warrant. He added that if the Minneapolis FBI had wanted to obtain the search warrant that evening, he would have sought the warrant and would not have needed supervisory approval to do so.

Following his conversation with Gary, Wesley called Megan on her cell phone and left her a message about the case. The next day, Wesley drafted a memorandum to Megan summarizing his conversation with Gary, in which he wrote, "The FBI would like to search the computer, and likely the other property. The suspect is being held, and questioned, by INS. [Gary] said that he will be off today, and that [another Minneapolis FBI agent] or [Henry] will stop by today to talk with you about the case."

Megan told the OIG that Wesley conveyed to her in his message on the evening of August 16 that the Minneapolis FBI had arrested Moussaoui and was interested in obtaining a search warrant, but not that night. When the USAO did not hear back from the Minneapolis FBI, Megan called Henry the next day, August 17, and left a message for him. According to Megan, Henry did not return her call until August 20. He told her that according to the Attorney General Guidelines he could not discuss the case with her without FBI Headquarters and DOJ approval, since the case had been opened as an intelligence matter.

Megan told the OIG that she did not know if probable cause existed before September 11 to obtain a criminal search warrant in the Moussaoui case. However, she stated her belief that if the FBI had indicated that it was ready to

pursue the search warrant, it would have been the "normal course" for the USAO to try to obtain the warrant.

10. Al-Attas' arrest

On August 17, the day after Moussaoui's arrest and Al-Attas' interview at the hotel, Al-Attas came to the INS District Office, as requested by the FBI, and was interviewed again by FBI and INS agents. During this second interview, Al-Attas stated that Moussaoui had associated with two Pakistani flight instructors and two flight students in Oklahoma, one from Saudi Arabia and one from Bahrain. In addition, Al-Attas said that Moussaoui followed the teachings of a sheikh, whose identity Moussaoui had not revealed to Al-Attas because Moussaoui believed that Al-Attas would not approve of this sheikh's views.[103] When asked if the person was Usama Bin Laden, Al-Attas stated that he did not believe so, and that the only reference Moussaoui had made to Bin Laden was to comment on his appearance on television. Al-Attas also gave the agents the first and last names of one associate of Moussaoui's in Oklahoma and the first name of another of Moussaoui's associates in Oklahoma.[104]

During this interview, Al-Attas admitted that he had worked while he was going to school at the University of Oklahoma. Because this was a violation of his student visa, the INS arrested Al-Attas and took him into custody.

Also on August 17, Henry and other agents interviewed Moussaoui again, and documented the results of the interview.

11. Second interview of Moussaoui

On August 17, Henry and other agents interviewed Moussaoui again. According to Henry's 26-page EC, which included information about both interviews, Moussaoui attempted to appear cooperative at the start of the August 17 interview but became "increasingly angry" as the questions focused on his source of financial support, his reasons for flight training, and his

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[103] A sheikh is "a venerable old man, a chief" or "the head of an Arab family, or of a clan or tribe; also, the chief magistrate of an Arab village."

[104] FBI records show that these two names were later checked in ACS, but no information was found on them.

religious beliefs. He was asked again to explain the source of his income, and he offered for the first time that he had received money from friends in the United Kingdom and from a friend in Germany for whom he could only recall a first name. Henry wrote that questions about materials in Moussaoui's laptop "provoked an extremely strong emotional reaction" in Moussaoui.

The agents told Moussaoui that they believed that he was an extremist, "intent on using his past and future aviation training in furtherance of a terrorist goal." He was asked to provide the name of his group, the religious scholars whom they followed, and to describe his plan in detail. Henry reported that Moussaoui was "visibly surprised" at the question about his membership in a group and that the FBI was aware of his fundamentalist beliefs. Moussaoui repeated he was in the United States to enjoy using a simulator for a big plane. According to Henry's 26-page EC, Moussaoui then requested an immigration lawyer, and the questioning was therefore halted.

D. Expedited deportation order

After the INS arrested Moussaoui on August 16, it initiated the process for deporting him. Because he had entered the country under the terms of the Visa Waiver Program, he was subject to the "expedited removal" process. As a condition of entering the United States under this program, Moussaoui waived any right to contest the deportation. For this reason, the deportation process consisted of paperwork prepared by an INS official, with no hearing before an immigration judge.

The deportation order for Moussaoui was signed on August 17, 2001. Henry told the OIG that he had been informed by the INS agent who had conducted the interviews with him that persons who had entered the country under the Visa Waiver Program and overstayed were not entitled to an appeal and would therefore be deported very quickly. Henry's supervisor, Gary, said that he also had been told by INS officials that Moussaoui could only be held for seven to ten days before he would be deported. As a result, the Minneapolis FBI believed that Moussaoui's deportation was imminent.

E. Discussion regarding search warrant

1. Henry's 26-page EC

After Moussaoui's arrest, Henry prepared a 26-page EC that provided a lengthy description of the facts of the case. The EC set forth the information obtained from the flight school, the information from the two interviews of Moussaoui and the two interviews of Al-Attas, and the information obtained from the items in Moussaoui and Al-Attas' possession when they were arrested.

The EC, which was uploaded into ACS on August 20, included some of Henry's assessments of Moussaoui's and Al-Attas' behavior. It described Moussaoui as "extremely evasive" and extremely agitated" when asked about his religious beliefs, overseas travel and associates, and the source of his financial support. Henry also wrote that believed, based on Moussaoui's demeanor, Moussaoui was being deceptive when he denied any weapons training. Henry also wrote that Al-Attas was being "deceptive in trying to minimize both his understanding of and involvement in whatever Moussaoui was planning to do."

Henry concluded the EC by stating, "Minneapolis believes that Moussaoui is an Islamic extremist preparing for some future act in furtherance of radical fundamentalist goals." In support of this conclusion, Henry wrote:

> The numerous inconsistencies in his story, his two month long trip to Pakistan which ended less than three weeks before his coming to the U.S., and his inability to explain his source of financial support all give cause to believe he is conspiring to commit a terrorist act, especially when this information is combined with his extremist views as described by Al-Attas in his sworn statement.
>
> As Moussaoui was in the process of gathering the most knowledge and skill possible in order to learn to fly the Boeing 747-400, Minneapolis believes that his plan involved an aircraft of this type. This is especially compelling when considering that the 400 series of this aircraft has a smaller flight crew and is more automated than other versions, lending itself to simpler operation by relative novices. His request of Pan Am that he be

> permitted to fly a simulated flight from London's Heathrow Airport to New York's JFK Airport is suggestive and gives Minneapolis reason to believe that he may have been attempting to simulate a flight under the conditions which he would operate while putting his plan into motion in the future.

Henry wrote that the Minneapolis FBI believed "Moussaoui, Al-Attas and others yet unknown [were] conspiring to commit violations of [federal anti-terrorism statutes]." Quoting from one of the statutes, Henry wrote that Moussaoui and Al-Attas were "attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States." See 18 U.S.C. § 2332b. In addition, Henry wrote that the Minneapolis FBI believed Moussaoui was engaging in flight training for the purpose of conspiring to use an airplane in the commission of a terrorist act. In support of this, Henry noted Moussaoui's possession of knives and his preparation through physical training for violent confrontation. Henry wrote that Moussaoui's "plan is believed to involve the performance of violence or incapacitation of individuals on aircraft." The EC further stated that Minneapolis considered the matter to be urgent.

At the conclusion of the EC, Henry wrote, "Minneapolis believes that the preponderance of information to be gained from future investigation will concern the specific criminal acts set forth above. However, as there is reason to believe that Moussaoui and Al-Attas are part of a larger international radical fundamentalist group, [the intelligence investigation] will remain open and a [criminal investigation] will be opened."

Through the EC, Henry also sent out several leads, including leads to FBI Headquarters, the Paris and London Legats, and the Oklahoma City Field Office. In the leads to the London and Paris Legats, Henry requested that they provide the EC to the British and French governments and report to Minneapolis any information developed on Moussaoui or any of his associates "yet unknown." The lead to the Oklahoma City FBI asked it to fully identify all of the individuals from that area who had surfaced in the investigation, including a request to further investigate Al-Attas.

With respect to the lead to FBI Headquarters, Henry requested that FBI Headquarters "expeditiously" obtain permission from OIPR for the Minneapolis FBI to contact the Minneapolis USAO to discuss the merits of

prosecution; to seek a criminal search warrant for Moussaoui's belongings, residences, and vehicles; and to obtain subpoenas for his telephone and financial records.[105]

Henry also sent an e-mail to the SSA who we call Jack in FBI Headquarters on Sunday, August 19, providing an update on the case.

Henry wrote that both Moussaoui and Al-Attas were in custody on INS violations. Henry reported that the Minneapolis FBI was planning to open a criminal investigation on Moussaoui and was seeking permission to contact the USAO. Henry explained his desire to obtain a criminal search warrant to search Moussaoui's possessions from the hotel room, including his laptop computer, cellular telephone, and other documentary material, and also Moussaoui's property in his residence in Norman, Oklahoma.[106] Henry wrote that he thought that a search of Moussaoui's things could "reveal detailed information regarding his plans and associates worldwide. He's obviously well-funded and highly motivated."

Henry also e-mailed the 26-page EC to Jack the next day, Monday, August 20. In the e-mail accompanying the EC, Henry again requested that FBI Headquarters obtain permission to allow Minneapolis to contact the Minneapolis USAO for a search warrant "as soon as possible." In the e-mail, Henry reported that Al-Attas was being released on bail and was returning to Oklahoma, where he could potentially "destroy incriminating evidence." Henry concluded the e-mail by writing, "[p]lease let me know as soon as [the Department] gives the go-ahead. We're all counting on you!"[107]

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[105] As discussed in Chapter Two, the 1995 Procedures provided that when an intelligence investigation was open and no FISA techniques had yet been employed, an FBI field office had to obtain permission through FBI Headquarters from the Criminal Division, not from OIPR, to contact the local USAO.

[106] According to Henry, the Minneapolis FBI was aware of the requirement that to open a criminal investigation Minneapolis had to establish a "wall" between the criminal investigation and the intelligence investigation. He said that the Minneapolis FBI had planned for Henry to remain the agent for the intelligence investigation and for a different agent to handle the criminal investigation.

[107] In addition, in an e-mail dated August 21 to FBI Headquarters, Gary, and another Minneapolis FBI agent, Henry wrote, "It's imperative that the [United States Secret Service] (continued)

2. Assignment of Moussaoui investigation at FBI Headquarters

According to Jack, he reviewed Henry's EC on August 20 and noticed that Hizbollah was not mentioned. This indicated to Jack that the case did not belong in his unit. Rather, because of the lack of information about any particular terrorist group and the extremist view described to Moussaoui in the EC, Jack believed that the case belonged in the ITOS' Radical Fundamentalist Unit (RFU). Cases that could not be linked to a specific group or substantive unit and involved radical extremist allegations are assigned to the RFU.

That same day Jack discussed the EC with his Unit Chief, who instructed him to give the matter to the RFU and walk the EC over to that unit. Jack therefore gave the 26-page EC to the RFU Unit Chief who we call "Don."[108] Don told the OIG that at the time there were four SSAs in the RFU. Don assigned the matter to one of them, an SSA who we call "Martin," based on the availability and workload of the staff at the time. An IOS assigned to work with Martin, who we call "Robin," also was assigned to the Moussaoui case. Henry was informed that the investigation had been reassigned to Martin in the RFU.

Martin had joined the FBI in 1988 as a special agent and spent his first three and a half years conducting bank fraud and embezzlement investigations

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be apprised of this threat potential indicated by the evidence contained in the EC. If [Moussaoui] seizes an aircraft flying from Heathrow to NYC, it will have the fuel on board to reach DC." Henry told the OIG that he believed that the Secret Service, in its role of protecting the President, needed to be advised of Moussaoui because he posed a threat to the White House. Henry knew that Moussaoui had received training to fly a 747-400 and if Moussaoui hijacked an airplane and flew from Heathrow to New York, the airplane would have enough fuel to be diverted to Washington. According to Henry, he never got a response to this e-mail.

[108] As discussed in Chapter Three, Don had been the Unit Chief of the RFU since May 2001. He became an FBI agent in 1987 and spent eight years in the Newark Division. Between 1990 and 1995, he worked international terrorism matters on the Newark counterterrorism squad. In 1995, he was promoted to an SSA position in a unit other than the RFU in ITOS in FBI Headquarters. In 1998, he became the supervisor of a counterterrorism squad in the Miami Division and remained there until his promotion to the Unit Chief of RFU in 2001.

in Colorado. In February 1992, he entered a language program at the Defense Language Institute in Monterey, California, to study Arabic for more than two years. After completing the language course, in September 1994 he became an agent on the counterterrorism squad of the Washington Field Office, where he worked exclusively on international terrorism matters, including the bombing of the Khobar Towers in Saudi Arabia in 1996. In November 1999, Martin was promoted to be a Supervisory Special Agent in the RFU.

IOS Robin began working for the FBI in 1976 in a clerical position. In 1980, she was promoted to a paralegal specialist position, where she handled Freedom of Information Act requests. In 1993, she was promoted to the IOS position and assigned to a substantive unit in ITOS. In approximately 1994, the RFU was formed, and Robin was assigned to that newly created unit. In 2001, Robin had responsibility for terrorism matters with a connection to two African countries.

3. Prior relationship between the Minneapolis FBI and RFU

The Moussaoui matter was not the first time that the Minneapolis FBI and the RFU worked together. Unfortunately, the earlier matters resulted in disputes and significant friction between the two offices. We believe this past history, which we discuss briefly here, affected how the two offices interacted on the Moussaoui case.

Several FBI employees told the OIG that the Minneapolis FBI's counterterrorism squad had conflicts with the RFU that preceded Martin and continued after Martin came to the RFU. The RFU Unit Chief who preceded Don, who we call "Dan," told the OIG that the SSA who had been the supervisor of the Minneapolis counterterrorism squad until the first week of August 2001 – who we call "Charles," had conflicts with the RFU SSA who had preceded Martin and that Dan had helped Charles in dealing with those conflicts. Dan added that the Minneapolis FBI counterterrorism squad had a reputation for saying "the sky is falling."

By contrast, Charles told the OIG that the RFU "raised the bar" for what was needed for the Minneapolis FBI to accomplish what it wanted. For example, Charles said that Martin had not supported the Minneapolis FBI's recommendation that the FBI seek the designation of a particular organization as a terrorist organization by the State Department. Charles said that Martin

had forwarded to Don an e-mail exchange between Charles and Martin that arose out of this conflict, and that Don e-mailed Charles to say that he wanted to discuss the problem. Charles said he spoke to Don about a week after the e-mail and that Don told him that he did not have a full complement of SSAs in the unit and that Charles had to deal with the personnel that were in the unit.

Charles also told the OIG that Martin treated Henry like he was a new employee. Charles said that, while Henry only had two years of FBI experience, he had a significant intelligence background based on his work with the Navy. According to Charles, Martin had "a track history of not giving [Henry] much respect."

Don told the OIG that soon after his arrival as unit chief in June 2001, he had a telephone conversation with Charles about the prior conflicts between the Minneapolis FBI and the RFU, including conflicts with the SSA who preceded Martin, the former unit chief, and Martin. Don stated that Charles told him that there had been "personality conflicts" and that he did not believe that the RFU had supported the Minneapolis FBI sufficiently. In particular, Don said Charles discussed Martin's lack of support for Minneapolis' recommendation that the FBI attempt to have a particular organization designated as a foreign terrorist organization by the State Department. Don told the OIG that he advised Charles that he wanted the disputes between the two offices to end and that if Charles had a problem with the RFU, he should address it with Don.

Martin told the OIG that he was aware that there had been prior conflicts between Minneapolis and others in the RFU. He said that his understanding was that Minneapolis had made some errors in their handling of matters with other SSAs, such as initiating electronic surveillance before the FISA order had actually been signed. Martin stated that his problems in his dealings with the Minneapolis office began when the conflict with Charles arose over the designation of an organization as a terrorist organization by the State Department. Martin told the OIG that he did not believe that it was appropriate to pursue the designation, based on information that he had obtained from the FBI's IOS who had responsibility for the particular organization for the FBI and from the CIA program manager who handled the particular organization for the CIA. Martin said that Charles believed that Martin was attempting to undermine his efforts. Martin believed that Charles also had "tak[en] offense" when he pointed out mistakes that were made by Minneapolis, such as failing to "minimize" a conversation recorded pursuant to a FISA warrant.

Henry told the OIG that he was "unhappy" that the Moussaoui matter had been assigned to Martin because of how matters "had gone in the past." Henry said that Martin acted with an "abundance of caution" and cited examples in which he believed that Martin had not acted aggressively enough. For example, Henry said that Martin refused to allow Minneapolis to pursue a criminal investigation in an intelligence investigation in which electronic surveillance under FISA was being conducted. According to Henry, without the criminal part of the case, the intelligence case could not proceed, and Minneapolis wanted to continue both the criminal investigative activity and the electronic surveillance. Henry told the OIG that Martin would not allow it. According to Henry, Minneapolis was forced to close its investigation, and another field office later picked up the criminal case.

With respect to the specific case cited by Henry, Martin stated that during the FISA renewal process he informed OIPR and the FISA Court of the criminal direction the case was taking. According to Martin, the Court did not have a problem with the case at that point. However, OIPR requested a meeting with ITOS Section Chief Martin Rolince to discuss whether there was a "primary purpose" problem, and they collectively decided to shut down the FISA surveillance. This was conveyed to the Minneapolis FBI, which in turn discontinued surveillance on the target. Martin told the OIG that at no time did he instruct Minneapolis that the criminal case could not be pursued.

Robin told the OIG that she believed that part of the problem between Martin and the Minneapolis FBI was a difference in style. According to Robin, Minneapolis, and field offices in general, usually wanted things done immediately. She said, however, that Martin was very "laid back" and that "he doesn't get all riled up and stirred up about things. He just – he's not a spin-through-the-roof kind of guy. But he gets everything done and it's not that he doesn't do them timely. He just doesn't get excited about stuff."

Former RFU Unit Chief Dan also described the differences between the Minneapolis FBI and Martin as a "clash of personalities." He described Martin as "low key" but "professional," and said that Charles was "more animated." Another IOS in the RFU who worked with the Minneapolis agents and Martin also described the problems as a "personality conflict." He described Martin as "methodical" and said that he had an "even keel" approach. He described the Minneapolis agents as "aggressive" and said that with every request to FBI

Headquarters, their approach was "if this doesn't happen, the world is going to end."

4. Gary seeks advice from ASAC Charles

Gary told the OIG that on August 21 he called ASAC Charles, who was in training at Quantico, for guidance on how to proceed, and that Charles told him that he should seek a criminal warrant. Charles said that he gave Gary this advice since he did not believe the Minneapolis FBI would be able to get a FISA warrant, not because of the facts in the Moussaoui case but because of his past experience with the difficulty and significant delays in obtaining FISA warrants. Charles stated that, in his experience, OIPR only wanted "slam dunks."

Charles told the OIG that, as part of the training he was attending at Quantico at the time, Deputy Attorney General Larry Thompson had just recently presented at the training conference a memorandum on the issue of intelligence sharing dated August 6 and addressed to the Criminal Division, the FBI, and OIPR. As discussed in Chapter Two, this memorandum reiterated the requirement of the 1995 Procedures that the Criminal Division be notified when there was a "reasonable indication" of a "significant federal crime" and that this notification was "mandatory."[109] The memorandum also stated that

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[109] As discussed in Chapter Two, the report of the OIG's Campaign Finance Report and the report of the Attorney General's Review Team investigating the Wen Ho Lee matter concluded that the FBI was not complying with the notification requirement primarily because of a fear that any contact with the Criminal Division would negatively affect an existing FISA order or the FBI's ability to obtain one in the future. In January 2000, Attorney General Reno established the "Core Group," which consisted of the FBI's Assistant Directors for counterterrorism and counterintelligence, the Principal Deputy Attorney General, and the Counsel for OIPR. The FBI Assistant Directors were supposed to provide "critical case briefings" to the Core Group, and they were to decide if the facts of the case warranted notification to the Criminal Division as provided for in the 1995 Procedures. The Core Group was disbanded in October 2000 and reconstituted in April 2001, but the problem of lack of notification to the Criminal Division remained. In July 2001, the GAO issued its report recommending, among other things, that the Attorney General establish a policy and guidance clarifying the expectations regarding the FBI's notification of the Criminal Division about potential criminal violations arising in intelligence investigations.

the standard for reasonable indication was "substantially lower" than probable cause, but that it required more than "a mere hunch." Charles told the OIG that he explained the new guidelines to Gary and recommended that he bring them to the attention of FBI Headquarters. Charles told the OIG he believed that by doing this, FBI Headquarters would be forced to contact the Criminal Division, and that once this occurred, the Criminal Division would on its own direct the Minneapolis FBI to contact the USAO about a search warrant. Gary told the OIG that Charles faxed the memorandum to him and that he discussed notifying the Criminal Division about Moussaoui with Martin on August 22, which we discuss below in Section F.

Gary also said that Charles told him that if he had any problems in dealing with Martin that he should ask Acting SAC Roy to "go up the chain of command" in FBI Headquarters, and Charles provided Gary with the names of upper management, including Assistant Section Chief Steve Jennings, Section Chief Rolince, and Deputy Assistant Director James Caruso. According to Gary, Charles suggested that Gary pass these names to Roy because Charles did not believe that Roy knew who they were. Gary told the OIG that he provided these names to Roy.

Charles also recommended that the Minneapolis FBI contact an FBI employee detailed to the CIA, who we call "Craig," to request any information that the CIA had on Moussaoui.

5. Henry discusses with Don pursuing criminal warrant

According to Henry, on approximately August 21, he called RFU Unit Chief Don to discuss pursuing a criminal investigation of Moussaoui. Henry told the OIG that Gary had already filled out the paperwork for opening a criminal terrorism investigation, and Henry was calling Don to let him know that the paperwork would soon be submitted to FBI Headquarters.

Henry told the OIG that Don instructed him that he could not pursue the criminal investigation. Henry stated that Don said to him, "You will not open it, you will not open a criminal case." Henry stated that Don asserted that if the Minneapolis FBI attempted some kind of criminal process from the USAO, such as a search warrant, and failed, it would not thereafter be able to pursue a FISA warrant. According to Henry, Don also asserted that probable cause for a criminal search warrant was "shaky."

Although Henry believed there was probable cause for a criminal warrant, he said that as an entry-level agent he was not in a position to argue with Don, a unit chief at FBI Headquarters, who was in a better position to judge how the FISA Court would respond to a FISA request that followed a failed attempt to obtain a criminal search warrant. Henry said that although his supervisor, Gary, had previously prepared paperwork for opening the criminal investigation, Henry wrote, "Not opened per instructions of [Unit Chief Don]" on it after this conversation with Don.

Don's recollection of the conversation with Henry about pursuing a criminal investigation of Moussaoui differed from Henry's. Don told the OIG that his recollection was that he talked to the Acting Minneapolis ASAC, Charles, and that he did not speak to Henry. Charles told the OIG, however, that he did not speak to Don before September 11. We believe that Don likely spoke to Henry, not Charles.

Don told the OIG that, based on his knowledge of the case, he did not believe there was criminal predication for a criminal search warrant. Don stated that, in his opinion, Minneapolis had a "belief" that there was the potential for a criminal charge of conspiracy to hijack, but this was not supported by sufficient evidence. Don also asserted that since Moussaoui had been arrested and detained on immigration charges, he could not be involved in a crime that was about to be committed.

According to Don, he voiced his opinion to the Minneapolis FBI about the lack of criminal predication and advised that if obtaining the criminal warrant failed, the FBI would not be able to pursue the FISA warrant. Don told the OIG he expressed in the conversation that he did not want Minneapolis to follow the criminal road prematurely. However, Don asserted that at no time did he tell the Minneapolis FBI that it could not pursue the matter criminally.

Don also stated to the OIG that he advised the Minneapolis FBI to consult with the Minneapolis CDC about whether probable cause for a criminal search warrant was present. According to Don, he stated, "You guys need to go back to your CDC, you need to discuss it with your CDC, and get back to me and tell me your position." Don told the OIG that, in his opinion, giving this kind of advice – whether there was criminal probable cause – was the role

of the CDC. He said he wanted the Minneapolis CDC to weigh in before the Minneapolis FBI made its decision about which way to proceed.

Henry confirmed to the OIG that Don advised him that he should consult with his CDC on the matter. After his conversation with Don, Henry met with Rowley to discuss whether Minneapolis should pursue the criminal investigation.

Martin told the OIG that his understanding was that Don explained to the Minneapolis FBI the problems that could arise when a criminal investigation is pursued at the same time that a FISA warrant has been issued or is being sought. Martin said he thought that Don had told the Minneapolis FBI, "You guys need to be careful. You need to run it through your division counsel if you want to do a criminal investigation on this guy, because if you do that and you get turned down by a magistrate or even if you try to get the okay from a U.S. Attorney's Office, we have to document that in our request to the FISA court, and we risk making it look like to the judge that we really want to get a criminal case, want to prosecute the guy but we didn't have enough probable cause to get a criminal search warrant." Martin told the OIG that it was his understanding that Minneapolis "listened to [Don] and agreed."

6. CDC Rowley's recommendation

According to Rowley, Henry came to her office some time after his conversation with FBI Headquarters and conferred with her about whether to seek a criminal search warrant in the Moussaoui case. Rowley said this occurred on or about August 22. Rowley told the OIG that, until this point, she had not been actively involved in the Moussaoui investigation, although she had had a brief discussion with Gary on the night of Moussaoui's arrest.

As discussed above, Rowley was the CDC for the Minneapolis FBI. She had graduated from law school in May 1980 and joined the FBI as a special agent in January 1981. After working in several FBI offices on, among other cases, white-collar crime, drug investigations, and applicant background investigations, Rowley transferred to the Minneapolis FBI office in July 1990. Rowley said that as the CDC for the Minneapolis FBI, she spent very little of her time on intelligence matters. She stated that she had attended FBI training on counterterrorism issues, including FISA, but that she usually was not involved in the FISA process. She said that agents typically dealt with FBI

Headquarters on these matters and that she had only reviewed a couple of FISA requests.

Rowley told the OIG that when Henry came to her office around August 22, he asked her what she thought about the FISA issue in the Moussaoui case. He related that he had spoken to either Martin or Don (Rowley did not recall which one), who had suggested that the Minneapolis FBI would have a better chance of obtaining a warrant if it sought a FISA as opposed to a criminal search warrant. She said she thought Henry may have mentioned something about the "smell test." She said that, after discussing the matter with Henry, like the RFU she recommended going the FISA route because of the "smell test." Rowley explained that she knew that if a FISA warrant was sought after an unsuccessful attempt to obtain a criminal warrant, it would give the appearance – or "smell" – that the true purpose for seeking the FISA was for criminal prosecution and the FISA warrant would be denied. According to Rowley, Henry's position was that the Minneapolis FBI should proceed with the criminal search warrant and not worry about the smell test. Rowley, however, stated that the smell test was a reality and advised that it had to be factored into the decision.

Additionally, Rowley said that while she thought that there was probable cause for a criminal search warrant, she also believed that the USAO in Minneapolis required a higher standard than probable cause to seek a search warrant.[110] Because of the smell test and concerns whether the USAO would

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[110] In her May 21, 2002, letter to the FBI Director, Rowley stated that she had advised Henry to seek the FISA warrant instead of the criminal warrant because the Minneapolis USAO "regularly requir[ed] much more than probable cause" and "requir[ed] an excessively high standard of probable cause." In the letter, Rowley gave as an example of this the Minneapolis FBI's investigation of mailbox pipe bombings during which, she wrote, an AUSA declined permission to seek a search warrant despite "significant evidence" supporting the search warrant. We interviewed several attorneys in the Minneapolis USAO, including the United States Attorney, Thomas Heffelfinger. All the attorneys denied that the Minneapolis USAO required more than probable cause before seeking search warrants. They also stated that in cases in which the USAO determined that there was insufficient evidence to support a search warrant, their practice was to specify the FBI's options, including what additional information was needed to support probable cause. With respect to the mailbox pipe bombings case, Heffelfinger acknowledged that there had been a disagreement between the USAO and the FBI over whether sufficient evidence existed to (continued)

agree to a criminal search warrant, Rowley said that she recommended the avenue with the best chance of success, which she believed was seeking a FISA warrant instead of a criminal warrant.

Rowley told the OIG that at the time of her discussion with Henry she had not discussed the Moussaoui matter with any attorneys in the National Security Law Unit (NSLU) or anyone else in FBI Headquarters.[111] She also said that she had not reviewed the FISA statute or any other training materials about FISA warrants. She said her advice was based on her knowledge of the problems with the smell test, the problems with the Minneapolis USAO, and "optimizing" the chances of getting a warrant by pursuing the FISA process first.

Henry confirmed to us that Rowley recommended that pursuing the FISA warrant would be the safest route. When we asked Rowley about the nature of the discussion that she had with Henry about seeking the criminal warrant, Rowley told the OIG that she was "helping make his decision." When we asked Rowley whose decision it was to not seek the criminal warrant – the field office or Headquarters – she stated:

> I thought it was kind of, I don't know, kind of a joint thing. I thought Headquarters, somebody at Headquarters had also recommended we try FISA first, too. But I think maybe ultimately it was [Henry]'s decision to try FISA first or our field division's.

F. The FISA request

As a result, the Minneapolis FBI began seeking a FISA warrant, instead of a criminal warrant, to search Moussaoui's belongings that were being held by the INS.

(continued)
obtain a search warrant, but he stated that the FBI declined to pursue the additional investigative steps suggested by the USAO.

[111] Rowley's only contact with anyone at FBI Headquarters about the Moussaoui matter was in a brief e-mail exchange with an NSLU attorney, which we discuss in Section F, 4, d below.

1. Minneapolis seeks to expedite the FISA process

When Gary first discussed seeking a FISA search warrant for Moussaoui's belongings with Martin on August 22, Gary indicated that Minneapolis wanted to expedite the process. As noted above, Gary told the OIG that the Minneapolis FBI had been informed by INS officials that the INS could only hold Moussaoui for seven to ten days before deporting him. Gary said that he was aware that FISA requests normally took a long time and that the Minneapolis FBI was concerned about expediting the process to ensure that the FISA warrant was obtained and executed before Moussaoui's deportation. Gary said that he explained to Martin that the INS said it could only hold Moussaoui for seven to ten days.

Martin told the OIG that he recalled that the Minneapolis FBI was very concerned about obtaining the FISA warrant quickly before the INS deported Moussaoui. Martin said he explained to Gary that a way to expedite the process would be to seek an emergency FISA. He also explained the process at FBI Headquarters for obtaining an emergency FISA, including the requirement for ITOS Section Chief approval.[112]

Gary and Henry began preparing a FISA request while they continued the investigation of Moussaoui.

2. The RFU's assessment of the Minneapolis FBI's FISA request

At FBI Headquarters, Martin and Robin began looking into the merits of the Minneapolis FBI's FISA request, based on the information about Moussaoui that the Minneapolis FBI had provided, primarily in the 26-page EC Henry had sent to FBI Headquarters about the Moussaoui investigation.

Martin told the OIG that his reaction upon reading the 26-page EC with respect to obtaining a FISA warrant was that while he believed Moussaoui was "a dirty bird" and was probably "up to something," there was no evidence

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[112] As discussed in Chapter Two, although the term "emergency FISA" was used, it referred to obtaining an expedited FISA warrant and not the statutory emergency FISA that involves a warrantless search approved by the Attorney General without prior approval of the FISA Court.

linking Moussaoui to a foreign power of any kind. Martin said that based upon what was in the EC, his opinion was that "there was no way" that a FISA warrant could be obtained because of the lack of evidence linking Moussaoui to a foreign power.

Robin told the OIG that Martin informed her that Minneapolis was seeking a FISA search warrant and Martin provided her with a copy of the 26-page EC to read. She said that after reading the EC, she also believed that Moussaoui was "up to something." However, she said that after reading the EC she asked Martin, "Where's the foreign power?" In her view there was no evidence of a terrorist organization's involvement with Moussaoui. According to Robin, Martin agreed with her assessment that the FISA request lacked a connection to a foreign power.

3. Additional information related to Moussaoui

The Minneapolis FBI continued to collect additional information about persons associated with Al-Attas in connection with the posting of his bond for release from the INS detention facility. In an EC written by Henry and dated August 22, the Minneapolis FBI reported to FBI Headquarters that Al-Attas had been bonded out of custody on August 20. While he was still in custody, he made 13 calls to a telephone number registered to a man who had been identified in an earlier interview by Al-Attas as the imam – or leader, spokesman, and advisor – of the mosque attended by Al-Attas in Norman, Oklahoma. We will call this person "Ahmed." Al-Attas told the Minneapolis agents that he had called Ahmed to request assistance in raising bond money.

The Minneapolis FBI conducted name checks for Ahmed in FBI databases and learned that a person with the same name was the suspect in several bank robbery investigations in Memphis, Tennessee, but that he had not been in contact with the FBI since 1999. The Minneapolis FBI sought to determine if the Ahmed who talked to Al-Attas was the same person as the bank robbery suspect. The Oklahoma City Field Office informed the Minneapolis FBI on September 6 that it had determined that the Ahmed who was the assistant iman of the Norman mosque was not the same Ahmed who was the bank robbery suspect in Memphis.

The Minneapolis FBI also determined that two other men were involved in attempting to post Al-Attas' bond. The first was a man who we will call

"James Smith," who had gone to the INS offices in Oklahoma City to inquire about Al-Attas' bond. Smith was the imam of a local mosque. The Minneapolis FBI reported that he was the subject of an Oklahoma intelligence investigation, but it did not state the date, status, or findings of the investigation on Smith.[113]

In addition to Smith, the Minneapolis FBI learned that an individual, who we call "Mohammed Mohald," had gone to the INS District Office near Minneapolis and paid Al-Attas' bond on August 20.[114] According to documents prepared in the case, Mohald had reported to INS officials that he was and had been Al-Attas' roommate for some time, and that he knew Attas' traveling companion – whom he called "Shaqir" – because they attended the same mosque in Norman, Oklahoma, where they all lived. Mohald advised that he had been a Muslim since 1970 and had traveled to a Middle Eastern country in the late 1980s as part of a missionary group.[115] The EC stated that a search in ACS revealed that Mohald had an extensive criminal history and was the subject of a New York criminal terrorism-related investigation. The EC did not state the date, status, or findings of the investigation.

In the EC, Henry reported suspicions about Mohald and stated that he believed that Mohald was involved in Moussaoui's plan to commit a terrorist act along with Al-Attas. Henry's suspicions were based on inconsistencies such as Mohald stating that he was Al-Attas' roommate, when the Minneapolis FBI had confirmed that Al-Attas had been living for approximately one month with Moussaoui and someone else at an address other than the one provided by

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[113] The Oklahoma City Field Office reported in an EC dated August 24 that Al-Attas had spoken not only to Smith but also to an individual who we will call "Nabu Khalid," who was the assistant imam to Smith. The Oklahoma City FBI reported that Smith and Khalid were the subjects of preliminary inquiries for their suspected involvement in a terrorist cell. This terrorist cell was not linked to Al Qaeda.

[114] This individual was American-born but had adopted a Muslim name.

[115] This particular missionary group is a worldwide Islamic missionary organization which was founded several decades ago. As discussed below, some members of this missionary group used the organization as a means and as a cover to recruit individuals to conduct acts of terrorism and to send them to Middle Eastern countries under the guise of "religious training."

Mohald. In addition, while Mohald admitted to traveling to a Middle Eastern country in the late 1980s, ACS records showed that he was issued a visa for that country in April 1990 under his American name, which suggested that Mohald withheld information from the FBI about later trips to this Middle Eastern country. Henry also found Mohald's explanation that he had flown to Minneapolis to post Al-Attas' bond so that Al-Attas could return to teach children at the mosque in Oklahoma to be "farfetched."[116]

Around the same time, Henry sent an e-mail to other FBI agents involved in the investigation asking whether he should consider getting assistance from an FBI psychological profiler. He wrote, "They probably have a psych profile for an Islamic Martyr and could tell us if our 747 guys fit." According to Henry, he contacted an FBI field profiler in Tampa, Florida, whom Henry had met at a training session. Henry told the OIG that he contacted this agent because he knew him and because this agent was an experienced international terrorism investigator.

Henry told us that this agent provided good re-interview techniques and highlighted potential issues based on the information Henry gave him. For example, the agent called attention to the fact that while Al-Attas was in jail, "the one call [Al-Attas] made was back to the mosque" and not to any family member. Henry said that while Al-Attas' parents lived in Saudi Arabia, Al-Attas had at least one cousin and possibly two in the United States but did not call these relatives.

4. Consultations with NSLU attorney Howard

Also on August 22, at FBI Headquarters SSAs Jack and Martin each independently consulted with an NSLU attorney who we call "Howard" about the Moussaoui matter. Martin also consulted with three other NSLU attorneys. We summarize first the role of NSLU attorneys, specifically with respect to FISA requests, before discussing the consultations between Jack and Howard, and between Martin and Howard.

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[116] Henry provided the names of Ahmed, Smith, and Mohald and their available identifying information to the CIA for checks against CIA records. The CIA did not report any information about these individuals to the FBI.

a. Role of NSLU attorneys

The NSLU is part of the FBI's Office of General Counsel in FBI Headquarters. The NSLU provided advice to FBI Headquarters and field offices on counterterrorism and counterintelligence matters. At the time of the Moussaoui case, two NSLU attorneys – who we call "Susan" and "Tim" – were assigned to work with ITOS substantive units. Other NSLU attorneys, including Howard, were consulted by ITOS employees when Susan and Tim were not available.[117] Marion "Spike" Bowman was the FBI's Deputy General Counsel for National Security Affairs and the head of the NSLU.

As discussed in Chapter Two, attorneys in the NSLU described their role as giving legal advice to their "client," the substantive unit in ITOS that was seeking the advice, but they said it was up to the substantive unit to decide how to proceed. NSLU attorneys spent a large amount of time handling questions related to FISA, including requests for warrants, execution of FISA orders, and dissemination of the information collected pursuant to FISA.

NSLU attorneys usually were consulted when a question arose whether there was sufficient information to support the FISA request. However, NSLU attorneys were not "assigned" to work on a particular FISA request or to work with specific SSAs. The consultations with NSLU attorneys typically consisted of oral briefings by the SSA and the IOS who were handling the particular FISA request. In connection with these consultations, NSLU attorneys did not normally receive and review the documents prepared by the field office or initial drafts of the LHM prepared by the SSA and IOS. Tim told the OIG that SSAs would sometimes come back to the NSLU attorney with documents to read after an oral briefing when the SSA "was really serious about something."

After questioning the SSA and IOS, and based on the information provided by the SSA and the IOS, the NSLU attorney typically would provide verbal guidance about what was needed to support the FISA request. Howard told the OIG that his role was "steering [the FBI] through the land mines and

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[117] Howard told the OIG that he primarily worked counterintelligence matters but also handled counterterrorism matters as needed. According to Howard, it was not uncommon for him to be consulted when Tim and Susan were unavailable.

helping them enhance their cases." Field offices did not normally participate in these consultations with the NSLU attorneys.

Both NSLU attorneys and SSAs described the volume of their work as overwhelming. Tim stressed that the NSLU attorneys relied on the SSAs and IOSs for their substantive knowledge about the available intelligence on the FBI's targets and terrorist organizations, and that given limited staffing NLSU attorneys normally were unable to conduct independent research on the substantive issues.

b. Jack's consultation with Howard

As noted above, the Minneapolis FBI's first contact with FBI Headquarters was with SSA Jack. On August 21, Jack made an appointment with NSLU attorney Howard to discuss the Moussaoui matter the following morning. Jack said that even though the case was in the process of being reassigned to Martin in the RFU, Jack kept his appointment with Howard because he was "curious" and wanted to discuss the Minneapolis FBI's options for obtaining authority to search Moussaoui's laptop and other belongings.

During the meeting on August 22, Jack orally briefed Howard on the facts, as reported in Henry's EC. Jack did not provide Howard with a copy of the EC. According to Howard's notes from the meeting, they discussed whether there was sufficient information to obtain either a criminal search warrant or a FISA search warrant. With respect to the FISA warrant, Howard told the OIG that he advised Jack that he did not believe that there was sufficient information to obtain a FISA warrant, primarily because Minneapolis lacked the necessary information to articulate a foreign power. Howard's notes indicate that he advised Jack that obtaining the FISA warrant also would be difficult because Moussaoui was already in custody. Howard told the OIG that at the time, OIPR viewed anyone in custody as a target of criminal investigation by the FBI, even if the person was being held on administrative charges, and therefore OIPR would question whether the FBI's "primary purpose" was to collect intelligence information.

With respect to approaching the USAO to obtain a criminal warrant, Howard's notes reflect that he did not believe that there was sufficient information to obtain a criminal search warrant. His notes state that he advised Jack that a decision needed to be made quickly and that if the Minneapolis FBI

decided to pursue the criminal case, then it would be difficult to later pursue the FISA warrant. Howard told the OIG, however, that whether to pursue the FISA warrant or the criminal warrant was a "judgment call" for Minneapolis to make and that he considered the matter to be a "work in progress."

Jack confirmed that he received this advice from Howard. He told the OIG that Howard advised him that he did not see evidence of a foreign power and that Howard concurred that there was no evidence of a criminal act. Jack told the OIG that he and Howard were "brainstorming" about the possible ways to proceed. Howard's notes indicate that he told Jack that it looked as if Minneapolis had several "good leads" and that Minneapolis needed to follow up on those leads.

c. Martin's meeting with Howard

As noted above, on August 20 the Moussaoui case was transferred from Joseph to the RFU and assigned to Martin and Robin. On approximately August 22, Martin and Robin consulted with Howard for legal advice on Minneapolis' chances for obtaining a FISA warrant.[118]

Martin said that when he began explaining to Howard the facts of the Moussaoui matter, Howard said that he was aware of the matter already because he had recently been consulted by Jack. According to Martin, Howard pulled out notes from his conversation with Jack and began reading them back to him and Robin.

Howard said he remembered having a "brief conversation" with Martin. Howard said that he recalled that he was on his way to a meeting and did not have time to discuss the issue in detail at that time. He said that he asked Martin if the Minneapolis FBI had followed up on specific items, and Martin indicated that he did not believe so. Howard reiterated the same advice to Martin as he told Jack – that he did not believe that there was sufficient evidence to tie Moussaoui to a foreign power and therefore a FISA warrant was not possible absent further investigation by Minneapolis.

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[118] Martin told the OIG that Tim and Susan, the two NSLU attorneys who usually worked on ITOS matters full time, must have been unavailable at the time.

Martin told the OIG that he recalled Howard advising him that there was not sufficient evidence to support a link to a foreign power. Like Jack, Martin did not provide Howard with a copy of the 26-page EC, although Martin had the document with him.

d. Howard's e-mail exchange with Rowley

After his meeting with Martin and Robin, Howard sent an e-mail dated August 22 to Minneapolis CDC Rowley. In the e-mail, he asked whether she had been asked for her "assessment of [Minneapolis'] chances of getting a [criminal] warrant" for Moussaoui's computer. Howard told the OIG that he did this because he wanted to make sure that the CDC was "engaged in the thought process." He stated that the decision on which type of warrant to seek was the field office's decision, and he wanted to make sure that the CDC was "part of the process."

In an e-mail response later the same day, Rowley wrote, "Although I think there's a decent chance of being able to get a judge to sign a criminal search warrant, our USAO seems to have an even higher standard much of the time, so rather than risk it, I advised that they should try the other route." Rowley told the OIG that in retrospect she wished that she had made it clear in her e-mail that she believed that, in fact, there was sufficient evidence to support probable cause for a criminal warrant.

Howard told the OIG that he recalled having the following reaction to Rowley's e-mail: "Good Lord, Coleen, we don't use FISA because we don't have probable cause for a criminal warrant. That plays right into the hands of those people who think FISA is subterfuge." Howard did not respond to the e-mail, nor did he and Rowley discuss the matter on the telephone.

5. French information about Moussaoui

Around the same time that Martin consulted with Howard, the Minneapolis FBI obtained additional information about Moussaoui from the French government. As noted above, because Moussaoui had entered the United States with a French passport, Henry had sent a lead to the FBI's Paris Legat to obtain any relevant information on Moussaoui from the French authorities. On August 22, the FBI's Paris Legat reported to the Minneapolis FBI and FBI Headquarters that the French government had reported that

Moussaoui was purportedly associated with a man who was born in France and died in 2000 in Chechnya fighting with "the Mujahideen." We call this person "Amnay."[119] The Legat's EC stated that while in Chechnya, Amnay worked for Emir Al-Khattab Ibn (Ibn Khattab), the leader of a group of Chechen rebels.[120] According to the EC, the French authorities, after Amnay's death, had interviewed a person who we call "Tufitri" who had known Amnay.[121] That person stated that Amnay was recruited to go to Chechnya by Moussaoui and that Moussaoui was "the dangerous one."

6. Martin advises Minneapolis FBI that French information is not sufficient to connect Moussaoui to a foreign power

After Martin received and reviewed the French information, he still did not believe there was sufficient information to identify a foreign power in the Minneapolis FISA request. Martin discussed the French information with Gary and stated that it provided little help to Minneapolis in connecting Moussaoui to a foreign power. Martin explained that Ibn Khattab and the Chechen rebel group he led were not an identified terrorist organization. Gary's notes of the conversation indicate that Martin explained that Minneapolis needed evidence linking Moussaoui to a "recognized" foreign power.

Martin told the OIG that by "recognized" he meant a foreign power that previously had been pled before the FISA Court. Martin told the OIG that he believed that the Chechen rebels had never previously been pled to the FISA

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[119] We do not use Amnay's real name because the FBI considers that information to be classified.

[120] As discussed in Chapter Three, after the collapse of the Soviet Union in 1991, Chechen separatists – both Islamic and non-Islamic – have sought independence for Chechnya from Russia. The Russian army has fought two guerilla wars in Chechnya to prevent its independence, resulting in tens of thousands of Chechens and Russians killed or wounded. In many Islamic countries, support for the Chechen cause is widespread. Ibn Khattab was a Jordanian-born Islamic extremist and leader of a large group of Chechen rebels that had many successes in clashes with Russian forces. He was killed in April 2002.

[121] We do not use Tufitri's real name because the FBI considers that information to be classified.

Court as a foreign power.[122] Rather, Martin described the situation in Chechnya as dissidents engaged in a "civil war." He acknowledged, however, that it may have been possible to develop the intelligence to support the position that Khattab's Chechen rebels were a terrorist group. But he said that he was not aware of any insurgency/rebel group ever being pled as a foreign power.[123]

In addition, Martin stated that even if the Intelligence Community had developed the intelligence that Khattab's Chechen rebels were a terrorist organization and could therefore constitute a foreign power under FISA, this could not be completed in a short time, which was what the FBI believed at the time was necessary in the Moussaoui case. Martin said he therefore advised the Minneapolis FBI that, to obtain a FISA warrant, it needed to develop information linking Moussaoui to a recognized or previously-pled, identifiable foreign power.[124]

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[122] We found that at the time FBI Headquarters was operating under a perception that OIPR was overly conservative in its approach to the FBI's FISA applications because OIPR's standard for probable cause was too high and because OIPR was not interested in pleading "new" foreign powers – foreign powers that had not previously been pled to the FISA Court. We discuss this perception of OIPR's conservatism and how it affected FBI Headquarters' handling of the Moussaoui investigation in the analysis section below.

[123] Martin suggested to the OIG that the reason that groups engaged in a civil war were not pled as terrorist organizations under FISA was because they were not "hostile" to the United States or working against U.S. interests. When asked whether it was a requirement under FISA for a terrorist organization to be hostile to U.S. interests to fulfill the foreign power requirement, Martin said that he did not know whether this was a legal requirement, but that he believed that it was assumed in the statute based on the terrorist organizations that had been pursued by the government.

[124] Martin told the OIG that at that time he had had only one other case in which he advised a field office that it was not going to be able to obtain a FISA warrant. He said that the field office wanted to pursue a FISA warrant targeted at an organization that it believed to be a terrorist organization that constituted a foreign power. As discussed above, a foreign power or an agent of a foreign power may be the target of a FISA warrant. Martin said that this potential target had never before been pled as a foreign power. He said that he consulted with an NSLU attorney, who informed him of the intelligence information that the field office would have to establish in order to successfully obtain a FISA warrant with the organization listed as a foreign power. Martin stated that he informed the field office of this (continued)

Robin also told the OIG that she did not believe that the French information was sufficient to connect Moussaoui to a foreign power. She said that she understood that the Chechen rebels had never been pled as a foreign power to the FISA Court and that the Intelligence Community had never developed sufficient intelligence that the conflict in Chechnya was more than a civil war. In one case she was familiar with, she understood that the FBI had previously attempted to obtain a FISA warrant using Khattab and the Chechen rebels as the foreign power but that it was "turned down" by OIPR.[125] She stated that "building a foreign power" was "not an overnight thing" and would have required months to collect the required intelligence information, as had been the case when one particular terrorist group was first put forth as a foreign power.

Gary told the OIG that during the conversation between him and Martin on August 22 about the French information, he raised with Martin the issue of the mandatory notification of the Criminal Division when there was a reasonable indication of a crime, as set forth in Deputy Attorney General Thompson's August 6 memorandum, which Charles had faxed to Gary. According to Gary, Martin said that he did not see any evidence of a federal felony, that the FISA route was easier, and that going the criminal route first would be relevant to whether they were able to obtain a FISA warrant. Gary's notes indicate that Martin stated, "Don't see federal crime." Gary told the OIG he deferred to Martin but faxed him a copy of the Thompson memorandum.

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advice, and the field office did not insist that the information it had was sufficient for a FISA warrant.

[125] Robin was mistaken about that FISA. The FISA request for that target was initially drafted by an FBI field office for a terrorist organization that was based in Northern Africa. The target was a well-known leader of a worldwide charitable organization that was known for providing financing to Muslim causes around the world, including but not limited to Ibn Khattab. The FISA request was given to an analyst in FBI Headquarters, who was asked to prepare the FISA request using a different foreign power than the terrorist organization based in Northern Africa. Several months later, after the field office developed information linking the target directly to a particular terrorist group leader, the analyst prepared a FISA request using his group as the foreign power.

Martin told the OIG that he did not remember a specific conversation with Gary about whether there was probable cause to obtain a search warrant. However, he said that he recalled a conversation in which he asked Gary, "What would the crime be?" Martin told the OIG he believed that the Minneapolis FBI did not have any evidence of a crime and only had "gut feelings."

7. Robin's research to link Moussaoui to recognized foreign power or terrorist organization

Robin conducted additional research on Moussaoui to try to bolster Moussaoui's connection to a recognized foreign power. Robin sought to find a direct link between Moussaoui or any of the other names or organizations that had surfaced in the investigation and foreign powers that she was aware had previously been pled to the FISA Court.

According to Robin, the Moussaoui FISA request was different from the typical FISA request because the Minneapolis FBI had not conducted a lengthy investigation on Moussaoui before he was arrested. As a result, Robin said, the FBI lacked information about Moussaoui that would have been gathered if the FBI had conducted physical surveillance and trash covers and obtained phone records and financial records, which was how intelligence investigations typically proceeded before a FISA warrant was requested.[126] Moreover, Minneapolis was seeking an emergency FISA warrant, which meant that there was little time to develop more information to support the FISA request.

Robin ran the names of Moussaoui, Al-Attas, and the individuals who had been identified as connected to Al-Attas in ACS and another computer system that contained intelligence reports from throughout the intelligence

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[126] Financial and telephone records could be obtained, prior to a FISA, through the use of a National Security Letter (NSL), which did not require approval of a court before issuance by the FBI. At the time of the Moussaoui investigation, the process for obtaining NSLs, which involved the signatures of several officials at FBI Headquarters and in the NSLU, took several months. Delay in obtaining NSLs has long been identified as a significant problem in counterintelligence and counterterrorism investigations. Under the Patriot Act, the FBI was given authority to delegate authority for obtaining NSLs to the field to speed up the process.

community. She said she did not find any evidence linking any of these individuals to a foreign power. She said she also researched the missionary group that Mohald had said that he had been a part of to determine whether that organization had any connections to terrorism or had formed the basis for the connection to a foreign power in any previous FISA application. According to Robin, it was not until several months after September 11 that individual members of this missionary group were pled as targets of a FISA application and were described as facilitators and recruiters for a particular terrorist organization.[127]

In addition, Robin researched the name Ibn Khattab, the Chechen rebel leader. Robin said she was not attempting to find information to support using Khattab and his rebel group as the foreign power because, according to Robin, there was insufficient intelligence to link his group to anything more than a civil war. She said that she was aware of a recent FISA application in which the subject had strong ties to Ibn Khattab, but that the Chechen rebels were not pled as the foreign power in that case. Robin told the OIG that she researched Ibn Khattab to determine whether he had close ties to other terrorist groups that had previously been pled as foreign powers before the FISA Court, but she did not find any. Robin said that she was aware that the FBI's Washington Field Office had an open investigation of Khattab but that it was not an active investigation.

One of the documents that Robin retrieved in her search using the name Ibn Khattab was the Phoenix EC, which we described in Chapter Three of this report. The author of the EC, Special Agent Kenneth Williams, mentioned Ibn Khattab when describing his interview of the subject of an FBI investigation who had a picture of Khattab and a picture of Usama Bin Laden on the wall of his apartment where the interview was conducted. Williams stated his belief that there were an "inordinate number" of persons of interest to the FBI who also were receiving training in aviation-related fields of study and that there

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[127] Even prior to the September 11 attacks, however, there was intelligence information showing that some members of this missionary group were using the organization as a means and as a cover to recruit individuals to conduct acts of terrorism and to send them to two Middle Eastern countries under the guise of "religious training."

was a possibility that Bin Laden was coordinating an effort to train people in the U.S. in order to conduct terrorist activity in the future.[128]

ACS records show that Robin printed the Phoenix EC on August 22. Robin told the OIG that her usual practice was to read the documents that she printed, but she said she did not have a recollection of reading the Phoenix EC at the time.

Robin did not provide the EC to anyone else or discuss its contents with anyone, including Martin or the Minneapolis FBI. Robin told the OIG that when she read the Phoenix EC after the Joint Intelligence Committee Inquiry staff informed her that ACS showed that she had printed the EC, she concluded that nothing in the EC would have bolstered Moussaoui's connection to a foreign power for FISA. She also asserted that the Phoenix EC's reporting of information about individuals who were of interest to the FBI – that they were Middle Eastern and were in flight school – was not significant at the time because there were thousands of Middle Eastern men in U.S. flight schools at the time.

8. Martin and Robin consult with NSLU attorney Tim

Around August 23, Don directed Martin and Robin to consult with another NSLU attorney, Tim, about the Moussaoui case. According to Martin, Don thought that Tim should be consulted because he handled counterterrorism matters full time and therefore may have had more expertise than Howard.

Martin orally briefed Tim on the facts of the Moussaoui case but did not provide him with any of the documentation. None of the participants in the meeting recalled specifically what facts were discussed. Tim took a few notes about the conversation in his calendar, and the notes reflect that Tim was told that Moussaoui was an Arab who was in flight school and who had encouraged a friend of his to fight for the Muslim cause in Chechnya. Tim said that he did not recall discussing with Martin and Robin the Chechen rebels as a possible foreign power. Tim added that it was the role of the SSA and IOS, not the

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[128] The Phoenix EC did not contain any references to Moussaoui, to any of the individuals who surfaced in the Moussaoui investigation, or to anyone associated with Oklahoma or Minnesota.

NSLU attorney, to identify the foreign power based on their analysis of the available intelligence. He also suggested that the reason that the Chechen rebels were not discussed as a foreign power was because, at the time, they were viewed as participants in a civil war, not as a terrorist organization. Tim told the OIG that while in theory the Chechen rebels could have been a foreign power, because "anything could be a foreign power," it was his understanding that this did not happen in practice before September 11, 2001. He added that even if the Chechen rebels were considered a foreign power under FISA, the FBI still would have had to show that Moussaoui was an agent of that foreign power.

Both Martin and Tim told the OIG that Tim's advice was that the Minneapolis FBI lacked sufficient evidence of a foreign power to obtain a FISA warrant. Tim advised Martin that Minneapolis would have to collect more information supporting Moussaoui's connection to a foreign power in order to obtain a FISA warrant.

Tim told the OIG that Martin's "attitude" in presenting the case was that "he didn't think [Minneapolis] should get the FISA" but that Minneapolis "wanted one." According to Tim, he was very busy with another matter at the time and advised Martin that if the project needed more attention, Martin would have to see another NSLU attorney.

Tim told the OIG that he did not read the Phoenix EC until some time after September 11. With regard to whether it would have had an impact on his legal advice, Tim stated, "I can't tell you it would have been enough for a FISA." He also stated that the Phoenix EC would not have provided sufficient information to connect Moussaoui to a foreign power. But Tim said that, if he had known about the Phoenix EC, he would have taken it to an attorney in OIPR to discuss the Moussaoui matter in person, which he said was consistent with how he had acted in the past. He said that while "all Middle Eastern pilots" trained in the United States, the Phoenix EC would have provided a theory to attempt to connect Moussaoui to a foreign power under FISA.[129]

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[129] We also asked Howard whether he had read the Phoenix EC since September 11 and if so, whether it would have made a difference to him in his analysis of whether the Minneapolis FBI had enough information to obtain a FISA warrant. Howard said that he only recently had read the Phoenix EC, but that if he had seen the Phoenix EC at the time, it (continued)

9. Martin tells Minneapolis its FISA request was not an emergency

On August 24, Martin and Gary discussed the options for the Minneapolis FBI in pursuing a FISA warrant for Moussaoui. Martin asserted that the Moussaoui situation did not qualify as an emergency, which required information that an "imminent act of terrorism" was about to take place, and he added the FISA request lacked sufficient evidence of a connection to a known foreign power.[130]

Gary's notes from the conversation indicate that Martin stated that Minneapolis could write a Letterhead Memorandum (LHM) for the FISA request, have its CDC approve it, and that Martin would try to push it "up [the] food chain" at FBI Headquarters. However, according to Gary's notes, Martin advised him that the FISA request could "take a few months" to complete, that there were "100s of these FISA requests," and that the FBI had to prioritize them.[131] The notes also indicate that Martin said that he had showed the FISA

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would have "made a difference in the pucker factor," and he would have called Rowley in Minneapolis and discussed the importance of tracking down the available leads to find out as much information about Moussaoui as possible. However, Howard said he believed that the Phoenix EC "would not have made a difference in the probable cause equation as it applie[d] to Moussaoui." He explained that the problem with the Moussaoui case was the lack of a connection to a foreign power and nothing he read in the Phoenix EC contributed to that issue.

[130] As discussed in Chapter Two, the SSAs and NSLU attorneys we interviewed told us that what rose to the level of an expedited FISA request depended on what the field office and ITOS management deemed to be an immediate priority, but the final decision would be made by the ITOS Section Chief, Michael Rolince. According to these witnesses, in the summer of 2001 expedited FISA requests normally involved reports of a suspected imminent attack or other imminent danger.

[131] Rolince and others told the OIG that there were always more FISA requests than ITOS resources and OIPR attorneys to complete all of them and have them heard before the FISA Court in the amount of time desired by the field office. Rolince stated that he instituted a policy that only the Section Chief was permitted to determine what constituted a priority and would be pushed to OIPR. He said that this arose out of the OIPR Counsel expressing to him that his attorneys were being called by SSAs and analysts making demands about what cases were priorities and had to be completed for presentation to the FISA Court. As a result of Rolince's policy, field office managers would call Rolince to (continued)

request to an NSLU attorney and that office was not supportive of the application.

Gary's notes also indicate that Martin told Gary that "1-1-1/2 years ago we could have rammed this through." Martin told the OIG that he did not remember making this statement but that he believes he was referring to the months after the bombing of the *U.S.S. Cole* in Yemen, which took place in October 2000. Martin said that after an act of terrorism or some other crisis situation, a significant amount of intelligence information is developed, which leads to more FISAs being obtained in a shorter amount of time. OIPR Counsel James Baker told the OIG that around the millennium in late 1999 and early 2000 the government had a heightened concern about terrorist attacks and was "aggressive" in its pursuit of FISA warrants, and the FISA Court "went along with them," approving a significant number of FISA warrants in less than a month.

Gary told the OIG that because he was new to counterterrorism matters, he relied on the advice that he received from Martin.

10. Martin seeks information from FAA

During this same time period, Martin initiated additional requests for information about Moussaoui. Martin advised the Federal Aviation Administration (FAA) representative at FBI Headquarters about the Moussaoui investigation and provided him with a copy of Henry's 26-page EC. The FAA employee checked FAA databases for information about Moussaoui and obtained records indicating that he had registered for a student pilot's certificate at the flight school in Norman, Oklahoma. The FAA employee e-mailed this information to the Minneapolis FBI and the RFU.

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assert their opinion that their case should be prioritized over others. Rolince explained that FISA renewals were generally of a higher priority than initiation of FISAs because with renewal requests the FBI was faced with the likelihood of not being able to renew the FISA if the previous FISA warrant order lapsed. He also stated that al Qaeda FISA requests were generally the priority, although there were times when another foreign power was the priority for a certain period of time because of a specific set of circumstances.

According to the FAA employee, he, Martin, and Robin met with Don when the Moussaoui matter first came to the RFU, and they discussed what the FBI could tell the FAA about Moussaoui. The FAA employee stated that they decided that since Moussaoui and Al-Attas were in custody and no other individuals were known to be working with them, the Minneapolis FBI would continue its investigation, but the FBI would not advise the FAA about the investigation at that point.

11. Minneapolis FBI seeks assistance from the CIA and London Legat

On August 24, after the Minneapolis FBI was told by Martin that the French information was not sufficient to link Moussaoui to a foreign power, the Minneapolis FBI sought assistance from other agencies to connect Moussaoui to al Qaeda or another foreign power.

Henry e-mailed an FBI manager detailed to the CIA to ask him to determine whether the CIA had any information linking Moussaoui to a foreign power. A CIA counterterrorism employee e-mailed the FBI manager detailed to the CIA, who forwarded the message to Henry, that Ibn Khattab was "a close buddy with Bin Laden from their earlier fighting days and that the CIA employee's interpretation of the French information was that Moussaoui was a "recruiter for Khattab." Henry responded by e-mail to the FBI detailee and asked him to forward the e-mail to the CIA employee. In this e-mail, Henry asked the CIA employee if she had any additional information connecting Ibn Khattab to al Qaeda "other than their past association." He also wrote, "We're trying to close the wiggle room for FBIHQ to claim that there's no connection to a foreign power." Henry did not receive any response from the CIA to his request for additional information linking Moussaoui to a foreign power. According to the CIA employee, the CIA had no further information on any links between Moussaoui and terrorists, and this information was communicated to the FBI.

Also on August 24, Henry e-mailed the FBI manager detailed to the CIA, who we call "Craig," with names, telephone numbers, and other information obtained from Al-Attas' address book. Henry requested that Craig ask the CIA to run traces on the information. Henry noted in the e-mail that he also was going to send copies of all of the documents found in Al-Attas' possession. Henry wrote that there were many more domestic telephone numbers in the

information obtained from Al-Attas, and Henry had included only the foreign information in the e-mail.

Also on August 24, the same day that Henry was exchanging e-mails with the CIA employee about obtaining information to connect Moussaoui to a foreign power, a CIA manager who was working in ITOS at FBI Headquarters as a "consultant" on intelligence issues e-mailed Don about the Moussaoui case. The CIA manager asked whether leads had been sent out to obtain additional biographical information, including any overseas numbers, and whether the FBI had obtained photographs and could provide them to the CIA. Martin responded to the e-mail and provided an update stating that requests for information and photographs already had been sent to the appropriate foreign intelligence agencies and to the CIA, and that the Minneapolis FBI had sent telephone numbers and addresses from Moussaoui's and Al-Attas' "pocket litter" to the CIA.[132] Martin concluded the e-mail by writing, "[p]lease bear in mind that there is no indication that either of these two had plans for nefarious activity as was apparently indicated in an earlier communication." (Emphasis in original.)

Also on August 24, Henry e-mailed the FBI's London ALAT, providing him with an update on the Moussaoui investigation and asking for assistance in establishing that Moussaoui was acting on behalf of a foreign power. Although the London ALAT contacted the British authorities twice in writing, made several telephone calls, and indicated the urgency of the Moussaoui matter, the British government did not provide the FBI any information about Moussaoui until September 12. We discuss the information and the ALAT's efforts to obtain this information from the British authorities in Section J below.

In addition to contacting the CIA and the London Legat directly, Henry contacted another FBI Headquarters employee who worked on intelligence matters and who we call "Carol." In an August 24 e-mail, Henry reported the CIA employee's statement that there was an association between Khattab and Bin Laden. Henry asked Carol for her assistance in establishing a connection between Moussaoui and a known terrorist organization, such as al Qaeda.

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[132] "Pocket litter" is a term used to describe the contents of the pockets of a person who is taken into custody and searched.

Henry wrote that the RFU had determined that Minneapolis did not have sufficient evidence of a criminal violation for a criminal search warrant and that Minneapolis also lacked sufficient evidence to obtain a FISA warrant. He noted that the RFU had advised Minneapolis that "because Ibn Khatab [sic] has not yet been established to be a member of a named group, that Moussaoui is not acting at the direction of a foreign power." He added, "I disagree, but that doesn't matter." He also e-mailed Carol a copy of his 26-page EC about the Moussaoui investigation. Henry told the OIG that he did not receive any information from Carol until September 10, when she sent him an e-mail inquiring whether he had been able to obtain a warrant.

12. Minneapolis prepares emergency FISA request

On the morning of Saturday, August 25, Henry completed the Minneapolis FBI's formal FISA request, which consisted of a 6-page LHM, and e-mailed it to FBI Headquarters. The LHM stated that the Minneapolis FBI was requesting a FISA search warrant on an emergency basis and that Minneapolis "wish[ed] to emphasize the urgency of this matter in reminding recipients that Moussaoui is in INS custody pending deportation."

The LHM summarized Henry's 26-page EC, including the statements received from the flight school representatives, that Moussaoui was arrested as an overstay on his visa and that deportation was pending and that he was in possession of two knives when he was arrested. The LHM also summarized Al-Attas' statements about Moussaoui's radical Islamic fundamentalist beliefs, including that Moussaoui believed that it was acceptable to kill civilians who harm Muslims. The LHM noted inconsistencies in Moussaoui's statements, such as his unconvincing explanation for the large sums of money in his possession while he was in the United States and his inability to convincingly explain the reasons for his recent trip to Pakistan. With respect to information linking Moussaoui to a foreign power, the LHM contained three paragraphs. The LHM included the information provided by French authorities. The LHM also included the statement from the CIA employee that Ibn Khattab was "known to be an associate of Usama Bin Laden from past shared involvement in combat."

Both Gary and Henry told the OIG that they believed that based on the information they provided in the LHM, the Minneapolis FBI could support that Moussaoui was connected to Ibn Khattab and that because Khattab was

connected to Usama Bin Laden, al Qaeda could be used as the foreign power in the FISA application.

Martin told the OIG, however, that he believed the information provided by the Minneapolis FBI to support a link between Ibn Khattab and Bin Laden was not sufficient to support a FISA request. According to Martin, it was "common knowledge" that there was a "purported" link between Khattab and Bin Laden. But he said that the most recent intelligence indicated that Khattab and Bin Laden were not connected.

Robin told the OIG that she believed that trying to link Moussaoui to al Qaeda by arguing that Moussaoui was linked to Khattab, and Khattab was linked to Bin Laden, was "too far removed" to obtain a FISA warrant. She stated that based on intelligence information, it was known that Khattab and Bin Laden were "contemporaries" but were not connected to each other. She said that Khattab was not working for Bin Laden.

13. Dispute between Minneapolis and Martin

Around this time, Gary and Henry were becoming increasingly frustrated with the advice from Martin that they lacked sufficient information linking Moussaoui to a foreign power. On Monday, August 27, in a telephone call between Martin and Gary, the tension surfaced.

According to Gary's notes of the conversation, Martin told them that "what you have done is couched it in such a way that people get spun up." Gary told the OIG that after Martin made this statement, Gary said "good" and then stated that Minneapolis was trying to keep Moussaoui from crashing an airplane into the World Trade Center. Gary's notes of the conversation indicate that Gary stated, "We want to make sure he doesn't get control of an airplane and crash it into the [World Trade Center] or something like that." According to Gary's notes, Martin responded by stating that Minneapolis did not have the evidence to support that Moussaoui was a terrorist. Gary's notes indicate that Martin also stated, "You have a guy interested in this type of aircraft. That is it."

Martin told the OIG that he did not recall making any statement about Minneapolis getting "spun up" about the Moussaoui investigation. When asked whether he spoke with Minneapolis about whether they were overreacting, Martin stated that he "could have." Martin told the OIG that he

never heard Gary make a statement that he thought that Moussaoui was going to hijack an airplane and crash it into the World Trade Center. He said that the first time that he heard that statement was in October 2001 at a meeting in FBI Headquarters involving several Minneapolis agents and FBI Headquarters employees to discuss the Moussaoui investigation. He said that during the meeting Gary made a reference to having made this statement to Martin some time in August 2001, but that Martin had never before heard Gary make the statement.

Gary's notes also indicate that the Minneapolis FBI asked Martin whether the FISA request, which had been e-mailed on Saturday, August 25, had been presented to Section Chief Rolince for approval as an emergency FISA. Martin stated that it had not been presented to Rolince.

Gary's frustration with Martin can be seen in an e-mail Gary sent to Martin on August 27 after their telephone conversation. In the e-mail, Gary advised Martin to contact the CIA employee for more information about Khattab and his connections to Bin Laden in order to support the foreign power portion of the FISA application. Martin responded in an e-mail on August 28 that FBI Headquarters had the latest information on Ibn Khattab and Chechnya, "as this program is administered by our unit," and that the matter had been discussed with the CIA employee. Martin also wrote, "I need to ask you guys to do me a favor. In the future, please contact and pass info to me and allow me to talk with [an FBI detailee to the CIA] and [the CIA]. Things work much better when our agencies are communicating HQ to HQ."[133]

Martin's e-mail was forwarded to Craig, the FBI detailee to the CIA with whom the Minneapolis FBI had been communicating. Craig responded with an e-mail to Gary, Martin, and Don, which stated that Craig definitely agreed that

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[133] Martin told the OIG that normally contacts with other agencies are made by the SSAs at FBI Headquarters. He stated that he was concerned about the Minneapolis FBI communicating directly with the CIA because it was "not conducive to good information flow" and that FBI Headquarters needed to be "apprised of what's going on." He also asserted that since FBI Headquarters was responsible for putting the FISA request together, it was necessary for FBI Headquarters to ensure that it had all of the available information from outside agencies, and that this was more likely to occur when the agencies were communicating at the Headquarters level.

it was critical for FBI field offices to deal directly with FBI Headquarters in order to ensure that FBI Headquarters was "in the loop up front." He added that in this instance he had been in touch with Don at the initiation of the case and that Don had asked the CIA to move quickly and without a formal request for information in the form of a teletype from FBI Headquarters. Craig wrote that it was for this reason that he had been dealing directly with the Minneapolis office but also coordinating with FBI Headquarters. Craig also wrote that the CIA had yet to receive a teletype from the FBI about the matter, which he described as "the only real, official communication between [the two agencies]." Craig also noted in a separate paragraph to Gary that FBI Headquarters "ha[d] a strong handle on the Chechen issue" and that the IOSs at FBI Headquarters were "well connected" to the CIA if they "require[d] anything new."

Henry told the OIG that he was frustrated with the advice that the Minneapolis FBI was receiving from FBI Headquarters and that he expressed this in a conversation with Martin. Henry said he told Martin that he disagreed with Don's arguments for not pursuing the criminal warrant. He told the OIG that he had said to Martin:

> ...if you're not going to advance this the FISA route, or if you don't believe we have enough for a FISA, I shudder to think – and that's all I got out. And [Martin] cut me off and said, you will not question the unit chief and you will not question me. We've been through a lot. We know what's going on. You will not question us. And that could be the mantra for FBI supervisors.

14. Minneapolis contacts RFU Unit Chief

Because of Gary's and Henry's frustrations in dealing with Martin, Gary told the OIG that he approached Roy, the Minneapolis Acting SAC, and asked Roy to call Don to "find out what [Martin]'s problem was."[134] On August 27,

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[134] As discussed above, Roy was named the Acting SAC on August 3, 2001, and remained in this position until December 2001. Prior to being named the Acting SAC, he was one of two Minneapolis ASACs.

Gary and Roy together placed a call to Don to discuss the Moussaoui FISA request.

According to Gary, Don was "immediately defensive" and asked Martin to join the call. Gary's notes of the conversation do not indicate that Martin's performance was discussed.

Gary told the OIG, and his notes reflect, that Martin and Don discussed the lack of a foreign power and stressed that more direct connections were needed to establish the required link. Gary told the OIG that he recalled asking "what is the mechanism" to address the Moussaoui situation. He said that he asked Martin and Don if "they won't let us go criminal" and if there was insufficient information for a FISA, "what can we do?"

Gary's notes indicate that he was advised that if Moussaoui could not be connected to a terrorist organization, there was "no mechanism to address on a case-by-case basis." Gary's notes also reflect that the question, "What is being done to address the loop-hole (if he isn't part of a known group)?" was asked. Gary told the OIG that he posed this question. The reply is noted in quotation marks as "That isn't something for you to worry about."[135] Gary told the OIG that he recalled that Don gave this reply. Don, however, told the OIG that he did not make this statement.

Gary's notes also indicate that either Don or Martin stated that another NSLU attorney – Susan – would review the matter and would give it a "good

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[135] Because FISA warrants are permitted only for foreign powers or agents of foreign powers, the "lone wolf" terrorist who is not acting on behalf of any foreign government or terrorist organization is not covered by the FISA statute. In 2002, a bill was introduced in the United States Senate to amend FISA's definition of "foreign power" to include "any person, other than a United States person, or group that is engaged in international terrorism or activities in preparation therefor." The intent of the amendment was to allow a FISA warrant to be issued after showing that a person is engaging in or preparing to engage in international terrorism, regardless of whether that person also is an agent of a foreign power. The bill was referred to the Judiciary Committee, and the Senate Intelligence Committee held a hearing on the bill on July 31, 2002. There was no written report, and the bill was not reported to the full Senate. On January 9, 2003, the bill was reintroduced and was approved by the Judiciary Committee on March 11, 2003. It was approved by the Senate in May 2003. A similar bill has been introduced in the House of Representatives.

faith review." Gary told the OIG that Don gave this assurance. According to Gary, Don also advised the Minneapolis FBI that it was necessary to attempt to confirm that the information received from the French related to the same Moussaoui the INS had in custody.

Roy told the OIG that he recalled having the telephone call but said he did not recall the substance of the conversation. He told the OIG, however, that he recalled that at some point he spoke to Don about Martin and expressed his belief that Martin was "hindering" the process or trying to "submarine" Minneapolis' case.

Don told the OIG that he recalled speaking on the telephone with Roy and Gary and discussing the foreign power issue. He said that his response to the disagreement was to have Susan – another NSLU attorney – weigh in on the merits of the FISA request. Don asserted that at no time did Roy or anyone else from Minneapolis raise any concerns to him about how Martin, Robin, or anyone else at FBI Headquarters was handling the case.

Martin also told the OIG that he did not recall the specifics of this telephone conversation. However, with respect to the issue of ensuring the identity of Moussaoui, he stated that his concern was that the Minneapolis FBI practice "due diligence" and ensure that the information that the FBI had received was for the same person. Martin told the OIG that he was aware that the name "Moussaoui" had resulted in multiple hits in the FBI's computer system when the Minneapolis FBI had first checked Moussaoui's name.

As a result of this concern, after the telephone conversation with Don and Martin, Gary directed an agent on the Minneapolis counterterrorism squad to contact the FBI's Paris ALAT to obtain information about the number of persons with the name Zacarias Moussaoui in France by checking the telephone books for the name Zacarias Moussaoui. In an e-mail later that day to the Paris ALAT, the Minneapolis agent wrote, "In an effort to demonstrate the probability, which we believe is low, can you determine just how many Zacarius [sic] Moussaoui's [sic] are listed in the white pages in France. [sic]" The ALAT replied by e-mail that he could check the white pages for Paris but he might not be able to check the white pages for all of France. He also wrote that he was meeting with the French authorities the next day and was expecting them to provide additional information that would "confirm Moussaoui's identity."

On August 30, the ALAT provided additional information obtained from the French authorities that confirmed Moussaoui's identity to Minneapolis and FBI Headquarters. This information is discussed in Section F, 20 below.

Henry told the OIG that he thought that Martin's suggestion that the Minneapolis FBI do more to confirm that Moussaoui was the same Moussaoui as reported by the French was "another arbitrary roadblock." He said that he believed that they should trust the professionalism of the French, although he also said that he was not aware of the specific information that the French authorities were relying on to assert that the Moussaoui in custody was the same Moussaoui as in their report.

Rolince told the OIG that some time in August 2001, Don stopped briefly at his office to give him a "heads up" on a case in the Minneapolis Field Office. Rolince said that the conversation lasted approximately 20 seconds. Rolince said he did not recall if Don mentioned the name Moussaoui or not. According to Rolince, Don indicated there was an issue with a FISA and Rolince might receive a call from FBI management in Minneapolis. Rolince said Don told him the subject of the investigation was in jail on an immigration charge and the logical leads had been sent out. Rolince told the OIG he did not receive any further details from Don about the issue in Minneapolis, but this type of heads up was not atypical. Rolince stated that he received this type of brief notification as often as 10-15 times a week from his subordinates about potential contacts from the field.

Rolince told the OIG that he never received a telephone call or other contact from the Minneapolis FBI about the Moussaoui matter. He said that he did not raise the limited information he received from Don about the Moussaoui investigation with anyone else in the FBI.

15. Martin and Robin's consultation with NSLU attorney Susan

After the call with Minneapolis on August 27, Martin and Robin met with NSLU attorney Susan to discuss the Moussaoui FISA request. Martin told the OIG that he orally briefed Susan about the facts of the case. He did not provide her with any of the documentation that had been generated, such as the 26-page EC or the 6-page LHM, although he had the documents with him at the meeting. Martin told the OIG that while he did not recall specifically what was discussed with Susan, he recalled that she did not believe that there was

sufficient evidence of a connection to a foreign power. Martin added that he recalled informing Susan of the facts that related to the issue of the foreign power, which was the information received from the French authorities.

According to Susan, the meeting lasted approximately 45 minutes. She said she was made aware of a handful of other facts, such as that Moussaoui was an Arab, was in flight school and had been asking some weird questions, and had paid cash for flight school.

Susan told the OIG that Martin and Robin downplayed the Khattab information to her. She stated, however, that she believed the evidence of a link between Moussaoui and Khattab was very "tangential" since it was based on the statement of Tufitri who had no direct knowledge of a connection between Moussaoui and Khattab. In addition, Susan told the OIG that based on her experiences in ITOS, the Chechen rebels would not have been accepted by OIPR as a foreign power. Susan told the OIG that based on the facts that she was presented, she told Martin and Robin that the FISA request lacked the necessary connection of Moussaoui to a foreign power.

Susan told the OIG that attempting to argue that Khattab was part of al Qaeda was not feasible, because at the time the FBI's position was that Khattab did not take direction from Bin Laden but rather was the leader of the rebels in Chechnya. She said that it was her understanding at the time that the CIA and the FBI did not agree about Khattab's role and relationship to Bin Laden.[136] Susan also stated that in her experience it would not have been feasible to get an emergency FISA through OIPR if a new foreign power that had never been pled before was presented.

Susan told the OIG that she asked Martin and Robin whether the FBI had any information indicating anyone was sending people to the United States for flight training, but that she was told no. She said that Robin did not mention the Phoenix EC to her. Martin told the OIG that he did not recall any such

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[136] The FBI IOSs we interviewed told the OIG that the CIA, not the FBI, collected intelligence information on the Chechen rebels and Khattab. According to the IOS who was responsible for targets in Chechnya, by the spring of 2001 both the CIA and the FBI took the position that Khattab did not take direction from Bin Laden.

question from Susan. Robin also told the OIG that Susan never brought up the issue of whether Middle Easterners were training in U.S. flight schools.

We asked Susan whether she had read the Phoenix EC since September 11 and whether it would have made a difference to her opinion about the Moussaoui FISA request. Susan said that she first read the Phoenix EC several months after September 11. She said that if she had read the Phoenix EC at the time, she would have been concerned enough about Moussaoui to bring the matter to an OIPR attorney's attention. According to Susan, she sometimes called OIPR attorneys "to bounce things off" them, rather than sending over a formal FISA request, and would ask them "where do you think we are?" Susan added that the Moussaoui case still would have had "the same foreign power issues" but that the Phoenix EC would have "influenced" her.

Susan also told the OIG that she had not been aware at the time of her meeting with Martin and Robin that the Minneapolis FBI had prepared a lengthy EC about the Moussaoui case. She stated that she thought that the case "was evolving" as she spoke to Martin and Robin and that she did not realize that documentation had been prepared. She said she believed that Martin had received oral briefings from Minneapolis. She said that she first became aware of Henry's EC in November 2001. However, she said that if she had read it before the meeting with Martin and Robin, it would not have changed her opinion about the Moussaoui FISA request. She said she recalled thinking that Martin had represented the facts as set forth in the EC. Susan stated that she probably received an oral briefing because Minneapolis was seeking an emergency FISA and needed an answer quickly. She said that there was nothing unusual about receiving an oral briefing in that situation. Susan told the OIG that she did not know at the time that Martin had already consulted with Howard and Tim about the same case.

After the consultation with Susan on August 27, Don instructed Martin to have the matter reviewed again by the head of NSLU, Spike Bowman, because of the level of concern raised by the Minneapolis FBI about Moussaoui and the FISA request. Martin arranged for a meeting with Bowman the next afternoon, August 28.

16. Martin's edits to Minneapolis' FISA request

Prior to the meeting with Bowman, Martin began reviewing and editing the Minneapolis FBI's 6-page LHM, in case the FISA request was approved by Bowman. Martin e-mailed an edited draft of the LHM to Gary and stated that he had made some refinements and wanted comments from Minneapolis. Martin noted that he had removed the paragraph reflecting that a CIA employee had stated that Khattab was an associate of Bin Laden, but that Martin would "add the foreign power info re Al-Khattab/UBL later, when we get an [attorney] to buy this argument."

Gary responded with a lengthy e-mail setting forth his concerns about Martin's edits. First, Gary expressed concern about the removal of the statement connecting Khattab to Bin Laden. Gary wrote, "It seems that we are setting this up for failure if we don't have the foreign power connection firmly established for the initial review." Gary also raised questions about the following made by Martin:

- Change from the statement about Moussaoui "preparing himself to fight" to a statement that Moussaoui and Al-Attas "train together in defensive tactics." Gary wrote, "During the interview neither Al-Attas nor [Moussaoui] used the term 'defensive tactics.' I think that softens our argument and misrepresents the statements of Al-Attas."
- Change to the statement "Al-Attas was also asked if he had ever heard Moussaoui make a plan to kill those who harm Muslims and in so doing become a martyr himself. Al-Attas admitted that he may have heard him do so, but that because it is not in his own heart to carry out acts of this nature, he claimed that he kept himself from actually hearing and understanding." Martin changed this section to read, "Al-Attas was also asked if Moussaoui has a plan to kill those who harm Muslims and or to martyr himself while conducting an act of terrorism. Al-Attas indicated that Moussaoui may have such a plan, but that he does not know for certain if this is the case." Gary acknowledged that Martin had changed the statement based on a previous telephone conversation with Gary, but Gary wrote "now that I see it in print,

I think we might be misstating Al-Attas' response" to the question.

- Change from the statement that "Moussaoui was unable to give a convincing explanation for his paying $8300 for 747-400 training" to "Moussaoui would [sic] give an explanation for his paying $8,300 in cash for 747-700 flight simulation training." After noting that Martin had left out the "not," Gary stated that he did not think that this statement was accurate because Moussaoui gave an explanation "but it was not convincing."
- Change from the statement that Moussaoui had no convincing explanation for the large sums of money known to have been in his possession during his time in the United States" to "Moussaoui would not explain the large sums of money known to have been in his possession during his time in the United States." Gary noted here again that Moussaoui had offered an explanation but that "his explanation fell short."
- Change from the statement that "Tufitri stated that Moussaoui was 'the dangerous one'" to Tufitri "described him as being dangerous." Gary pointed out that Tufitri "did not describe him as being dangerous in general terms, Tufitri specifically referred to him as 'the dangerous one.'" Gary added, "I think this is significant – and it accurately reflects the information as it was provided by [the French authorities].

Martin responded by e-mail to Gary the same day. With regard to Gary's concerns about the foreign power information, Martin explained that Robin would be pulling together the information required for the foreign power section of the FISA application and that it would be added to the LHM once it was ready to be sent to OIPR. Martin added, "Don't worry about this part."

Martin also wrote that he would make some of the changes requested by Gary. For example, with respect to the "would not give an explanation" comment, Martin changed the text to "did not give a logical explanation." With respect to Gary's concern about Moussaoui's inability to explain the source of income, Martin wrote, "I added words to cover your point."

Martin declined to make some of the other changes requested by Gary and offered explanations for his edits. With respect to the "defensive tactics" change, Martin wrote, "We don't need to provide verbatim answers to [interview questions]. I think the way I've set it out here is accurate." With respect to the question put to Al-Attas about whether he had heard Moussaoui make a plan to kill people who harm Muslims, Martin wrote that he did not believe how it had been written made sense and that "the way it reads in [my] draft is fine." With respect to the "dangerous one" comment, Martin wrote that what was in the paragraph was adequate.

At the end of the e-mail, Martin wrote, "I tried to tighten up the language and make it more concise. There's not necessarily anything wrong with [the LHM] – I'm just trying to make an adjustment for our new targeted audience."

Gary told the OIG that he believed Martin's edits "softened" the FBI's position. He said that he questioned why Martin had taken out the foreign power information when it was legally required to obtain the FISA warrant, and claimed he was given "no real explanation" for why Martin omitted the foreign power information. Henry told the OIG that he believed that Martin's edits appeared to be "dumbing [the LHM] down" and that the edits "would definitely cause [the FISA request] to fail."

In response, Martin told the OIG while he believed that the LHM was generally well-written, the three paragraphs for the foreign power section of the LHM were not adequate to establish the foreign power element, and he intended, along with Robin, to compile a "real" foreign power section when an NSLU attorney gave approval to move forward with the FISA request. Martin said that handling the request this way was common and denied that he was attempting to "torpedo" the case.

Robin also told the OIG that, as they did with other cases, she and Martin were preparing to create a new foreign power section for the Moussaoui LHM that would be comprehensive. She said that Martin's edits were normal and that the changes were designed to create "a logical, intelligent package that we thought would get to court" and to make the LHM less "inflammatory." She explained that by "inflammatory" she meant that the Minneapolis LHM was not focused, but rather used terms that were geared toward getting someone's attention without providing any evidentiary support. Robin asserted that Martin was streamlining the document and adding the "buzzwords" that he

knew from experience OIPR would require in order to get the package to the FISA Court. Robin stated that the RFU wanted FISA requests to get OIPR's attention but did not want the RFU to seem like "maniacs."

17. Consultation with NSLU chief Spike Bowman

On the afternoon of August 28, Martin and Robin met with Bowman to discuss the Moussaoui FISA request. Don told the OIG that he had planned to attend the meeting but that on his way to Bowman's office he was called into a meeting with Section Chief Rolince. No one from Minneapolis was asked to participate in the meeting.

Bowman told the OIG that it was "quite unusual" for him to be consulted about a particular FISA request. He said that it also was unusual for the field office to be so adamant that it had sufficient evidence to obtain a FISA warrant and for the Headquarters SSA to be as adamant that the FISA warrant was not sufficiently supported.

Martin orally briefed Bowman about the facts of the Moussaoui case but did not provide him with any of the documentation that he had with him. Robin told the OIG that she thought that Bowman was very familiar with the facts because he had been briefed by other attorneys who had been involved in the matter.

Martin said that Bowman advised that even if everyone were to agree that the Chechen rebels could be pled as a foreign power, the Minneapolis FBI lacked sufficient evidence to establish that Moussaoui was an agent of that foreign power. Martin told the OIG that Bowman said that Tufitri stating that Moussaoui told Amnay how to serve Allah by fighting with the Chechen rebels did not meet the standard of an agent of a foreign power.

According to Bowman, Martin conveyed the opinion that he did not believe there was sufficient information for a FISA. Bowman said he was aware that Moussaoui was a French citizen who had overstayed his visa, that he was a bad flight school student who paid in cash and who could not satisfactorily explain how he was being supported in the United States, that he was asking odd questions about the airplane (such as whether you could open the doors during flight), that he was more interested in learning how to take off and land the airplane than flying it, that he was traveling with a friend who did not seem to share his interest in aviation, and that the French authorities had

reported that Tufitri was blaming Moussaoui for recruiting Amnay to fight in Chechnya on behalf of the rebels there.

Bowman told the OIG that he did not believe, based upon the facts, that there was sufficient evidence of a link to a foreign power. He said that he was aware that the Minneapolis FBI wanted to argue that because there was some connection between Moussaoui and Khattab and because there was a relationship between Khattab and Bin Laden, Moussaoui was an agent of al Qaeda. Bowman said that it was his understanding that it was common knowledge that Khattab and Bin Laden had "some kind of relationship," but in his opinion this was not a close enough link to argue that Moussaoui was an agent of al Qaeda. Bowman also stated that one Muslim encouraging another Muslim to fight in a Muslim cause was not sufficient to meet the requirements of an agent of a foreign power under FISA.[137]

We asked Bowman whether he had read the Phoenix EC and whether it would have made a difference in his advice. Bowman stated that he read the Phoenix EC only after September 11, but that he believed for several reasons it would not have made any difference if he had read it at the time. He asserted that the Phoenix EC was a routine communication pointing out what a field office believed was an "anomaly" and that it was not an "alarmist" communication. In addition, he said that the Phoenix EC did not connect any of the people referenced in the Moussaoui case with any foreign power. He said that it did not "associate Moussaoui with anything."

After meeting with Bowman, in an e-mail to Gary and Acting SAC Roy, Martin informed the Minneapolis FBI of Bowman's opinion that there was insufficient evidence of a connection to a foreign power. Martin wrote:

> We just left a meeting w/ Spike Bowman, #1 in NSLU. He says we have even less than I thought. Apparently, even if we could show that the ZM that recruited [the person] in France is the one

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[137] As discussed in Chapter Two, the legislative history of FISA provides that to meet the definition of an agent of a foreign power, there must be "a nexus between the individual and the foreign power that suggests that the person is likely to do the bidding of the foreign power" and that there must be a "knowing connection" between the individual and the foreign power.

you have locked up in INS detention, we still don't have a connection to a foreign power. We would need intel to indicate the guy was actually a part of the group, an integral part of the movement or organization, and not just an individual [redacted]."

In the e-mail, Martin advised Gary to call him to discuss the next course of action. Roy responded by e-mail and wrote, "Thanks for your help and continued support."

Gary's notes indicate that Martin and Gary also spoke on the telephone after the Bowman meeting and Martin explained that the FBI needed more information linking Moussaoui to a foreign power. The notes state that Martin told Gary, "we need [Moussaoui] to be an integral part of a terrorist organization."[138] The notes also indicate that Martin conveyed that more intelligence information was needed on "how he is acting on behalf of a foreign power." The notes state: "Bottom Line – You don't have a foreign power." The notes also state that Martin advised Gary to ensure that Moussaoui was entered on a watch list and that the FBI's Paris Legat was contacted about deportation arrangements for Moussaoui (which we discuss below).

18. Additional information about Al-Attas and Moussaoui

a. Minneapolis FBI explores use of undercover officer in Moussaoui's jail cell

In an e-mail from Gary to Roy on August 29, Gary wrote that he and Henry were "exploring the feasibility" of inserting an undercover officer who spoke Arabic in Moussaoui's jail cell "in an attempt to elicit from Moussaoui

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[138] Bowman told the OIG that Martin accurately conveyed his advice that even assuming that there was a foreign power to which the FBI could attempt to connect Moussaoui, the Minneapolis FBI lacked sufficient evidence to establish that Moussaoui was acting as an agent on behalf of a foreign power. He stated, however, that Martin's interpretation of his advice that agency law requires a showing that the target was an "integral part" of the terrorist organization was not correct. He opined that the agency standard required a showing that the target was "serving the interest" of the foreign power.

the name of (or descriptive information which would identify) the recognized foreign power with whom he is aligned." Gary told the OIG that Roy, Charles, and Rowley all were consulted about this idea, and all of them stated that they did not see any limitations that would prevent this from occurring. Gary noted in the e-mail that the Minneapolis FBI did not know yet whether the use of the undercover officer for the proposed operation had been approved.

Roy provided the information about using an undercover officer to Don in an e-mail in which he wrote, "The use of the [undercover officer] is also exploratory as we do not want to leave any stone unturned prior to [Moussaoui's] release." Don responded in an e-mail and wrote, "Let us look into this asap. Do NOT go forward with the [undercover officer] until we weigh in . . . ." Roy replied, "We were only been [sic] exploring the possibility of the [undercover officer] – we are by no means ready to go forward with it. The point may be moot because it seems the deportation to France is a more likely outcome and it may be more timely."

Don told the OIG that he discussed the issue with an employee detailed to ITOS with expertise in this area and that the employee stated that the idea was "ridiculous" and that it could not be done. Don said that having an undercover employee involved with something in which information could be obtained that might be used in a criminal proceeding was problematic since the undercover officer would not be in a position to testify. According to Don, he conveyed this information to Roy, and Minneapolis did not pursue this idea further.

b. Translations of recorded conversation between Al-Attas and "Ahmed" and Al-Attas' will

With regard to Al Attas, Henry asked an Arabic speaker who was not employed by the FBI to translate Al-Attas' will, and to translate and transcribe the tape of a 9-minute conversation between Al-Attas and the individual we call "Ahmed," the imam from Al-Attas' mosque whom Al-Attas called while he was in custody. According to an e-mail from Gary to Roy on August 29, the translation by the translator stated Ahmed had said on the tape, "I heard you guys wanted to go on Jihad." Gary's e-mail also stated that the translator reported that Al-Attas immediately responded on the tape, "Don't talk about that now." In addition, Gary's e-mail stated that the translator informed the Minneapolis FBI that Ahmed became very upset when he heard that

Moussaoui was going to be deported. Gary's e-mail added that, according to the translator, the translation of the will that Al-Attas had with him stated that "death is near" and that "those who participate in Jihad can expect to see God."[139]

On August 29, Roy transmitted the information from the will to Don by e-mail, stating, "I obtained some additional information this afternoon and I am forwarding that to you. Please understand that this is only preliminary and we realize the interpretation was not done by a certified linguist." Roy did not ask that Don do anything in particular with the information.

Don responded by e-mail, writing, "The 'will' is interesting. The Jihad comment doesn't concern me by itself in that this word can mean many things in various muslim [sic] cultures and is frequently taken out of context." Don told the OIG that the term "jihad" often was used and had many different meanings.

19. Failure to reconsider seeking a criminal warrant

After Martin conveyed to the Minneapolis FBI that FBI Headquarters believed that the FISA warrant was not feasible, the Minneapolis FBI and FBI Headquarters began taking steps to finalize Moussaoui's deportation. Yet, neither FBI Headquarters nor the Minneapolis FBI reconsidered the criminal search warrant issue or trying to contact the Minneapolis U.S. Attorney's Office (USAO) about a criminal search warrant, even after the legal decision was made that insufficient evidence existed to obtain a FISA warrant. Initially, as noted above, the decision was made not to seek a criminal warrant, in part because if a criminal warrant was not obtained, this would violate the "smell test" and jeopardize the chances of obtaining a FISA warrant. Once the FISA

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[139] The will and the tape also were sent to the FBI's Chicago Field Office for translation and transcription by an FBI linguist, which was completed around September 6, 2001. The Chicago translation of the tape was the same as that of the initial translator: "Sheikh do not talk about it now. Do not talk about it now sheikh." The Chicago translation said the will stated that "death has approached" and expressed Al-Attas' hope that "Allah will award him with paradise and keep him with the prophets, martyrs and pious." Henry forwarded these translations to FBI Headquarters in an e-mail dated September 6, 2001, with a lead that stated "For information."

warrant was ruled to be unobtainable because of the foreign power requirement, the smell test was no longer an issue. Yet, no one sought to attempt to obtain a criminal warrant, or apparently even discussed this issue.

Don told the OIG that he did not know why he, Martin, or the Minneapolis agents did not raise the issue again about seeking a criminal search warrant, once a decision was made not to pursue the FISA warrant. He suggested that it did not happen because no one thought to raise the matter again. Don said that looking back on the matter now, he wished that there had been a discussion about seeking a criminal warrant once the FISA route was exhausted. Martin told the OIG that if the Minneapolis FBI believed that it had sufficient evidence to obtain a criminal search warrant, then the Minneapolis FBI should have raised the issue. He said, however, that he did not believe that there was sufficient evidence of a crime to obtain a criminal search warrant.

When Henry was asked why he did not propose seeking a criminal warrant once the FISA route was exhausted, he responded, "I never thought about it." He stated that he "could have done that but it did not occur to [him]." Gary told the OIG that he did not pursue a criminal search warrant because FBI Headquarters would not obtain the requisite authorization from the Department of Justice. Rowley told the OIG that she did not know why a criminal warrant was not sought once the FISA route was exhausted. She noted that she did not have a leadership role in the case and she felt that the people who were involved knew what they were doing.

20. Additional French information received about Moussaoui

On August 30, the FBI's Paris ALAT provided additional French information to the Minneapolis FBI and FBI Headquarters about Moussaoui. The ALAT's report included information from a person who we call "Idir" who knew Moussaoui.[140] Idir confirmed the relationship between Moussaoui and Amnay. Upon learning of Amnay's death, Idir had accused Moussaoui of causing the death. Idir explained that Moussaoui had become a radical fundamentalist and that he had brought Amnay to these beliefs. He said that

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[140] We do not use Idir's real name because the FBI considers that information to be classified.

Moussaoui and Amnay "were inseparable, one was the head and the other was the armed hand of the same monster." Amnay states that when Moussaoui had come to his community, Idir had warned the local Muslim community of the moral danger Moussaoui posed to young Muslims and that Moussaoui was "driven from at risk urban areas by his coreligionists for propagating hismessage of intolerance and hatred."

The report from the Paris ALAT also stated that Idir recalled that Moussaoui had traveled to Kuwait, Turkey, and Afghanistan. Idir said Moussaoui was a "strategist" who was potentially very dangerous and was devoted to Wahabbism, the Saudi Arabian sect of the Islamic religion adhered to by Bin Laden. Idir also described Moussaoui as "extremely cynical" and "a cold stubborn man, capable of nurturing a plan over several months, or even years and of committing himself to this task in all elements of his life." The date of birth Idir provided for Moussaoui was the same as the one in Moussaoui's passport, which had been seized upon his arrest in Minneapolis.

The Paris ALAT's report also stated that the ALAT had inquired with the French authorities about deporting Moussaoui to France and that the French authorities were interested in pursuing the matter. In the lead portion of the EC, the Paris ALAT wrote a lead for the Minneapolis FBI that stated, "With FBIHQ concurrence and assistance, advise Legat Paris of interest in further exploring the possibility of deporting [Moussaoui] by U.S. law enforcement escort to France as described in the text of this EC." The lead for the RFU was a "read and clear" lead.

Gary's notes indicate that Martin brought this new information to Gary's attention in a telephone call on August 30. In addition, Martin advised him that the French government would be able to hold Moussaoui for several days with his property quarantined. The notes reflect that Martin told Gary that the French authorities were "very interested in Moussaoui" and that they wanted him "escorted to France" and his "property quarantined." Gary's notes also indicate that Martin advised Gary that the French terrorism statutes would allow the French to hold Moussaoui for "several days to determine what he's up to."

G. Deportation plans

Martin and the Minneapolis FBI coordinated with the INS to finalize plans for Moussaoui's deportation. Under the law, Moussaoui could be deported to either France, his country of citizenship, or England, his country of last residence. The French advised that they could hold Moussaoui and search his belongings, and on approximately August 30, it was decided to deport Moussaoui to France.

During the deportation planning, the Minneapolis FBI and the FBI Paris ALAT requested permission from FBI Headquarters for Henry and an INS agent to accompany Moussaoui to France in order to brief French authorities and to assist in evaluating the information obtained in the search. Minneapolis Acting SAC Roy wrote in an August 30 e-mail to Don that the French authorities were requiring that Moussaoui be accompanied by a law enforcement officer from the United States and that Moussaoui's property be kept separate from him. Roy wrote, "If possible, we would like the Minneapolis agents to be present while the exploitation of the computer is conducted so we can act immediately on any information obtained."

Don initially was opposed to sending FBI agents to escort Moussaoui. He sent a reply e-mail to Roy on August 31 stating that he believed that the deportation of Moussaoui should "remain an INS issue." (Emphasis in original.) Don wrote in the e-mail the Minneapolis FBI should ensure that the FAA was involved and noted that FAA sky marshals were armed.

Section Chief Rolince told the OIG that he also was initially opposed to sending a Minneapolis agent with Moussaoui to France. He said that at first he thought it was unnecessary because, based on his past experience, the agent would have accompanied Moussaoui in an attempt to obtain information. He said that he changed his mind when it later was explained to him that the Minneapolis agent was going to accompany Moussaoui as part of an overall strategy to ensure that Minneapolis obtained all of the information from the search and further investigation.

Roy replied by e-mail to Don a few minutes later and asked whether Don's e-mail meant that FBI Headquarters would not support a Minneapolis agent accompanying Moussaoui to France. Gary also provided additional information to Don, such as that the French authorities preferred that an FBI agent accompany Moussaoui to France and that Martin had informed the

Minneapolis FBI that FAA sky marshals would not be traveling with Moussaoui.[141]

Don replied by e-mail three hours later, stating that he could not discuss the matter at the moment but would call Roy the following week. Don added that he did not believe that the FBI would be turning over the case to the French authorities by not sending an FBI agent to escort Moussaoui. He added that the FBI's Paris ALAT would be present for the search and had been involved with the Moussaoui investigation from the beginning.

On September 4, Don, Martin, and Roy received an e-mail from the Paris ALAT in which he stated that he wanted to confirm the deportation plans. He wrote that it was his understanding that the proposal was to send Moussaoui to Paris with an INS escort and the FBI case agent. The ALAT noted that "[t]his would fit nicely with what the French have requested" and that the agents would need to stay in France a couple of days to assist with briefing the French authorities and to obtain the results of the search by the French authorities. Martin replied by e-mail that Don "still [held] the position that [Moussaoui] will be escorted by INS, and that no FBI personnel is needed." Martin also wrote that because the case had been opened only two weeks and because the interviews were well documented, the ALAT and the French authorities should be able to handle the case without the FBI sending the case agent.

The Paris ALAT responded by e-mail to Don, providing his opinion on whether a Minneapolis agent should accompany Moussaoui to France. The ALAT stated that he did not feel that he was in a position to adequately answer some questions that could be raised about the FBI's investigation of Moussaoui, such as other investigation conducted of which the ALAT was unaware, and questions about Moussaoui's personality for purposes of approaching him in an interview. He wrote that he therefore believed that an agent from Minneapolis or FBI Headquarters should accompany Moussaoui.

Don responded to the ALAT's e-mail the same day. He wrote, "Do we need to fly FBI agents all over the world to conduct basic investigation. [sic] I don't like the idea of [a Minneapolis FBI agent] 'escorting' this guy --- This is

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[141] Martin's e-mail about the FAA stated, "[The FAA] did not indicate a desire to escort the guy, and indicated the INS escort would suffice."

not that complicated. It may be to [sic] late, but in the future I would like [the ALAT] to handle such matters."

The next day, September 5, Henry e-mailed Martin about a meeting he had with the INS supervisor who was going to be responsible for sending Moussaoui to France. Henry explained that the INS supervisor had raised a number of issues about the deportation of Moussaoui and recommended that the FBI request that the INS transport Moussaoui on a government aircraft (a Justice Prisoner Alien Transportation System (JPATS) flight). Martin responded to this e-mail by stating that he would discuss the issue with the INS supervisor assigned to the RFU. Martin also forwarded the e-mail to Don.

Don replied the next day, September 6, writing, "Isn't a JPATS flight awful expensive for a guy SUSPECTED of being up to no good??? Again, I'm of the belief that we consider that a FAA sky marshal(s) be present on the flight."

According to Gary, he repeatedly asked Roy to raise the issue at a higher level at the FBI regarding Minneapolis agents accompanying Moussaoui to France. According to Gary, Roy was waiting for a call back from Don, and because Don had not given Minneapolis a definite "no," Roy was hesitant to go up the chain of command.

According to Roy, he did not hear from Don about the deportation issue. When Don still had not responded by Monday, September 10, Roy sent another e-mail to Don asking whether he had given consideration to a Minneapolis FBI agent escorting Moussaoui.

Don replied by e-mail a few hours later stating that FBI Headquarters decided to concur with a Minneapolis agent accompanying Moussaoui to France.

Gary also told the OIG that he had suggested at some point that Roy "go up" the chain of command about Minneapolis' FISA request, but that Roy did not. Gary told the OIG that he believed that Roy was "not aggressive enough" because he did not appeal to anyone in upper management at FBI Headquarters, but that Roy may have decided to focus on the deportation issue and "drop" the FISA issue. Gary told the OIG that he believed that part of the reason that Roy did not contact anyone above Don about the Moussaoui FISA request was because he was an acting SAC, and also possibly because Roy did

not have any international terrorism experience. Gary also said that Gary himself was "on a learning curve too," and that if he had more experience, he would have sought assistance from someone above Don with trying to get FBI Headquarters to submit the Moussaoui FISA request to OIPR.

Roy responded to this issue by stating that he did not go above Don because, before the September 11 attacks, there was no apparent "urgency" to the Moussaoui matter, and he believed that the Minneapolis FBI had taken the matter through the appropriate channels, since the head of the NSLU also had given his opinion on the FISA request. Roy added that shortly after Bowman's opinion was received, the deportation plan was in place and that plan was going to result in Moussaoui's belongings being searched, which was what Minneapolis was attempting to achieve.

H. Dissemination of information about Moussaoui

On August 28, Don received an e-mail from the FBI detailee to the CIA who we call Craig, which indicated that the CIA had not yet received a formal communication from the FBI about the FBI's requests in the Moussaoui investigation. Don e-mailed Martin and Robin on August 31 to request that they prepare a "comprehensive teletype" to the CIA about Moussaoui. Don wrote that they should pass to the CIA all information, such as biographical information, pocket litter, and telephone numbers, and formally ask for traces on all of the information even though the requests already had been made informally. Don noted that the information needed to be in "formal channels" and instructed Martin and Robin to include the Minneapolis FBI and appropriate Legat offices on the teletype so that the offices would know what FBI Headquarters was doing. Martin replied that he had spoken to Craig about the lack of a formal request and that Martin had begun preparing a teletype, but that he had not yet completed it.

On the same day, in an e-mail from Don to Roy in which Don recommended that FAA sky marshals be used to escort Moussaoui when he was deported to France, Don wrote that he "would also suggest that [Minneapolis] ensure FAA is on board (figuratively and literally). FAA needs to know that FBI suspects that your subject may have been up to no good which included his desire to obtain 747 pilot training." Roy responded in an e-mail that the Minneapolis FBI was working on an LHM and would disseminate it to the FAA in Minneapolis as soon as possible.

Henry told the OIG that he began drafting an LHM to the FAA and that he thought it was important to inform the FAA that Minneapolis believed that Moussaoui wanted to seize control of an airplane and that he might be released soon after he was back in France. Henry prepared a 7-page LHM in which he summarized the FBI's investigation, including what the FBI had learned from the flight school employees about Moussaoui and his interest in and ability to use the mode control panel. Henry noted, "While it is not known if his physical training and study of martial arts are also connected to this plan, such preparations are consistent with facilitating the violent takeover of a commercial aircraft."

Henry also included a section at the end of the LHM labeled "threat assessment" in which he wrote:

> Minneapolis believes that Moussaoui, Al-Attas, and others not yet known were engaged in preparing to seize a Boeing 747-400 in commission of a terrorist act. As Moussaoui denied requests for consent to search his belongings and was arrested before sufficient evidence of criminal activity was revealed, it is not known how far advanced were his plans to do so.

Henry wrote that the French authorities were planning to receive Moussaoui into custody when he was deported and would search his belongings, but that it was not known whether he could be detained over the long term. Henry added that "most significantly" it was unknown whether the French authorities would be able to retain Moussaoui's property indefinitely, including the flight manuals and "materials believed to be contained on his laptop which pertain to his plan." Henry wrote that if the materials were returned to Moussaoui and he was released, "Moussaoui may have the ability to continue with his plan to utilize a 747-400 for his own ends." Henry added, "As the details of his plan are not yet fully known, it cannot be determined if Moussaoui has sufficient knowledge of the 747-400 to attempt to execute the seizure of such an aircraft if he becomes free to do so in the future."

On September 4, Gary discussed this LHM with Martin. According to Gary's notes of the conversation, Martin told him not to provide the LHM to the FAA because FBI Headquarters was issuing a teletype that day to all agencies. Martin instructed Gary to provide the local FAA office with a copy of the teletype once it was received in Minneapolis.

Martin's 11-page teletype was issued on September 4. It was addressed to the FBI Minneapolis and Oklahoma City offices, six FBI Legat offices, the CIA, FAA, Department of State, INS, U.S. Secret Service, and U.S. Customs Service. The teletype consisted of a summary portion and the details of the Moussaoui investigation. In the summary portion of the teletype, Martin wrote that Moussaoui had been detained on a visa waiver overstay violation after he was brought to the attention of the FBI by instructors at the Minneapolis flight school, who had become suspicious of him because he was taking flight simulation training for a 747-400 aircraft. The teletype stated that this training is normally given to airline pilots, and that Moussaoui had no prior experience and had paid $8,300 in cash for the course. The teletype included the information received from the French authorities about Moussaoui, including that he adhered to radical Islamic fundamentalist beliefs and he had recruited a person to join the jihad against Russian forces in Chechnya. It also included the later information received from the French, such as the description of him as "full of hatred and intolerance and completely devoted to the Wahabite cause" and that he was "considered to be potentially very dangerous because of his beliefs and the nature of his character." The teletype added that Moussaoui had traveled to Pakistan for two months prior to his arrival in the United States and that "it is noted that Islamic extremists often use Pakistan as a transit point en route to receiving training at terrorist camps in Afghanistan."

After the summary portion of the teletype, Martin included specifics from the investigation, most of which were taken from the 26-page EC prepared by Henry at the initiation of the investigation. Unlike the LHM Henry had prepared to give to the FAA, however, the teletype did not contain a threat assessment or any indication that the Minneapolis FBI believed that Moussaoui, Al-Attas, and others not yet known were engaged in preparing to seize an airplane in commission of a terrorist act.

On September 5, Henry and an INS agent provided Martin's teletype to the FAA office in Minneapolis and briefed FAA employees on the threat that the Minneapolis FBI believed Moussaoui posed. Henry told the OIG that while the teletype contained most of the facts of the investigation, it lacked conclusions and analysis and had "no statement of opinion as to the threat that this represents."

Martin told the OIG that at the time that he was preparing the teletype, he was not aware that the Minneapolis FBI was preparing an LHM to provide to

the local FAA office. He stated that he discussed to whom to address his teletype with the IOS at FBI Headquarters who prepared teletypes for the FBI when it disseminated threat information, and he also discussed the contents of the teletype with an FAA employee detailed to FBI Headquarters. Martin told the OIG that he included in the teletype what he believed was supported by the facts of the investigation. He asserted that Minneapolis had a "gut feeling" that Moussaoui was "up to no good," but did not have intelligence information of an ongoing plot or plan to hijack an airplane.

Don told the OIG that the FBI used teletypes to disseminate facts gathered from an investigation and to disseminate information about threats. He said that Martin's teletype was a compilation of the facts and did not "speculate as to what Moussaoui was up to." Don said that the FBI anticipated that the recipient agencies would provide the FBI with their reactions to the teletype or information that was relevant to the teletype.

I. September 11 attacks

On September 10, Henry received an e-mail from Carol, the FBI Headquarters employee whom he had contacted for more information about Khattab's connections to Al Qaeda. She asked whether Henry had ever received anything that he could use in support of a search warrant for Moussaoui's belongings. Henry responded that the RFU had determined that Minneapolis had insufficient evidence to pursue either a FISA or a criminal warrant. He noted that Minneapolis "did not pursue this further because [FBI Headquarters has] directed that this is an INS matter." He added that he "strongly disagree[d]." He also wrote that Moussaoui was being deported to France and that his "big fear" was that Moussaoui would be released following his deportation. He concluded by thanking Carol for her assistance.

Carol responded a few minutes later by e-mail in which she wrote, "Thanks for the update. Very sorry that this matter was handled the way it was, but you fought the good fight. God Help [sic] us all if the next terrorist incident involves the same type of plane."

On the morning of September 11, at 8:34 a.m. Eastern Standard Time, Martin sent an e-mail to Gary finalizing plans for Moussaoui's deportation, which the FBI believed would occur within several days. Just 12 minutes later, the first hijacked airplane hit the north tower of the World Trade Center.

After the first airplane hit, Martin tried to call Minneapolis ASAC Charles but reached Rowley instead. According to Rowley, she told Martin that it was essential to get a criminal search warrant for Moussaoui's belongings. Rowley said that Martin instructed her that Minneapolis should not take any action without FBI Headquarters approval because it could have an impact on matters of which she was not aware. In her May 20, 2002, letter to the FBI Director, Rowley wrote that in this conversation with Martin she had said "in light of what just happened in New York, it would have to be the 'hugest coincidence' at this point if Moussaoui was not involved with the terrorists." Rowley wrote that Martin replied "something to the effect that I had used the right term 'coincidence' and that this was probably all just a coincidence." Rowley told the OIG that she agreed to follow Martin's directive not to immediately seek a criminal warrant, and she was told that FBI Headquarters would call her back.

Martin told the OIG that he recalled that there was a lot of confusion when he spoke to Rowley. Martin said that he did not recall making the statement about a coincidence to Rowley. He explained to the OIG that he did not feel comfortable giving legal advice about seeking a criminal warrant, so he went to the NSLU attorney who we call Tim, who advised that the Minneapolis FBI should seek the criminal search warrant.

While Rowley was waiting for a return call from FBI Headquarters, Minneapolis ASAC Charles was on the telephone with Don. Because Acting SAC Roy was out of the office, Charles was responsible for the Minneapolis office and had called FBI Headquarters immediately after the first airplane hit the World Trade Center. Charles had reached Don and asked him for permission to seek a criminal search warrant for Moussaoui's belongings. According to Charles, Don responded that he still did not believe that there was enough evidence to support a criminal search warrant. Charles stated that, during the course of this conversation the Pentagon was hit by another hijacked airplane, and that Don then told Charles to go to the USAO for a criminal warrant.

Don confirmed that he spoke to Charles on the morning of September 11. He asserted that he immediately told Charles that the Minneapolis FBI could

seek a criminal warrant.[142] Don told the OIG that it was a brief conversation that lasted several seconds at the most.

Once Don authorized contact between the Minneapolis FBI and the Minneapolis USAO, Henry and Rowley went to the USAO to obtain a criminal search warrant for Moussaoui's belongings. They consulted with several senior Assistant United States Attorneys, and drafted an affidavit in support of the search warrant. The affidavit stated that there was probable cause to believe that the laptop computer and other items seized from Moussaoui would contain evidence of a violation of 18 U.S.C. § 32 – destruction of aircraft or aircraft facilities. The affidavit contained much of the information reported in Henry's 26-page EC about Moussaoui's interactions with the flight school and interviews with the Minneapolis FBI, as well as the information from Al-Attas' will and from the transcribed conversation of Al-Attas while he was in custody. The affidavit also included information about the September 11 attacks on the World Trade Center and the Pentagon. The search warrant was granted that day.

The FBI searched Moussaoui's belongings that were being held at the INS offices in Minnesota, including the laptop computer, associated computer software such as diskettes, spiral bound notebooks, clothes, and a cellular telephone. The return from the search warrant stated that the following items, among other things, were found: a pair of shin guards; a Northwest Airlines 747 cockpit operating manual; two 747 training videos; seven spiral notebooks containing handwritten notes about aviation; a Microsoft flight simulator book; a PowerPoint compact disc; a cell phone; binoculars; headphones; a skullcap; a cassette recorder; European coins; eyeglasses; disposable razors; and several documents, including financial records, blank checks, and identification papers from France.

Moussaoui's belongings did not reveal anything that specifically provided a warning or an indication of an imminent terrorist attack. There were no plans, correspondence, or names or addresses in his computer or notebooks that linked him directly to the September 11 terrorist attacks. However, information was

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[142] The 1995 Procedures provided that the FBI could go directly to the USAO without obtaining permission from the Criminal Division if "exigent circumstances" were present.

obtained in the search that, through further traces, was used by the government to indict Moussaoui for conspiring in the September 11 terrorist plot.

J. Information received from British authorities on September 12 and 13

On September 11, after the attacks, the London Legat again requested information about Moussaoui from the British. According to British reports that the FBI reviewed on September 12 and 13, Moussaoui had attended an al Qaeda training camp in Afghanistan.

It is not clear why the information from the British was not provided to the FBI until after September 11. The FBI's ALAT in London first contacted the British authorities by telephone and in a written communication dated August 21. The ALAT summarized the status of the FBI's investigation of Moussaoui, provided a document describing the results of the investigation at that time, and asked for traces to be conducted on Moussaoui and all of the individuals listed in his communication and in an enclosed document.

The ALAT told the OIG that he had had several meetings and telephone calls with the British authorities in which Moussaoui was discussed. He said that the British were well aware of the importance of the matter. In addition, he said that on September 5 he provided the British with the additional information about Moussaoui that the FBI had received from the French authorities. The ALAT told the OIG that he did not know why the British authorities failed to provide the information about Moussaoui sooner. However, he said that 10 to 15 days to respond to a request for information from the FBI was normal.

K. Moussaoui's indictment

On December 11, 2001, Moussaoui was indicted by a grand jury on six conspiracy counts directly related to the September 11 attacks. He is still awaiting trial.[143]

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[143] On July 22, 2002, Al-Attas pled guilty to making false statements to federal investigators. He was sentenced on October 22, 2002, to time served.

III. OIG Analysis

We concluded that there were significant problems in how the FBI handled the Moussaoui case. In our view, these problems were attributable to both systemic issues in how the FBI handled intelligence and counterterrorism issues at the time, as well as to individual failings on the part of some of the individuals involved in the Moussaoui case.

A. No intentional misconduct

At the outset of our analysis, we believe it is important to state that we did not conclude that any FBI employee committed intentional misconduct, or that anyone attempted to deliberately "sabotage" the Minneapolis FBI's request for a FISA warrant, as Rowley wrote in her letter to FBI Director Mueller. For example, Rowley argued that Martin edited the initial FISA request submitted by the Minneapolis FBI and omitted information to "deliberately further undercut the FISA effort." Rowley also suggested that as part of the alleged sabotage, FBI Headquarters personnel failed to make Minneapolis aware of the Phoenix EC.

As we discuss below, we believe that Rowley's letter raised significant problems in the way the Moussaoui investigation was handled, and we criticize some of the actions of FBI employees. Her letter also alluded to broader problems that existed in how the FBI handled intelligence matters and FISA requests. But contrary to her assertions, we found no evidence, and we do not believe, that any FBI employee deliberately sabotaged the Moussaoui FISA request or committed intentional misconduct.

B. Probable cause was not clear

Rowley asserted in her letter that FBI Headquarters inappropriately failed to seek a FISA warrant even though probable cause for the FISA became clear when the FBI received the French information that Moussaoui had recruited someone to fight in Chechnya on behalf of the rebel forces led by Ibn Khattab. As we discuss below, in our view the standards that the FBI applied towards FISA requests before September 11 were unduly conservative, and FBI Headquarters did not fully or appropriately analyze the French information, as well as other pieces of information regarding Moussaoui, for how it could be used in the FISA process or in connection with obtaining a criminal warrant.

But according to the prevailing FBI and DOJ practices at the time, it was not clear that the French information, or other available information, was sufficient to obtain a warrant from the FISA Court. Prior to September 11, 2001, the Chechen rebels led by Khattab had not been designated by the State Department as a foreign terrorist organization. FBI managers and attorneys we interviewed told us that they believed that the Chechen rebels had not been pleaded as a foreign power before the FISA Court previously. In addition, they stated that while it may have been theoretically possible to use the Chechen rebels as a new foreign power in FISA applications to the FISA Court, FBI Headquarters was operating under the belief that OIPR would not plead a foreign power in a FISA request that had not previously been pled. In addition, several FBI witnesses stated that the intelligence at the time suggested that Khattab and the Chechen rebels were involved only in a civil war and were not interested in harming U.S. interests, and they believed this assessment would have caused OIPR not to support using the Chechen rebels as a foreign power in a FISA application. The FBI witnesses stated that even if the CIA had evidence that would have supported articulating the Chechen rebels as a foreign power for a FISA application, "building" a new foreign power for a FISA application was a process that took several months to complete, and the Moussaoui FISA warrant was needed more quickly because he was about to be deported.

The Minneapolis FBI believed that the foreign power connection was also established because Moussaoui was connected to Khattab, who was linked to Usama Bin Laden. Yet, several FBI employees we interviewed stated that while there was some association between Khattab and Bin Laden, the latest intelligence information indicated Khattab was not part of the al Qaeda organization, and that Khattab did not take direction from Bin Laden.

In an effort to examine whether probable cause was clear with regard to the Minneapolis FBI's request for a FISA warrant, we asked James Baker, the current head of OIPR, to review the documentation in the Moussaoui investigation and provide us with his assessment as to whether there was a sufficient connection between Moussaoui and a foreign power to support a

FISA warrant.[144] He opined that the case for a FISA warrant was "not a slam dunk" and that there were "no conclusively damning facts" to establish the necessary connection to a foreign power. However, he said that, while he could not say conclusively how he would have responded if he had been asked to review the Moussaoui matter in August 2001, he thought it might have been possible to argue that Moussaoui and the other individuals who had surfaced in the investigation were operating as an al Qaeda cell in the United States. Alternatively, he said that it was possible to argue that Moussaoui, Al-Attas, and the other individuals who surfaced in the investigation were their own small, unnamed foreign power, since the FISA legislative history provides that a foreign power can be a group as small as two individuals.

Baker stated that if the request for a FISA warrant had been presented to OIPR for consideration in August 2001, he would have "asked lots of questions" about it. He said that he would have been concerned about such a FISA application because the Minneapolis FBI had at first wanted to go to the U.S. Attorney's Office to seek a criminal search warrant, and he believed this would have raised questions with the FISA Court that the FBI was trying to use FISA to pursue a criminal investigation. He said that in order to obtain a FISA warrant, OIPR likely would have recommended a wall between the two investigations.

Baker's analysis confirmed our view that, contrary to Rowley's allegations, the Minneapolis FBI did not have a completely clear case for a FISA warrant in the Moussaoui case that would have been easily approved had the FBI and OIPR sought one from the FISA Court. Given the standards and prevailing practices at the time, FBI Headquarters' assessment that it could not establish Moussaoui's connection to a foreign power with OIPR or the FISA Court was not completely off base, as alleged by the Minneapolis FBI. Nor do we believe that FBI Headquarters' failure to seek a FISA warrant was a result of any intent to "sabotage" the Moussaoui case. But, as we discuss below, we

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[144] As stated previously, Baker joined OIPR in October 1996 and became the Deputy Counsel in 1998. In May 2001, he was named Acting Counsel, and in January 2002 he became the Counsel. Before we showed him the documents, Baker had not previously reviewed the Moussaoui information.

believe the FBI Headquarters' handling of the Moussaoui request and other FISA requests was unduly conservative and problematic in various ways.

C. Problems in the FBI's handling of the Moussaoui investigation

The handling of the Moussaoui case highlighted that the Department's narrow interpretation of the "purpose" requirement under FISA before September 11, 2001, was a severe impediment to obtaining FISA warrants. We also question how the FBI examined the interaction between a potential criminal case and an intelligence case in the context of the Moussaoui investigation.

We believe the FBI did not carefully consider its options at the outset of the Moussaoui investigation, and it inexplicably failed to consider whether it should seek a criminal warrant once the decision was made that a FISA warrant should not be sought. Moreover, it did not adequately disseminate, within or outside the FBI, the information from the Minneapolis FBI about the potential threat posed by Moussaoui.

The Department's interpretation of FISA was conservative prior to September 11 for a variety of reasons. This conservative interpretation was exacerbated in the Moussaoui case by the fact that many of the FBI's decisions were informed only by what FBI Headquarters or NSLU attorneys sensed might be the reaction of OIPR or the FISA Court. There was no clear body of law to guide the FBI, and neither OIPR, the NSLU, nor FBI management made clear the policies and practices to guide individual FBI employees or supervisors on FISA applications. Many decisions appear to have been made based on prior feedback from OIPR, rather than clear guidance. As we discuss below, this lack of guidance resulted in frequent misunderstandings about the possibilities under FISA or the appropriate standards to guide decisions regarding intelligence and criminal investigations.

1. Initial evaluation of the request for a FISA warrant

a. Prevailing standards

As discussed in Chapter Two, the FISA statute requires that "the purpose" of a FISA warrant be to obtain foreign intelligence information. However, courts and the Department for many years used the standard of whether the "*primary* purpose" of the FISA request was to obtain intelligence

information. Under this standard, the Department and the FBI analyzed each case to determine whether the goal of an investigation was to gather intelligence or to pursue a criminal investigation. In 1995, the Department developed written procedures, called the "1995 Procedures," designed to ensure adherence to this "primary purpose" standard. The impetus for the 1995 Procedures was OIPR's concern that the lack of procedures had permitted the FBI and the Criminal Division to work so closely together in the Ames case that the FISA Court would believe that the purpose of the FISA warrant was to gather information for the criminal case, rather than the intelligence investigation.

The Department's interpretation of the primary purpose standard, and the widespread perception within the FBI that the FISA Court and OIPR would not permit criminal investigative activity when an intelligence investigation was opened, impeded the Minneapolis FBI's ability even to consult with prosecutors to assess whether probable cause existed to obtain a criminal search warrant. After Moussaoui's arrest on immigration charges, the Minneapolis FBI wanted to search Moussaoui's belongings to determine his plans and to prevent him from committing a terrorist act. The FBI agents' objectives were broad – to deter any criminal activities, to protect national security by whatever means available, and to obtain any intelligence on Moussaoui's plans. These objectives could not be easily categorized as either criminal or intelligence.

Unfortunately, under the prevailing standards at the time, consultation and coordination with the prosecutors in the local U.S. Attorney's Office was difficult, and it did not occur in the Moussaoui case. The Minneapolis agents opened the Moussaoui case as an intelligence investigation. As a result, they could not contact the USAO for guidance and advice on the criminal investigation or the possibility of obtaining a criminal search warrant without approval from the Criminal Division and notice to OIPR. Once the FBI's intelligence case was opened, FBI Headquarters had to send a memorandum to the Criminal Division to receive permission to contact the USAO to discuss a criminal warrant.

The Minneapolis FBI initially made contact with the USAO, but then did not pursue any substantive conversations because of these prohibitions. Conversely, if the Minneapolis FBI had opened the case as a criminal investigation, or consulted with the USAO or the Criminal Division attorneys

about a criminal case, that possibly would have affected its ability to obtain a FISA warrant because of concerns about the "smell test." According to OIPR Counsel Baker, even the fact that that Minneapolis FBI had written in its 26-page EC that it wanted permission to go to the USAO would have been something that concerned him and may have affected the Moussaoui FISA request.

At the initial stages of a terrorism investigation, it is often unclear and difficult to know how to proceed. In this case, the Minneapolis agents were not able to seek advice directly from the Minneapolis USAO, which was probably in the best position to assess whether there was sufficient evidence to obtain a criminal warrant from the local court. Although Rowley assumed that the Minneapolis USAO would not have supported the request for a criminal warrant because she believed it had an unduly high standard of probable cause, this was only a guess. The Minneapolis USAO disputes her claim and stated that its normal practice was to work with the FBI to obtain a warrant. Yet, whether or not this assessment was accurate, the system resulted in uninformed decisions because it did not allow agents to consult with prosecutors at an early stage, absent permission from the Criminal Division.[145]

This problem was addressed in October 2001, when the Patriot Act changed the requirement from "the purpose" (for obtaining foreign intelligence) to "a significant purpose," and specifically permitted such consultations. As a result, direct consultations among the intelligence investigators and the criminal investigators and prosecutors can occur immediately. We agree with the statement of former Associate Deputy Attorney General David Kris, who testified before Congress on September 10, 2002:

> We need <u>all</u> of our best people, intelligence and law enforcement alike, working together to neutralize the threat. In some cases, the best protection is prosecution – like the recent

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[145] In addition, as discussed in Chapter Two criminal investigations had to be segregated from intelligence investigations, and information collected in the intelligence investigation that related to the criminal investigation had to be passed "over the wall" to the agents handling the criminal investigation. We discuss some of the problems created by this system in Chapter Five.

> prosecution of Robert Hanssen for espionage. In other cases, prosecution is a bad idea, and another method – such as recruitment – is called for. Sometimes you need to use both methods. But we can't make a rational decision until everyone is allowed to sit down together and brainstorm about what to do.

(Emphasis in original.)

b. Inadequate evaluation of whether to proceed as a criminal or intelligence matter

Given the effect that consulting with the USAO had on a potential FISA application, the options in the Moussaoui case needed to be evaluated carefully before making the initial decision whether to proceed criminally or as an intelligence investigation under FISA. This was especially true because the Moussaoui case was unusual for the FBI. Ordinarily, the FBI spent months collecting intelligence information in support of a FISA request. However, in this case the FBI did not have time because Moussaoui was about to be deported.

Therefore, it was even more important for the FBI to carefully consider the evidence before it, the likely outcome of seeking a criminal warrant, including an assessment of probable cause for a criminal search warrant, and the potential for obtaining additional information that could connect Moussaoui to a foreign power under the FISA standards at the time.

Unfortunately, this careful or thorough analysis did not occur. After initially opening the Moussaoui matter as an intelligence investigation, the Minneapolis FBI agents requested FBI Headquarters to seek permission from the Criminal Division to approach the USAO to discuss a criminal warrant. Because of its relative inexperience in handling counterterrorism investigations, the Minneapolis FBI did not appreciate the adverse impact that seeking a criminal warrant could have on the intelligence investigation. Therefore, as an initial matter it did not fully consider the issues and outcomes in pursuing the Moussaoui case as an intelligence investigation or criminal investigation. By the same token, it did not receive sufficient guidance or assistance from FBI Headquarters, partly because of the strained relations between the Minneapolis Field Office and the RFU, which we discuss below.

Another opportunity for a thorough assessment of the case arose when the Minneapolis case agent, Henry, consulted with RFU Unit Chief Don. Don advised Henry that he did not believe that there was sufficient information to obtain a criminal search warrant and that failing to obtain a criminal search warrant would prevent the Minneapolis FBI from obtaining a FISA search warrant. Henry's recollection is that Don directly told him that he could not open a criminal case. According to Henry, Don also asserted that probable cause for a criminal search warrant was "shaky." After his conversation with Don, Henry wrote on the paperwork that had been previously prepared to open the criminal case: "Not opened per instructions of [Unit Chief Don]."

Don told the OIG, on the other hand, that he did not give such a direct instruction and that at no time did he tell Minneapolis that they could not pursue the matter criminally. He said that based on his knowledge of the case, he did not believe there was criminal predication for a criminal search warrant and that he voiced this opinion to the Minneapolis FBI about the lack of criminal predication. He said he also advised Minneapolis that if obtaining the criminal warrant failed, the FBI would not be able to pursue the FISA warrant. Don said he suggested the case agent consult with the Minneapolis CDC, Coleen Rowley, about whether she believed that probable cause for a criminal search warrant was present because he believed that it was the role of the CDC to make such assessments. According to Don, he stated, "you guys need to go back to your CDC, you need to discuss it with your CDC, and get back to me and tell me your position." As we discuss below, Henry did consult with Rowley, who said she recommended the avenue with the best chance of success, which she believed was seeking a FISA warrant instead of a criminal warrant.

While it is impossible to be certain of what exactly was said in the discussion between Don and Henry, or whether FBI Headquarters made clear it would refuse permission to seek a criminal warrant, it is clear that the decision on whether to pursue a criminal or intelligence case was made without full consultation or adequate analysis. Based on this conversation and other contacts with Martin and Don in the following days, Minneapolis believed that FBI Headquarters would not support its request to seek a criminal warrant and that a FISA request was the only viable option available. It therefore pursued that option. But no one carefully considered at an early stage whether this was likely to be a viable option under the prevailing FISA standards.

We do not believe that Don's response to Henry's initial contact was adequate. Don should have weighed the possibility of obtaining a criminal warrant with what would be gained from the intelligence investigation and the problems in obtaining a FISA warrant. While Don believed that the Minneapolis FBI lacked sufficient information to warrant pursuing a criminal investigation and that the intelligence investigation was therefore the only option available, this judgment was made too quickly and without adequate consideration of whether the evidence suggested that the FBI was likely ever going to be able to, under the prevailing view of FISA requirements at the time, sufficiently connect Moussaoui to a foreign power for a FISA warrant.

We also believe that Don should have ensured that Henry discussed the matter fully with RFU SSA Martin and an NSLU attorney, taking into consideration the potential of the criminal investigation and the potential of the FISA route, including the problems that would have to be overcome, before reaching the decision on which route to take. While it was the field office's prerogative to decide how to pursue an investigation, the role of FBI Headquarters was to ensure that these decisions were made with full information and adequate analysis from the substantive experts in FBI Headquarters. Yet, this never occurred, partly because of Headquarters' dismissal of the Minneapolis FBI's assessment of the threat posed by Moussaoui, partly because of strained relations between the RFU and the Minneapolis FBI, and partly because FBI Headquarters approached this case like other cases, where there was time to investigate further and obtain more evidence to support the FISA warrant. In this case, however, Moussaoui was going to be deported quickly, and there was little time to conduct an investigation to obtain sufficient evidence to link Moussaoui to a recognized foreign power.

From our review, early on the RFU appears to have discounted the concerns of the Minneapolis FBI about Moussaoui. Don and Martin believed that Minneapolis was overreacting and couching facts in an "inflammatory" way to get people "spun up" about someone who was only "suspected" of being a terrorist. The RFU downplayed and undersold the field office's concerns about Moussaoui, even writing "that there is <u>no</u> indication that either [Moussaoui or Al-Attas] had plans for nefarious activity." In response to the Minneapolis FBI's concern that it wanted "to make sure Moussaoui doesn't get control of an airplane to crash it into the [World Trade Center] or something

like that," Martin dismissed this possibility, stating "You have a guy interested in this type of aircraft. That is it." As we discuss below, we believe that the RFU did not fully consider with an open mind the evidence against Moussaoui and examine in a collaborative fashion with Minneapolis how to best pursue its investigation. Rather, it quickly and inappropriately dismissed Minneapolis' information as incomplete and its concerns as far-fetched.

However, it is also important to note that another potential opportunity for a thorough evaluation of both the criminal and intelligence investigations arose when Henry consulted with Rowley, the Minneapolis CDC. When Henry approached Rowley at Don's suggestion to discuss whether Minneapolis should seek a criminal warrant or a FISA warrant, Rowley correctly advised Henry about the existence of the smell test and the adverse effect that seeking a criminal warrant could have on the intelligence investigation. Her advice – that Henry instead seek a FISA warrant – was based on her concerns that the USAO would not approve a request for a criminal warrant because she believed it used a standard higher than probable cause. Rowley told the OIG that she gave the advice that she believed would optimize the Minneapolis FBI's chances of being able to search Moussaoui's belongings. She did not, however, adequately assess or discuss with Henry whether a FISA warrant would even be feasible in this case, given the need to connect Moussaoui to a foreign power.

Rowley acknowledged to the OIG that her experience and knowledge of FISA were not extensive.[146] We believe that she should have recognized the need for a more thorough examination of the potential of both the criminal and

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[146] When we questioned Rowley about the basis for her belief that probable cause for a FISA warrant was "clear" when the information from the French was received, her responses indicated that she did not fully understand the statutory requirements of FISA. She believed that sufficient information existed to obtain a FISA warrant because she believed the French information indicated that there was probable cause to believe that Moussaoui was engaged in terrorist activities. Rowley failed to consider whether there was probable cause to believe that Moussaoui was an agent acting for or on behalf of a foreign power. She further stated her belief that the foreign power connection could be made to Bin Laden because Moussaoui shared similar philosophy and goals with Bin Laden and was linked to Khattab, who also held radical Islamic beliefs. These statements revealed a lack of a full understanding of agency principles under the existing FISA requirements.

intelligence options, including the likelihood of obtaining a FISA warrant within a matter of several days, and at a minimum consulted with an NSLU attorney.

2. Failure to reconsider criminal warrant

We found it even more troubling that after the FBI Headquarters conclusion – based upon NSLU advice – that Moussaoui did not have a sufficient connection to a recognized foreign power for a FISA warrant, no one reconsidered whether to try to obtain a criminal warrant. As far as we could determine, neither FBI Headquarters nor the Minneapolis FBI initiated any discussion about pursuing the criminal warrant after NSLU Unit Chief Bowman opined that a FISA warrant was not feasible. After the FISA warrant was ruled out, the "smell test" was no longer a consideration. The FBI could have consulted with the Minnesota USAO at that point to determine whether it believed there was sufficient probable cause to obtain a criminal search warrant. If the Minnesota USAO agreed, one could have been sought. If the USAO disagreed, this consultation would have had no impact on a FISA warrant, since one was no longer being sought.

We asked Don, Henry, Rowley, Gary, and Martin why a criminal warrant was not considered after the FISA route was exhausted. Don, Henry, and Rowley told the OIG that they did not know why this was not done. Don said that looking back on the matter now, he wished it had been discussed. Gary told the OIG that he did not seek to pursue it again because he believed FBI Headquarters was not willing to support obtaining the requisite permission to approach the USAO. Martin told the OIG that because Minneapolis believed that there was sufficient evidence to support obtaining a criminal warrant, it was up to the field office to initiate pursuit of the criminal warrant.

We found it puzzling, and troubling, that no one discussed pursuing this option. It also showed that the FBI never fully evaluated the potential of the criminal investigation versus the FISA investigation. Instead, the FBI pursued the case as an either/or proposition, without evaluating the potential of each approach.

We also do not agree with Martin that it was Minneapolis' responsibility alone to consider this option. In our view, his position reflects the breakdown in communication between Headquarters and the field, and also shows a

troubling lack of initiative and acceptance of responsibility by FBI Headquarters. While we cannot say whether a request for a criminal warrant would have been successful, it should have been reconsidered.

3. Conservatism with respect to FISA

The handling of the Moussaoui case also highlighted the conservatism of the Department and the FBI at the time with regard to the use of FISA. At the time of the Moussaoui investigation there was a widespread perception in the FBI that OIPR was excessively restrictive in its approach to obtaining FISAs. The perception was that OIPR would not plead "new" foreign powers – foreign powers that had not previously been pled to the FISA Court – and that OIPR required more support to go forward than the probable cause that what was required by the FISA statute. This perception caused the FBI to be less aggressive in pursuit of FISA warrants that did not fit the standard pattern.

This perception was discussed in the May 2000 report of the Attorney General's Review Team (AGRT) that was established to review the FBI and the Department's handling of the Wen Ho Lee FCI investigations and FISA application. The report stated that in interviews with FBI personnel, "a consistent theme that has emerged has been the FBI's substantial frustration with what it perceives to be OIPR's general lack of aggressiveness in the handling of FISA applications." The AGRT concluded that OIPR was too conservative in its handling of the Lee FISA application and three factors suggested that the FBI's general complaint of undue conservatism had merit. First, the AGRT found that OIPR had never had a FISA application turned down by the FISA Court and that "this record suggests the use of 'PC+' [probable cause plus], an insistence on a bit more than the law requires." Second, the AGRT asserted that while some disputes between agents and lawyers were to be expected, the fact that the complaints about OIPR came from all levels within the FBI as well as the frequency and the intensity of the complaints suggested that this concern was not arising out of the normal tension between agents and lawyers. Third, the AGRT stated that OIPR applied too conservative an approach to the Lee application, which suggested it did so across the board because of the significance of and attention received within OIPR by the Lee application.

We heard similar complaints from FBI Headquarters managers and NSLU attorneys that OIPR was too conservative. FBI employees made two

arguments in support of this assertion. First, FBI employees said that OIPR required more than what FBI employees believed was necessary under FISA to get a FISA warrant. One former unit chief told the OIG that OIPR's standard for probable cause was "too high." The former head of NSLU told the OIG that OIPR attorneys often asked for details about the investigation that were not related to the issue of probable cause. He asserted that, by comparison, Title III applications were "far cleaner and far more succinct" than the FISA applications. As an example of OIPR's conservatism, another NSLU attorney asserted to the OIG the fact that in FISA applications involving a particular terrorist organization as the foreign power, OIPR required a substantial number of pages worth of facts to support the assertion that it was a terrorist organization, despite the fact that this terrorist organization was designated as a foreign terrorist organization by the State Department.[147]

Second, FBI employees told the OIG that they believed that OIPR was not aggressive in its use of FISA. They asserted that OIPR was not interested in pleading "new" foreign powers – foreign powers that had not previously been pled to the FISA Court. FBI employees told the OIG that with respect to each potential target, they had to identify which terrorist "box" the target fit into, and that OIPR was primarily interested in using a particular terrorist organization as the box and pleading it as the foreign power. FBI personnel explained to the OIG that while terrorist groups were at one time recognizable as a collection of individuals belonging to an organization with a well-defined command structure and could easily be placed in a terrorist "box," this was no longer the case by the mid-90s. Instead, terrorists were often Islamic extremists who were not necessarily affiliated with any specific terrorist group and who received support from or shared the same goals with several different groups. To address this change in terrorism, the FBI proposed to OIPR in 1997 and again in 2000 creating a new foreign power – which they called the "International Jihad Movement" – that would target these kinds of terrorists. According to FBI employees, the FBI presented its position to OIPR on several occasions, but OIPR was not receptive to this idea. By the summer of 2001,

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[147] At the request of the FBI, in 2001 this information was eventually revised and shortened substantially.

however, OIPR had agreed to review documentation the FBI compiled in support of creating the new foreign power.

James Baker, the Counsel of OIPR, acknowledged that OIPR had this reputation, but he did not believe that it was accurate. He stated that significant changes had occurred before September 11, 2001, as well as in the past few years. He said that at the time of the millennium (year 2000), the threat of terrorist attacks was high and OIPR was very aggressive in its use of new theories of probable cause, which the FISA Court approved. He said that OIPR attorneys – in their oversight role – asked a lot of questions of the FBI and did not automatically approve FISA applications, causing some frustrations in the FBI. He also stated that another source for the perception of OIPR within the FBI was the fact that field offices had no contact with OIPR, and as a result were not aware of the work that OIPR contributed to bolstering the FISA package. But he said that the FBI generally brought meritorious cases to OIPR and that he instructed his staff to be advocates for each application and to "pull the thing together and see if it can fly."[148] With respect to the new foreign power suggested by the FBI, Baker told the OIG that the FBI was requested repeatedly by OIPR to draft a memorandum setting forth the evidence supporting the existence of this new foreign power, but the FBI did not present any documentation to OIPR concerning this theory until after September 11, 2001.

In our review, it was clear to us that the perceptions about OIPR affected how aggressively FBI Headquarters handled requests for FISA warrants from the field. As we discuss below, the FBI was hesitant to plead new foreign powers or to plead unnamed foreign powers in FISA applications. Most FBI

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[148] The OIPR Deputy Counsel, Margaret Skelly-Nolen, also told the OIG that she believed that the FBI's criticism of OIPR had been "unfair." She stated that OIPR learned what FISA Court judges would and would not approve based on their comments and questions in court sessions involving FISA applications. She stated that obtaining FISA orders in counterterrorism cases was "harder" than in the traditional espionage cases, although she acknowledged that not all of the attorneys in OIPR were "equally aggressive." However, she also described OIPR as "proactive" and the FISA Court as "responsive" to the needs of the government. She added that the FBI knew "how to press" OIPR when the FBI really wanted a FISA warrant to go through. She stated that what she tried to do with FISA requests was determine what was the most accurate and expeditious way to plead the case.

employees we interviewed did not even consider the possibility of pleading unnamed foreign powers, and many did not even know that it was possible. In addition, an ongoing OPR investigation about errors in FISA applications increased the caution with which the FBI approached FISA.

a. Failure to plead new foreign powers

As discussed above, the government generally sought FISAs for subjects that had previously been approved by the FISA Court. As a result, at the time of the Moussaoui investigation, the FBI did not routinely try to plead "new" foreign powers or otherwise seek to use the FISA statute creatively. FBI Headquarters SSAs, IOSs, and NSLU attorneys evaluated cases and gave advice to the field offices based upon what they thought would get a FISA package through OIPR and to the FISA Court, not based upon what may have been legally possible under FISA. They therefore focused on "recognized" foreign powers – those that had previously been pled to the FISA Court – and sought evidence of direct links between the target and the foreign power. If the case fell outside those parameters, the FBI was not usually aggressive or creative in analyzing the possibilities under FISA. OIPR Counsel Baker confirmed that prior to September 11 it was far easier to show that someone was a member of an established group that was engaged in international terrorism, such as al Quaeda. In reviewing the Moussaoui case, he stated that although it was theoretically possible to allege a connection between Moussaoui and the Chechen rebels (because of Moussaoui's recruitment of Amnay to go to Chechnya), it would have been far easier to use al Quaeda as the foreign power if sufficient information could be developed to support such a connection.

One NSLU attorney told us that, by the summer of 2001, most of the FBI concerns were not necessarily about the legal sufficiency of the FISA request, but rather whether, as a practical matter, information could be presented to OIPR in such a way to get approval for presentation to the FISA Court. Several ITOS employees told us that because of the resistance to pleading new or unnamed foreign powers, a particular terrorist organization therefore was being used as a generic terrorist group in cases where there were doubts about ties to a specific group. Several analysts told us that even if the link to this particular terrorist organization was tangential and the subject appeared to be more closely aligned with other individuals or to be operating alone, they

would still try to link the potential target to this particular terrorist group in order to obtain FISA Court approval.

Reflecting this view, Martin and Don advised Minneapolis that a "recognized foreign power" was required in order to obtain a FISA warrant. The French information about Moussaoui showed a potential link between Moussaoui and Khattab's group of rebels in Chechnya. While Martin, Robin, and the NSLU attorneys were aware that the Chechen rebels could in theory constitute a terrorist organization and therefore be a foreign power under FISA, they did not believe this was a viable option. Their advice to the Minneapolis FBI that it needed to link Moussaoui to a "recognized foreign power" was based on their understanding that the Chechen rebels had not been pled to the FISA Court previously, the belief that the intelligence was lacking to support pleading that the Chechen rebels were a terrorist organization, and their concern that it would take months to build a case for a new foreign power.

FBI employees pointed out that even if they could get a new foreign power approved by the Department and before the FISA Court, it was still significantly faster and easier to plead an already accepted foreign power. For foreign powers that had been pled before the FISA Court, the FBI could use previously drafted FISA applications, which contained language that already had been scrutinized and accepted. This approach required using the available language on the foreign power and filling in the individual facts of a case. It required less research and time to develop a persuasive package for OIPR and the FISA Court. In contrast, pleading a new foreign power required making a persuasive argument that would require several levels of approval from within the FBI and OIPR. This was a time consuming process, with an uncertain outcome.

In the Moussaoui case, the available evidence showed a much more likely link between Moussaoui and Khattab and the Chechen rebels rather than a link to al Quaeda. While the FBI's belief about the likelihood of success with OIPR and the time it would have taken to plead a new foreign power were important considerations, this potential option was never explored by FBI Headquarters. Most important, no one discussed it with OIPR, despite the Minneapolis FBI's strong belief that Moussaoui was dangerous and its strong desire to seek all legitimate means to obtain access to his computer and other belongings.

b. Failure to consider pleading unnamed or unknown terrorist groups as a foreign power

The FBI could have sought to plead that Moussaoui was linked to an "unnamed" foreign power. The legislative history of FISA states that an individual cannot be a foreign power, but that "[w]here two or three individuals are associated with one another, it might be argued that they are an 'association' or an 'entity,' which, if the proper showing is made could be considered a 'foreign power.'" OIPR Counsel Baker told us that based on this legislative history he believed that a foreign power could be as small as two people. He also told us that the foreign power does not necessarily need to have an agreed upon name or need to be widely known.

No one at the FBI involved in this case considered trying to plead Moussaoui as an agent of an unnamed, new foreign power. If they had, it might have been possible to plead Moussaoui as an agent of an unnamed terrorist group composed of Moussaoui and a group operating in Oklahoma, such as Al-Attas, the persons who helped Al-Attas get out of jail, and the persons from whom Moussaoui indicated he received money.

September 11 provided the impetus for the Department and the FBI to be far more aggressive in the use of FISA. Based upon OIG interviews and review of documents, we determined that the Department has shown a great degree of flexibility in pleading foreign powers since September 11.

We recognize it is not readily apparent that trying to plead Moussaoui as an agent of an unnamed foreign power would have succeeded had it been pursued. But no one at the FBI even considered this option, despite Minneapolis' adamant concerns about Moussaoui. Moreover, no one even consulted with OIPR about this option, or any other option, to see what could be accomplished to support the Minneapolis FBI's investigation.

c. Ongoing DOJ OPR investigation

We believe that the FISA Court reprimand of the FBI and an ongoing DOJ OPR investigation of how FISAs were handled contributed to the FBI's conservatism in seeking FISA requests. As discussed in Chapter Two, in September 2000, OIPR notified the FISA Court of errors in approximately 75

FISA applications.[149] In November 2000, the Office of the Deputy Attorney General referred the matter to DOJ OPR, and DOJ OPR opened an investigation.

Beginning in October 2000, the FISA Court began to require all Department personnel who received FISA information in cases involving the terrorist group that had been the subject of the majority of the errors to certify that they understood "that under 'wall' procedures FISA information was not to be shared with criminal prosecutors without the Court's approval." Everyone who reviewed such FISA-derived information was required to sign the certification stating that they were aware of the FISA Court order and that the information could not be disseminated to criminal investigators without prior approval of the Court. After being notified of additional errors in FISA applications in March 2001, the FISA Court banned one FBI SSA from appearing before it. DOJ OPR was asked by the Attorney General to expand its investigation to include a review of these additional errors in FISA applications.

We heard differing opinions within the FBI about how the DOJ OPR investigation affected FBI employees.[150] Martin told us that there was "a big push for accuracy" with new procedures being implemented and that there "were concerns that you just never know when an OPR is going to be opened up on you." However, he said that the matter did not significantly impact his work. Don said that ITOS SSAs were upset about the DOJ OPR investigation and were concerned that the investigation would harm their careers and their ability to get other jobs within the FBI after their stint in ITOS. But Don

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[149] As discussed in Chapter Two, a significant number of the errors concerned inaccurate information in FISA applications about the "wall" procedures that had been put into effect to separate criminal investigations from intelligence investigations.

[150] In her May 21, 2002, letter to the Director, Rowley wrote: "Our best real guess [for why Headquarters acted as it did in the Moussaoui matter]. . . is that, in most cases, avoidance of all 'unnecessary' actions/decision by FBIHQ managers (and maybe to some extent field managers as well) has, in recent years, been seen as the safest FBI career course." She said that FBI officials who made decisions or took actions that turned out to be mistaken saw "their careers plummet and end. This has in turn resulted in a climate of fear which has chilled aggressive FBI law enforcement action/decisions."

asserted that he did not believe the OPR investigation had "chilled" the efforts of the FBI. Robin stated that, while the OPR investigation caused FBI employees to be more careful about accuracy, she did not feel it had created any timidity in the use of FISA warrants.

Other ITOS personnel believed that the OPR investigation and the increased scrutiny by the FISA Court had a bigger impact on FISA applications. One SSA who formerly was assigned to ITOS told us that, after the revelation of FISA application errors, there was a climate of fear and reluctance in ITOS. He stated that in 2000 and early 2001, all ITOS SSAs were aware that they would be held accountable for any mistakes made in FISA applications, even mistakes by field offices that the SSAs oversaw. He added that, because the SSA position in ITOS is temporary, most SSAs are planning to be promoted to a position in a field office. This would be difficult if an agent had been disciplined or was under investigation. He said that agents were concerned that their ability to be promoted would be adversely affected by any investigation into their actions.

In addition, OIPR personnel said that the OPR investigation impacted the FBI's work on FISAs. The OIPR Deputy Counsel told us that the OPR investigation caused repercussions that affected the entire process. She said that the FBI allowed a number of FISAs to expire because agents were concerned that they would find themselves under investigation or banned by the FISA Court for errors in applications. She said that she had heard agents comment that they are "not going to be another [the agent who was banned by the FISA Court]."

We believe that the atmosphere in the FBI was affected by the OPR investigation and the FISA Court ban of the SSA. The added procedural requirements, concerns about individual liability, and the increased scrutiny of information in a FISA request likely caused agents to be more careful and sometimes become apprehensive about pursuing an unusual case or a case where all the facts were not immediately ascertainable.

We also believe that this atmosphere affected Martin's approach to FISA applications, including the Moussaoui matter. Indeed, in an e-mail on June 12, 2001, Martin cautioned Henry about the rules related to FISA with regard to minimizing an intercepted conversation in another intelligence case:

While you folks may perceive me as being too critical at times, I need to be certain that I am representing facts and issues properly to DOJ and the Court. There are a few folks looking for scalps these days. I'm only trying to keep yours and mine from being removed.

D. Assessment of probable cause

FBI Headquarters also did not analyze the facts in their totality and too readily discounted individual facts when assessing the Minneapolis FBI's concerns about Moussaoui. The standard for probable cause is the same for both FISA warrants and criminal warrants. The Supreme Court defined probable cause in Illinois v. Gates, 462 U.S. 213, 236-38 (1983), as whether, given the "totality of the circumstances" there is a "fair probability" that contraband or evidence of a crime will be found in a particular place. The Supreme Court emphasized that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." This standard allows for drawing reasonable inferences from the facts and does not require direct evidence.

Yet, we found that the RFU and the NSLU tended to view the facts of the Moussaoui case individually rather than consider the totality of those facts. They evaluated the Moussaoui investigation for direct evidence of Moussaoui's links to a foreign power, particularly al Qaeda. While the perception at FBI Headquarters may have been that this was what was required by OIPR, FISA required only "probable cause" that a target was an agent of a foreign power.

For example, in evaluating Moussaoui's potential links to al Qaeda, Martin and Robin focused on the intelligence indicating that Khattab was no longer believed to be a part of the al Qaeda organization and did not take direction from Bin Laden. Although Martin and Robin were correct that the FBI lacked sufficient information to tie Moussaoui directly to al Qaeda, it does not appear that either of them evaluated the totality of the evidence for facts that would allow for reasonable inferences that there were sufficient indirect connections to al Qaeda.

An example of information that could have been considered in support of the FISA request was the telephone conversation between Al-Attas and the Oklahoma imam while Al-Attas was incarcerated. In that conversation the

imam stated to Al-Attas, "I heard you guys wanted to go on Jihad." Al-Attas immediately responded, "Don't talk about that now." Don stated in an e-mail to Minneapolis: "The Jihad comment doesn't concern me by itself in that this word can mean many things in various muslim [sic] cultures and is frequently taken out of context." Don told us that he saw the use of the term "jihad" all the time and there are always questions about what the term really means. Yet, while the term may be open to interpretation, it is a significant comment that in context should have been given greater weight in considering whether there was probable cause to believe Moussaoui was connected to a terrorist group. Baker told us that "he would have tied bells and whistles" to the jihad comment in a FISA application.

Don also discounted Al-Attas' will. He stated in an e-mail that the will was "interesting," but he told the OIG that it is not uncommon for Muslims to have a will. However, as pointed out in the criminal search warrant obtained after the September 11 attacks, the will was in a mailing envelope as though it was ready to be sent to relatives.

We believe that the RFU failed to appreciate the significance of these individual facts and failed to analyze their effect on the totality of the circumstances. Instead, it treated each fact individually and too readily discounted their significance. The end result of this approach was that all of the facts were never fully considered in their totality or fully presented to anyone for a legal sufficiency review – whether by the NSLU or OIPR.

E. Conflict between Minneapolis and FBI Headquarters

Many of the problems that arose in the handling of the Moussaoui case also were affected by strained relations between the Minneapolis FBI and the RFU. Prior conflicts with the RFU led the Minneapolis FBI agents to mistrust the judgment of the RFU, and Martin in particular. The Minneapolis FBI thought that the RFU was "raising the bar," was not aggressive, and acted out of an abundance of caution. The Minneapolis agents also thought that the RFU did not support the field adequately, undervalued the Moussaoui case, and undermined their efforts. Minneapolis therefore was skeptical of the advice from Headquarters and attempted to bypass Headquarters to obtain relevant assistance and evidence from other agencies.

By the same token, the RFU mistrusted the Minneapolis FBI based on experience in prior matters and believed that in the Moussaoui case Minneapolis was proceeding from "gut feelings" rather than evidence. Martin and others in the RFU did not have faith in the judgment of some Minneapolis FBI agents, and thought they had a tendency to claim "the sky was falling." The RFU also believed that Minneapolis did not adequately understand the law or the requirements for a FISA warrant.

This friction – as well as the clash of personalities – resulted in poor communication and misunderstandings between FBI Headquarters and Minneapolis. The atmosphere was not conducive to, and did not lead to, the field and Headquarters carefully considering the best options for proceeding in the investigation and jointly seeking an appropriate result. Instead, both sides mistrusted the other and hardened in their positions. As a result, the RFU's response to requests from Minneapolis and to new evidence appeared to be skepticism and a quick reaction that the evidence was not sufficient. This caused the Minneapolis FBI to believe even more strongly that Headquarters was undermining its efforts. The communications became increasingly adversarial and incomplete.

For example, Martin advised the Minneapolis FBI that, to obtain a FISA warrant, it needed to connect Moussaoui to a "recognized foreign power." This advice was shorthand for a foreign power that had previously been pled to the FISA Court. The Minneapolis agents, who were not experienced in FISA matters, did not understand the advice and disagreed with it. This can be seen in Henry's e-mail to Gary and the Paris ALAT in which Henry wrote that the RFU advised that the French information was not sufficient for a FISA warrant because it did not connect Moussaoui to a "named group." Henry also wrote, "I don't agree. . .who said that a foreign power has to be a named group?" In an e-mail to the London ALAT and others, Henry wrote, "Help us establish that [Moussaoui] is acting on behalf of a foreign power (which RFU seems to think must be a named group or a country)." Had there been better communication between the two offices, we believe the Minneapolis FBI agents would have understood better why FBI Headquarters was advising the Minneapolis FBI that a "recognized foreign power" was needed.

F. Problems with legal review of FISA request

We concluded that this case did not receive a sufficient FBI legal review. While the RFU consulted with several NSLU attorneys about the Moussaoui case, it consulted a different attorney each time. A single NSLU attorney was not assigned to the case, and no NSLU attorney ever reviewed all the facts or the documentation from the field before providing an opinion as to the sufficiency of the evidence to obtain a FISA warrant.

In addition, when presenting the case to NSLU attorneys, Martin made clear that he did not think there was sufficient evidence for a FISA warrant and orally provided some facts of the case. While oral briefings and consultations on an ad hoc basis may have been adequate for most FBI FISA requests, it was not adequate in an unusual case like this one. Here, there were indications that Moussaoui was connected to terrorist groups, but the connection to a foreign power was not clear. Moreover, the time frame to obtain a warrant was compressed because of Moussaoui's imminent deportation. There also was vehement disagreement in this case between the field office and FBI Headquarters about the FISA request. In light of these unusual factors, the NSLU should have been apprised of all of the facts, the strength of the field's belief in the need for a warrant, and the depth of the field's disagreement with Headquarters' position on this case.

Martin consulted with four NSLU attorneys about the Moussaoui FISA request. He gave each attorney an oral briefing on what he believed were the relevant facts as to whether Moussaoui was connected to a foreign power. Although Martin had the documents provided by the Minneapolis FBI that described in detail the facts of the Moussaoui investigation, he did not provide this documentation to any of the attorneys. The attorneys gave verbal advice based only on Martin's oral presentation. No one asked whether there was documentation that had been generated in the case or asked to review any such documentation, and two told the OIG they did not believe such documentation existed.

Although it is impossible to reconstruct Martin's exact conversations with the NSLU attorneys, the evidence shows that Martin provided a brief recitation of the facts that contained less than all of the available information about Moussaoui. At the start of the briefings Martin also conveyed to the NSLU attorneys his belief that there was insufficient evidence for a FISA. He

did not present the request to NSLU attorneys neutrally or convey the Minneapolis FBI's strong concerns that Moussaoui was likely to commit a terrorist act. Martin undersold the case to the attorneys and conveyed it in a way that did not fully present the field's views.

Martin had identified the issue in the Moussaoui case as the lack of a foreign power and said he focused on the information that he believed was relevant to that issue, which according to Martin was the French information indicating that Moussaoui had some connection to Khattab and his group of Chechen rebels. Because the FBI's focus at the time was on establishing direct links between a potential target and a foreign power, however, Martin overlooked facts from which reasonable inferences might have been drawn that Moussaoui was involved with a terrorist group. This included Moussaoui's recent travel to Pakistan and Al-Attas' statements about Moussaoui's radical fundamentalist Islamic beliefs. None of this information was provided to the NSLU attorneys.

We recognize that at the time it was normal practice for SSAs and IOSs to give only oral briefings to NSLU attorneys and that they determined what information needed to be discussed with the NSLU attorney. They were not required to provide all of the underlying documentation to the NSLU attorneys with whom they were consulting, and NSLU attorneys were not required to read all of the underlying documentation before providing advice. But given the Minneapolis FBI's urgency to obtain a warrant and the strong disagreement between Headquarters and the field office over whether a FISA warrant could be obtained, we believe that Martin should have presented the documentation to the NSLU attorneys to ensure that Minneapolis' position was being presented fairly and completely to the NSLU. The RFU had promised the Minneapolis FBI that the NSLU would give the Minneapolis request a "good faith review," but the RFU did not present all the documentation, or all the facts, to any NSLU attorney for that review. We also believe that the Minneapolis FBI should have been asked to participate in the discussions with the NSLU, partly to ensure that its views were conveyed and also to ensure that it understood the legal advice that was given.

NSLU chief Bowman told the OIG that it was unusual for a field office to be so adamant that there was sufficient information to support a FISA warrant and for the SSA to be so adamant that there was not. Moreover, the Moussaoui FISA request was unlike most other FISA requests. In most others, even if the

NSLU did not believe that there was sufficient information to support going forward on the FISA request, the field office could continue to investigate the subject for months, acquire additional information in support of the FISA request, and come back to the NSLU for another opinion. Because Moussaoui was going to be deported shortly, the opinion that there was insufficient evidence to seek a FISA warrant was, in effect, a denial of the FISA request. In light of the unusual circumstances of this case, it would have been a better practice for the NSLU attorneys to inquire about available documentation and review it before rendering an opinion. In this case, however, a comprehensive legal review of the documentation in the Moussaoui investigation did not take place.

Part of the problem was that the FBI did not assign one NSLU attorney to be responsible for a case. Both Martin and Don told the OIG that they relied on the NSLU attorneys to help them apply the relevant legal standards to the facts collected from the field and elsewhere. Because they sought advice from several NSLU attorneys in the Moussaoui case, none who felt solely responsible for the case, no one from the NSLU considered all of the information available and no one from the NSLU was sufficiently informed to assess the totality of the facts and circumstances.

It is impossible to determine for certain whether any of the NSLU attorneys would have provided a different recommendation concerning the Moussaoui FISA request if they had read all the documentation, including the 6-page LHM or the 26-page EC. Moreover, we are not suggesting that SSAs should be required to provide, or that NSLU attorneys should be required to review, all of the documentation with respect to FISA requests in every case. But we believe that the circumstances of the Moussaoui FISA request warranted a full review of all available documentation and a more careful legal analysis of that information.

We also found that the advice that was presented to the field was not complete or accurate. For example, in the meeting between the RFU and Bowman to assess whether there was sufficient evidence to seek a FISA, Bowman advised that even if the FBI could establish a foreign power for the Moussaoui FISA request, the request lacked sufficient evidence to show that Moussaoui was an agent of that foreign power. After the meeting Martin did not correctly report to the field what was required to establish such an agency relationship. While Martin accurately reported Bowman's advice that there

was insufficient evidence to establish that Moussaoui was an agent of a foreign power, he wrote that the FBI needed evidence to show that Moussaoui was an "integral part" of a terrorist organization to establish agency. This was not correct. To show agency, the FBI needed to show that the agent of the terrorist organization demonstrated more than mere sympathy or vocal support for the goals of a terrorist organization. The agent must be shown to be working "for or on behalf of" the terrorist organization. Nothing in the legislative history of FISA, the Attorney General Guidelines, or the caselaw suggests that the purported agent would have to be an "integral part" of the terrorist organization to fulfill the FISA requirement of agency.[151]

The FBI also did not ensure adequate involvement by the CDCs in the field's preparation of FISA requests. Field offices were not required to consult with CDCs about their FISA requests. The role of the CDC in providing advice on intelligence investigations and FISA applications varied by office, but we were told by many witnesses that the CDCs in smaller offices were not generally involved. NSLU attorneys we interviewed also told us that CDCs generally were not sufficiently knowledgeable about FISA to provide advice and that they generally deferred to the NSLU. We were also told that it was not uncommon for the CDCs in the field to avoid intelligence investigations.

In this case, CDC Rowley acknowledged that she lacked extensive knowledge about FISA and that she was not in a position to advise the Minneapolis FBI on the issues surrounding the FISA request. We believe that the FBI should have ensured that CDCs, at a minimum, had sufficient training and visibility among agents to assist them in assessing the legal requirements in intelligence investigations.[152] Such expertise would be helpful to field offices, especially in cases like Moussaoui where there were problems connecting him to a foreign power and the field disagreed with the advice it was receiving from FBI Headquarters.

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[151] Bowman told the OIG that he did not advise Martin that the FBI needed evidence showing that Moussaoui was an integral part of a terrorist organization and that Martin must have misunderstood their discussion.

[152] NSLU attorneys informed us that they had provided training to CDCs at various conferences and sessions. However, despite this training, CDCs were not as knowledgeable about FISA law and processes as they needed to be.

Finally, because of the strong disagreement between Minneapolis and FBI Headquarters on this case, we believe the matter should have been at least referred to OIPR for its evaluation. While the Minneapolis FBI did not push for an OIPR review, and FBI Headquarters did not seek it, such a review would have been an appropriate approach to resolving the dispute in this case. The role of the NSLU is to provide advice and guidance to the field, but we believe the NSLU should have consulted with OIPR in this case, particularly because the field office felt so strongly that Moussaoui posed a danger. As discussed above, while it is not clear whether OIPR would have, in fact, sought the FISA warrant given the prevailing standards at the time, OIPR should have at least been consulted on this matter.

G. The Phoenix EC

The FBI's computer records show that RFU IOS Robin accessed and printed the Phoenix EC on August 22. She saw it when she searched in ACS for the term "Ibn Khattab." Khattab is mentioned in a paragraph of the Phoenix EC that describes how the author of the EC interviewed the subject of an investigation who had a picture of Khattab and a picture of Bin Laden on the wall of his apartment. As described fully in Chapter Three, the EC also asserted there were "an inordinate number" of persons of interest to the FBI who were receiving training in aviation-related fields of study and that there was a possibility that Bin Laden was coordinating an effort to train people in the United States to conduct terrorist activity in the future.

Robin told the OIG that she did not specifically recall reading the Phoenix EC, although she believed that she must have read it because her practice was to read documents that she printed. She did not bring the Phoenix EC to anyone else's attention at FBI Headquarters, such as Martin or attorneys in the NSLU, or in any field office, including in Minneapolis.[153] She said she did not know why she did not bring the EC to anyone's attention. She added that after reading it some time after September 11, she concluded that she must have thought there was nothing in the EC that bolstered Moussaoui's

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[153] As discussed in Chapter Three, although Don and Martin's names were on the "attention" line of the Phoenix EC, neither Don nor Martin accessed it in ACS or otherwise became aware of the Phoenix EC until after September 11.

connection to Khattab for the foreign power element of the FISA request. She also suggested that the reporting of information about individuals who were of interest to the FBI – that they were Middle Eastern and were in flight school – was not significant because there were thousands of Middle Eastern men in U.S. flight schools at the time.

We discussed the Phoenix EC with the four NSLU attorneys who were consulted about the Moussaoui matter. All said they had not seen the Phoenix EC before September 11. All said that the Phoenix EC itself would not have conclusively led to a FISA warrant, but three of the attorneys said that if they had seen the Phoenix EC in connection with the Moussaoui case, they would have responded differently than they did when asked about the adequacy of the Moussaoui FISA request. When asked about the adequacy of the Moussaoui FISA request, Howard said that if he had seen the Phoenix EC at the time, it would have "made a difference in the pucker factor," and he would have called CDC Rowley in Minneapolis and discussed the importance of tracking down the available leads to find out as much information about Moussaoui as possible. Susan and Tim said that if they had read the Phoenix EC at the time, they would have been concerned enough about Moussaoui to bring the matter to an OIPR attorney's attention. According to Susan, she had even asked Robin whether the FBI had any information indicating anyone was sending people to the United States for flight training, but Robin did not mention the Phoenix EC.[154]

We believe that Robin should have recognized the potential relevance of the information in the Phoenix EC to the Moussaoui investigation and made others aware of it. Although the EC did not specifically mention Moussaoui or anyone else involved in the Moussaoui investigation, the EC discussed the possibility that persons under investigation by the FBI were terrorists working for Bin Laden and receiving training in aviation-related fields in the United States for the purpose of conducting terrorist activity in the future. The

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[154] Contrary to the other three NSLU attorneys, Bowman told the OIG that while coincidences between Moussaoui and the information in the Phoenix EC were apparent after September 11, he did not believe that he would have made any such connections or taken different action if he had read the Phoenix EC at the time of the Moussaoui matter.

Minneapolis FBI also suspected Moussaoui of being a terrorist receiving flight training, and the Phoenix EC was relevant to that theory.

Robin's failure to bring the Phoenix EC to anyone's attention is another example of how the FBI focused on establishing direct links between targets and foreign powers, but failed to appreciate how indirect evidence also could be useful in supporting FISA requests.

H. Edits to Minneapolis FBI's FISA request

Rowley and some of the Minneapolis FBI agents believed that Martin edited the Minneapolis FISA request to ensure that it would fail. They were most concerned that Martin had removed the section describing Moussaoui's connection to a foreign power. They asserted that Martin softened the language of the FISA request in other respects, and that FBI Headquarters should not have made substantive changes to the field's FISA request because it altered the meaning and tended to make it less accurate.

Our review found that Martin edited the request as he did other requests, and we do not believe he changed the document to intentionally undermine the Moussaoui FISA request. Moreover, Martin sent all of his proposed changes to Minneapolis for review. Martin deleted the three paragraphs of information about Moussaoui's connections to Khattab and the statement that Khattab was a close associate of Bin Laden. When Gary raised concerns about this deletion, Martin responded with an e-mail stating that the foreign power information would be added back in once an NSLU attorney had approved the use of al Qaeda as the foreign power.

Gary also questioned the accuracy of some of the other changes Martin had made. In some instances, Martin agreed to some of the wording Gary suggested but kept his own wording in other instances.

Preparing the FISA request for approval within FBI Headquarters and the NSLU for eventual submission to OIPR was primarily the responsibility of the SSA assigned the FISA request. An SSA and an IOS at FBI Headquarters typically edited the LHM submitted by the field office requesting the FISA warrant. The extent of the editing depended on the quality of the field office's LHM and the judgment of the SSA and IOS who were handling the FISA request. In some instances, the LHM was completely rewritten and a different

foreign power was used. In other cases, the IOS would check the accuracy of facts as reported by the field office, with no other editing.

The foreign power section of the LHM was usually several pages long. The SSA or IOS normally would copy relevant language from other FISA requests in which the same foreign power had been used. They also would add information to the LHM when they had uncovered additional information in their research to support the foreign power element.

Martin was the SSA responsible for the Moussaoui FISA request and the SSA who would have had to swear to the affidavit filed with the FISA Court. Most of the edits made by Martin were stylistic. Moreover, Martin did not hide any of his edits. He returned the revised draft of the LHM to Gary for his review and asked for comments. The evidence also showed that Martin was planning to prepare an entirely new foreign power section that would contain all of the necessary foreign power information. Martin also responded to Gary's concerns about the removal of the foreign power information and the other edits. Martin made some changes based on Gary's suggestions and gave explanations for the edits that he declined to change. We believe these actions suggest that Martin was not intentionally undermining Minneapolis' attempts to obtain a FISA warrant.

We also concluded that Martin's edits did not significantly change the FISA request. For example, the Minneapolis FBI had written, "Moussaoui had no convincing explanation for the large sums of money known to have been in his possession," which Martin changed to "Moussaoui would not explain the large sums . . . ." After Gary noted in his e-mail that the problem was that the Minneapolis FBI believed that Moussaoui could have explained that matter but chose not to, Martin changed the statement to "Moussaoui did not give a logical explanation for the large sums . . . ."

However, a few of Martin's changes were unnecessary and altered the meaning of the LHM to some extent. For example, Martin changed the statement that "Al-Attas admitted that Moussaoui . . . is preparing himself to fight" to "Al-Attas stated that he and Moussaoui [sic] own boxing gloves and

train together in defensive tactics."[155] Gary responded that neither Al-Attas nor Moussaoui used the term "defensive tactics," and that the change "soften[ed] our argument" and misrepresented Al-Attas' statements. In his response e-mail, Martin simply wrote that he believed that the way he had it written was "accurate."

Although Gary challenged some of the changes as "softening" the FISA request, Martin wrote that he believed that the way he had it written was "accurate."

We believe that some of Martin's edits made Minneapolis' request slightly less persuasive had it gone forward to OIPR. However, the edits did not make major changes and were not indicative of a deliberate attempt to sabotage the Minneapolis FBI request.

I. Inadequate dissemination of threat information

Although FBI Headquarters disseminated a teletype to the Intelligence Community about Moussaoui on September 4, the FBI did not include any of the threat assessment information about Moussaoui that was drafted by the Minneapolis FBI. We found that the FBI did not have clear guidelines for what threat information should be disseminated and where it should go. It was normally left to the discretion of an analyst or agent, without significant supervisory oversight.

When the decision was made to deport Moussaoui and the FBI was considering using FAA sky marshals to accompany him to France, Don instructed the Minneapolis FBI to get the FAA "up to speed" on the case. Henry wrote a detailed memorandum providing the facts of the Moussaoui case and an assessment of the threat that Minneapolis believed he posed. Henry stated the belief that Moussaoui's flight training was preparation for some future terrorist act and that his physical training and study of martial arts were "consistent with facilitating the violent takeover of a commercial aircraft." Henry wrote:

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[155] This was a reference to Al-Attas' statement that he and Moussaoui were taking martial arts training.

> Minneapolis believes that Moussaoui, Al-Attas, and others not yet known were engaged in preparing to seize a Boeing 747-400 in commission of a terrorist act. As Moussaoui [redacted] was arrested before sufficient evidence of criminal activity was revealed, it is not known how far advanced were his plans to do so. As the details of this plan are not yet fully known, it cannot be determined if Moussaoui has sufficient knowledge of the 747-400 to attempt to execute the seizure of such an aircraft if he becomes free to do so in the future.

One of the purposes of Henry's assessment was to ensure that the FAA was made aware of Moussaoui.

By contrast, the teletype prepared by the RFU and distributed outside the FBI did not have any threat assessment. According to Don, the purpose of the teletype was to provide information to and solicit input from the Intelligence Community, not to provide a threat assessment. He added that, prior to September 11, the FBI was a "case driven, fact specific" agency that did not ordinarily "speculate" or include "hypothetical information" in a teletype to the Intelligence Community. He stated that since September 11 the FBI has attempted to provide more analysis in disseminations of this type about potential threats from individuals or groups. Similarly, Martin told the OIG that he attempted to include the known facts about Moussaoui in the teletype.

We concluded that the RFU's teletype on Moussaoui omitted significant facts, such as the fact that Moussaoui knew how to operate the 747-400 Mode Control Panel, the aircraft's automated feature that allows the aircraft to fly, navigate, and, in some cases, land in a fully automated manner. Nor did it contain any assessment of the facts – either Minneapolis' or the RFU's – despite Martin's acknowledgement that he considered Moussaoui to be "a dirty bird," even if he did not believe Moussaoui could be connected to a foreign power under FISA. The RFU's teletype was not distributed to all FBI field offices, an action that may have generated helpful responses, especially in locations like Phoenix where similar issues had arisen. The teletype also was not distributed to all agencies in the Intelligence Community.

J. Inadequate training

We found that the FBI did not provide adequate training to the SSAs and the IOSs in ITOS, on either analytical procedures or on building a FISA package. The IOS and the SSA in this case had not received any specific training on FISAs or on foreign intelligence generally.

SSAs came to FBI Headquarters with different backgrounds, and the level of training given to the agents in intelligence matters varied. Moreover, the SSAs normally stayed approximately 18 months in ITOS and then moved back out to the field. While Martin had a background in terrorism investigations, he had handled FISA applications and renewals with respect to only two targets while working in the field. He told us that one of the two cases already had an active FISA order when he was assigned to the case, and he handled only the renewals. Thus, after initiating only one FISA application in the field, Martin assumed responsibility in FBI Headquarters for advising the field on FISA issues and creating FISA packages for OIPR on behalf of multiple field offices. He received little formal training in this area. In addition, although the FISAs he handled covered surveillance of different terrorist groups, he did not receive any additional formal substantive or process-oriented training prior to assuming his SSA position at FBI Headquarters.

We were told that most of the SSAs' training at FBI Headquarters was provided informally by the IOSs, who were permanent Headquarters employees and did not rotate through the units like SSAs. Several ITOS employees told us that the section could not have run without the IOSs. Prior to September 11, there were several paths to becoming an IOS. Some IOSs were promoted from within the FBI from other, sometimes clerical, positions. The FBI also hired some IOSs from outside the FBI, many of whom had graduate degrees. From our interviews of the IOSs, we found widely divergent skill and knowledge levels.

The IOS in the Moussaoui case, Robin, had no formal analytical training. She began with the FBI as a clerk in the records branch after graduation from high school. Her formal training consisted of some courses at Quantico several years ago, and occasional briefings from NSLU attorneys regarding updates and changes in the law. This training was not sufficient for the many analytical challenges they faced. It also clearly was insufficient to have the IOSs do most

of the training of incoming SSAs, who are responsible for overseeing, coordinating, and contributing to all field intelligence investigations.

IV. Individual performance

As detailed above, numerous systemic problems affected how the FBI handled the Moussaoui case. We believe that these systemic problems caused the main deficiencies in the Moussaoui investigation. Placing blame on individuals alone for the problems in the Moussaoui case would unfairly single them out for actions that we believe were not inconsistent with the FBI's prevailing practices at the time.

However, some deficiencies by individuals in this case warrant criticism. Although we believe that no one committed intentional misconduct, deliberately undermined the case, or violated established FBI or Department policies or procedures, we believe that some individuals did not do all they could have, and should have, to help pursue the Minneapolis FBI's strong concerns about Moussaoui. By contrast, the actions of some individuals warrant praise. In this section, we discuss the performance of individuals involved in the case.

A. RFU

1. Don

As Chief of the RFU, Don was responsible for ensuring that the Minneapolis FBI's requests to obtain a warrant to search Moussaoui's possessions received adequate review. Don recognized that the Moussaoui case was unusual. He directed his staff several times to consult with NSLU attorneys on the FISA request. He also took the unusual step of seeking a review of the request from the chief of the NSLU, Bowman.

Yet, we believe that Don too quickly concluded that there was insufficient probable cause for a criminal search warrant in the Moussaoui case, and he never carefully reconsidered that view, despite the additional evidence that was uncovered. He also never reviewed the entire file or ensured that the NSLU received all the documentation or the facts, despite the RFU's pledge that the NSLU would give it a good faith review. He did not reconsider whether a criminal warrant could be obtained, even when the FISA request was no longer considered an option.

However, these shortcomings were not an intentional attempt to sabotage the case, as Rowley implied. We have no doubt that Don believed there was insufficient evidence for probable cause. It is also important to recognize that he had numerous other cases in the unit and responsibilities that demanded his attention. But the Moussaoui case was unusual, given the circumstances under which it was presented to FBI Headquarters and the vehemence of the field office's concern that Moussaoui was preparing to commit a terrorist act. In light of that background, Don did not give the matter the careful evaluation this case deserved. Nor did he address the problem of a suspected terrorist like Moussaoui who could not be connected to a "recognized" foreign power under FISA. According to the Minneapolis agents, when they raised questions about this issue and asked about other options, Don said there were none and that they should not worry about it. He did not look for solutions in this case, which was the role of the RFU.

He also too quickly discounted important facts, such as the statement by Al-Attas about going on "jihad." OIPR Counsel Baker suggested that this comment was significant and he would "have tied bells and whistles" to the jihad comment in a FISA application. In sum, we believe Don too quickly discounted the facts and the assessment of the field office in assessing the possible threat that Moussaoui posed.

2. Martin

By many accounts, Martin was a responsible and conscientious agent. It is important to note that he assisted with the plans to deport Moussaoui to France. He consulted with the Legat Offices in both London and Paris to see which country would best be able to handle a search of Moussaoui's belongings upon entry. Martin was informed that French authorities believed they would be able to search his belongings upon his arrival, and Martin was supportive of this plan and assisted in coordinating it.

However, we concluded that Martin's performance in this case was lacking in many respects. Although his personality was described as "easy going" by some, it is clear that he and the Minneapolis agents clashed. The Minneapolis agents distrusted his advice, and he believed that the Minneapolis Field Office became "spun up" too easily.

Like Don, Martin quickly viewed the Minneapolis agents as jumping to conclusions based only on gut feelings. We believe he hardened his position and did not evaluate the case fully. He was not open-minded or creative in his approach to obtaining a FISA warrant in this unusual case. Rather, he told the field what it could not do, but never fully considered solutions to the FISA problem or even explained the problems to them fully. Despite the fact that the Minneapolis FBI was extremely concerned that Moussaoui could be involved in a terrorist act and Martin's own acknowledgment that he thought Moussaoui was "a dirty bird," Martin did not aggressively seek to help Minneapolis understand the barriers or think creatively about how it could obtain what it believed it needed.

It also appeared to us that he viewed the Minneapolis FBI as an adversary, rather than helping the agents understand the options and guiding them through the complicated issues of FISA. We also were troubled by Martin's response when we asked whether he reconsidered seeking a criminal warrant after the FISA route was ruled out. He suggested it was Minneapolis' responsibility alone to consider this option. In our view, this response demonstrates a lack of initiative and acceptance of some of the responsibility by Martin.

We also believe Martin undersold the case when he presented it to the NSLU attorneys for review, and he did not ensure that the attorneys received all the facts. He started the briefings by stating his belief that there was not enough evidence to obtain a warrant, rather than by explaining the case fully and seeking NSLU guidance. He never gave the NSLU attorneys the documentation prepared by Minneapolis. He did not ask the field to participate in the briefing or suggest that the NSLU contact the field directly. Although it was not the standard practice to involve the field in that way, this was not a standard case, and we believe the field should have been involved in the discussions.

Martin also did not provide complete or accurate legal advice to the field office. He used shorthand – such as Moussaoui must be tied to a "recognized" foreign power or Moussaoui must be an "integral" part of a terrorist organization. This was not correct. This shorthand also did not provide the field clear guidance on what it needed to obtain a FISA warrant.

Martin's edits to the field's FISA request exacerbated the problem. Although most of his changes were stylistic, other changes softened the language slightly and appeared to us as unnecessary. We recognize that it was his job to review and edit a FISA request, where appropriate. But his edits furthered Minneapolis' concern that Headquarters was not doing what it could to obtain a warrant and was instead unnecessarily and unfairly impeding the field's efforts.

Martin also did not ensure that the information presented by the field about the potential threat from Moussaoui was disseminated. He did not believe that a threat assessment should be sent without input from the Intelligence Community, and he disseminated his own teletype rather than forward the document prepared by Minneapolis that contained a threat assessment. But his teletype omitted important facts, and he did not provide it to all agencies in the Intelligence Community.

In our view, Martin did not adequately handle this unusual case. He did not work with the Minneapolis agents adequately, educate them on FISA, or guide them through the complicated FISA process to determine if the FBI could legitimately accomplish what the field wanted and needed in order to thoroughly investigate Moussaoui. He did not fully brief the NSLU. He did not adequately provide the information on the potential threat posed by Moussaoui within and outside the FBI. He did not adequately consider alternative options for a criminal warrant after he concluded that there was not enough evidence for a FISA warrant under the prevailing standards at the time. Although his conduct did not violate a clear FBI policy, we believe his performance in this case was significantly lacking.

3. Robin

Robin, the IOS who worked with Martin, is also considered a hard working and competent employee. The IOS's role was to support the SSA, and Robin supported Martin's requests. However, when she uncovered the Phoenix EC, she did nothing with it. We believe she should have at least recognized the relevance of the EC and the potential relationship of its theories to the Moussaoui case. Several NSLU attorneys told us that had they known about the Phoenix EC, it might have made a difference in how they addressed the Moussaoui matter. At the least, they said, it would have caused them to consult with OIPR about the possibility of obtaining a FISA warrant for

Moussaoui. We think Robin should have brought the Phoenix EC to someone's attention.

B. NSLU attorneys

Several NSLU attorneys provided advice to the RFU on the Moussaoui case, based on what they were told about the case. None read the documentation in the case or learned all the facts. The advice that they gave, based on what they were told and the prevailing conservative interpretation of FISA, was not unfounded. We do not believe any of the individual attorneys, including Bowman, were wrong in their advice or that they violated any specific policies or practices in place at the time. Yet, we believe that given the unusual nature of this case – in particular the strong disagreement between the field and Headquarters about whether probable cause existed to obtain a FISA warrant – they should have considered alternative approaches, contacted the Minneapolis FBI for more information, or at least consulted with OIPR to determine if there were creative approaches to this case.

Part of the problem was how the NSLU operated – no single attorney was assigned responsibility for a FISA request. Instead, several attorneys were consulted at various times, and no one was required to review or understand the facts and be responsible for providing comprehensive advice on a FISA request. As a result, the attorneys relied on brief explanations from the RFU and never reviewed all the documentation. Nor did any attorney consider all the potential approaches, including whether the field should approach the USAO after the possibility of a FISA warrant was exhausted. But given this system, and the facts available to the NSLU, we do not think any of the NSLU attorneys committed misconduct or provided clearly inappropriate legal advice.

C. Minneapolis FBI employees

The Minneapolis agents deserve praise for their relentless efforts and their accurate instincts in assessing Moussaoui's actions. They believed that Moussaoui posed a threat, and they aggressively and tirelessly investigated this prospect. Their tenacity deserves praise and recognition.

We also believe that Rowley deserves credit for bringing forward the important issues relating to how the Moussaoui case was handled. Her complaints resulted in an important reassessment of how the FBI handled this

matter, and some of them raised valid concerns about FBI employees and operations. However, as we discussed in this chapter, we did not find that all of her allegations about the FBI or FBI employees to be meritorious.

Moreover, Rowley's performance in the Moussaoui investigation itself was lacking in several regards. As the Minneapolis CDC, she was responsible for guiding the Minneapolis agents through the complicated interrelationship between a criminal and an intelligence investigation. At the outset, she assumed that the USAO would not support a criminal warrant. Contrary to the implication in her letter, which placed the blame for failing to seek a criminal warrant solely on FBI Headquarters, she advised the field agents not to seek a criminal warrant. She did so without fully understanding the requirements of FISA and the difficulty of connecting Moussaoui to a recognized foreign power. She never provided guidance or help to the field agents on this critical issue. She did not consult with the NSLU about what was required under FISA or whether attempting to seek a criminal warrant was a better avenue. Nor did she ever reconsider her initial advice that the USAO would not seek a criminal warrant, even after the FISA route was exhausted. Along with FBI Headquarters, she should share some of the criticism for the failure to carefully and creatively assess the options for obtaining a warrant.

While the Minneapolis agents' aggressiveness in pursuing the Moussaoui investigation was commendable, we also believe that the Minneapolis agents contributed to some of the problems in the handling of the Moussaoui investigation. Gary and Henry sought to open a criminal investigation after opening the intelligence investigation without fully considering the ramifications of doing so or evaluating the potential tools available before deciding which avenue presented the best option. In addition, they failed to reconsider pursuing a criminal warrant once the FISA route was exhausted. Even if they believed that FBI Headquarters would still be unsupportive of a criminal warrant, there would have been nothing to lose in raising the issue again, and they could have attempted to bolster their argument for seeking a criminal warrant with the additional information that had been uncovered in the case since the matter was initially discussed.

We also concluded that the Minneapolis FBI management should have taken more aggressive action to support its field agents. Several FBI employees commented to us that if the Minneapolis FBI felt strongly about this case, it should have raised its concerns at a higher level in FBI Headquarters.

They said that field office SACs often called the ITOS Section Chief in Headquarters, or a higher official, when the field office disagreed with the advice of a unit chief or wanted a further review of the unit chief's decision. Section Chief Rolince told the OIG that he routinely received telephone calls from field office managers about disputes between the field and Headquarters and that approximately once a week a field manager would come to his office at Headquarters to discuss a dispute or issue between the field office and Headquarters.

Gary even advised the Acting SAC, Roy, to push the issue up the "chain of command" at Headquarters. Roy talked to Don, but Roy did not push the issue further. Roy stated to the OIG that he believed that the Minneapolis FBI was "working things out" and that the Minneapolis FBI had yet to receive information that caused him to believe it was necessary to push the issue further. We believe, however, that given the adamant views of the field agents, he should have raised this issue to a higher level at the FBI. While we are not certain it would have made a difference, we believe he should have expended the effort.

V. Conclusion

In sum, we did not find that any employees committed intentional misconduct, or violated established FBI policies or practices, or attempted to deliberately sabotage the Moussaoui case. But the performance of several individuals involved with the case was lacking. The Minneapolis agents, who deserve credit for their tenacity and accurate instincts, did not receive sufficient support, either from their field office management and legal counsel or from FBI Headquarters.

We believe that singling out individuals for criticism alone would miss the main problems demonstrated by the Moussaoui case. Even if FBI employees pursued this case more aggressively, consulted with OIPR, or sought a criminal warrant, it is not clear that this approach would have succeeded in obtaining a search warrant for Moussaoui's possessions before September 11. However, this case evidenced systemic problems in how the FBI handled intelligence cases and provided guidance to the field. The problems included a narrow and conservative interpretation of the FISA requirements, inadequate analysis of whether to proceed as a criminal or intelligence investigation, adversarial relations between FBI Headquarters and

the field, and inadequate and disjointed review of potential FISA requests by the NSLU. In our view, these systemic problems were a more important cause of the deficiencies we found in the Moussaoui case. In addition the systemic problems hindered the FBI's ability to detect and deter terrorism.

CHAPTER FIVE
TWO SEPTEMBER 11 HIJACKERS: KHALID AL-MIHDHAR AND NAWAF AL-HAZMI

I. Introduction

In this chapter, we examine the FBI's handling of intelligence information concerning two of the September 11 hijackers, Khalid al-Mihdhar and Nawaf al-Hazmi. Mihdhar, Hazmi, and three other terrorists hijacked and crashed American Airlines Flight 77 into the Pentagon.

The FBI has asserted that it learned in late August 2001 that Mihdhar and Hazmi were al Qaeda operatives and that they had traveled to the United States in January 2000. In August 2001, the FBI also discovered that Mihdhar had entered the United States on July 4, 2001, purportedly for a month-long stay. In late August, the FBI initiated an investigation to determine whether Mihdhar was still in the country and to find him. The FBI was still searching for him at the time of the September 11 attacks.

We examined the information that the Intelligence Community and the FBI had about Mihdhar and Hazmi prior to September 11. We found no evidence indicating the FBI or any other member of the Intelligence Community had specific intelligence regarding the September 11 plot. However, beginning in late 1999 and continuing through September 11, 2001, we found five junctures at which the FBI either learned of intelligence information about Mihdhar and Hazmi, could have learned of additional intelligence information about them, or could have developed additional information about their location and terrorist connections. These five junctures were:

- In early January 2000, Mihdhar traveled to Kuala Lumpur, Malaysia, where he met with other al Qaeda operatives. Intelligence information developed by the CIA in early 2000 revealed that Mihdhar was a suspected al Qaeda operative, he traveled to Malaysia to meet with other al Qaeda operatives, and he had a multiple-entry U.S. visa. The CIA also discovered in March 2000 that Hazmi had traveled to Los Angeles in January 2000.

- In late January 2000, Mihdhar and Hazmi both traveled to Los Angeles and then moved to San Diego, where they associated with a former subject of an FBI investigation and also lived with a long-time FBI asset.[156]
- In late December 2000 and early January 2001, a reliable joint FBI/CIA source provided information related to the FBI's ongoing investigation of the attack on the *U.S.S. Cole.*[157] The source's information linked Hazmi and Mihdhar with the purported mastermind of the Cole attack.
- In the summer of 2001, the CIA and the FBI had various interactions regarding the FBI's investigation of the Cole attack. These interactions touched on the participants in the January 2000 Malaysia meetings and information developed by the CIA about the Malaysia meetings.
- In August 2001, the FBI learned that Mihdhar had entered the United States on July 4 and began searching for him in early September 2001. It also learned that the purported mastermind of the Cole attack had met with Mihdhar and Hazmi in the Malaysia meetings. The FBI did not locate him before the September 11 attacks.

Yet, despite these ongoing discussions and opportunities for the FBI to learn about and focus on Mihdhar and Hazmi, including their presence in the United States, the FBI was not made aware of and did not connect important details about them until late August 2001, a short time before they participated in the terrorist attacks. Even in August, the FBI's search for Mihdhar and Hazmi was not given any urgency or priority, and was not close to locating them by the time of the attacks.

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156 Hazmi had also traveled to and attended the January 2000 meetings in Kuala Lumpur, Malaysia.

157 As noted previously, on October 12, 2000, two terrorist operatives in an explosive-laden boat committed a suicide attack on the *U.S.S. Cole* naval destroyer during a brief refueling stop at the port in Aden, Yemen. Seventeen sailors were killed and 39 were wounded in the attack.

In this chapter, we describe each of these five opportunities in detail. We set forth the available intelligence information regarding Hazmi and Mihdhar that existed at the time, whether the information was made available to the FBI, and what additional information about Hazmi and Mihdhar the FBI could have developed. In the analysis section of this chapter, we evaluate the problems that impeded the FBI's handling of the intelligence information about Hazmi and Mihdhar before September 11.

II. Background

A. OIG investigation

To investigate the issues involving Hazmi and Mihdhar, the OIG asked for and reviewed all documents the FBI had regarding them before September 11. The FBI search for these documents included searches of its Automated Case Support system (ACS), Integrated Intelligence Information Application (IIIA) system,[158] and CTLink.[159] In addition, searches were conducted on archived FBI e-mail messages and the FBI Director's briefing documents. These searches were initially conducted in response to a request by the Congressional Joint Intelligence Committee's Inquiry Staff, which was conducting its own inquiry into this subject. The OIG also obtained direct access to ACS so that we could conduct our own searches for relevant documents. In addition, we reviewed hard copy case and informant files to search for documents relevant to Mihdhar and Hazmi.

In addition to reviewing these documents, we conducted more than 70 interviews related to the Mihdhar and Hazmi matter. These included interviews of FBI IOSs, special agents, attorneys, and supervisors who had access to some of the relevant information or participated in meetings or

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[158] IIIA is a database designed to capture comprehensive amounts of information from counterintelligence, international, and domestic terrorism investigations. The system includes information ranging from biographical data on persons to profiles of terrorist groups. The FBI describes the system as "conducive to putting together information regardless of office of origin or case."

[159] CTLink is a shared database used for the dissemination of intelligence information among agencies within the Intelligence Community.

operations related to these hijackers. We also interviewed FBI employees detailed to the CIA and FBI agents who participated in debriefings of intelligence sources who had relevant information.

Because much of the information discussed in this chapter of the report involves the FBI's interactions with the CIA, we also obtained information directly from the CIA. The DOJ OIG does not have oversight authority over CIA operations or personnel, and we therefore did not make assessments of the performance of CIA personnel. That issue is the responsibility of the CIA OIG, which is conducting its own inquiry in response to the JICI report. We had to rely on the cooperation of the CIA in providing access to CIA witnesses and documents that were relevant to the OIG's oversight of the FBI.

We interviewed CIA staff operations officers, analysts, and supervisors, as well as CIA employees detailed to the FBI, including a CIA employee detailed to the FBI's New York Field Office's Joint Terrorism Task Force. (S)

Initially, the CIA made available to the OIG for review various documents that the CIA's "Director of Central Intelligence (DCI) Review Group"[160] had identified as being related to our inquiry. The Review Group had gathered these and other documents during its review of the September 11 attacks and during additional searches conducted at the request of the JICI staff. We did not have independent access to CIA databases, and therefore we could not independently verify that all relevant documents had been provided to us. However, we had several lengthy sessions with members of the Review Group at which they identified the documents they used to support their conclusions regarding Hazmi and Mihdhar. The CIA permitted us to review but not have a copy of these documents.

In addition, a member of the CIA General Counsel's staff conducted additional searches for documents relevant to particular disputed issues. As a result of that review, copies of additional relevant documents were also made available for our review.

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[160] The CIA formed the DCI Review Group in late 2001 to assist the CIA in determining why it had not detected the September 11 plot. The group included former CIA case officers and CIA OIG personnel.

In response to the JICI report issued in December 2002, the CIA OIG initiated a review in February 2003 of the CIA actions related to the September 11 attacks. In July 2003 the CIA OIG review team informed us it had several more documents that were relevant to our review. These documents were made available to us to review, and redacted copies of the documents were provided to us in November 2003. The CIA OIG review team also provided additional relevant documents and information to us that it found during the course of its review.

In February 2004, however, while we were reviewing a list of CIA documents that had been accessed by FBI employees assigned to the CIA, we noticed the title of a document that appeared to be relevant to this review and had not been previously disclosed to us. The CIA OIG had not previously obtained this document in connection with its review. We obtained this document, known as a Central Intelligence Report (CIR). This CIR was a draft document addressed to the FBI containing information about Mihdhar's travel and possession of a U.S. visa. As a result of the discovery of this new document, a critical document that we later determined had not been sent to the FBI before the September 11 attacks (see Section III, A, 4 below), we had to re-interview several FBI and CIA employees and obtain additional documents from the CIA. The belated discovery of this CIA document delayed the completion of our review.

B. Background on the CIA

In this section of the chapter, we describe background information relevant to the interactions between the CIA and the FBI and the ways in which they exchanged intelligence. We begin with a discussion of the CIA's authority and mission, organization, forms of communications, and ways in which the CIA passed intelligence to the FBI. We also discuss the role of the FBI's employees who were "detailed" to work at the CIA.

1. CIA authority and mission

As discussed in Chapter Two, the National Security Act of 1947 created the CIA and established it as the nation's lead foreign intelligence agency of the United States. The CIA engages primarily in the clandestine collection of "foreign intelligence" information – information relating to the capabilities, intentions, and activities of foreign governments or organizations, including

information about their international terrorist activities. The CIA is charged with evaluating and disseminating the intelligence information it collects.

The CIA reports directly to the President through the Director of Central Intelligence (DCI), who is the head of both the CIA and the Intelligence Community. The DCI is the primary advisor to the President and the National Security Council on national foreign intelligence matters. George Tenet was named to that position in 1997.

2. Organization of the CIA

The work of the CIA is conducted primarily through three "directorates": the Directorate of Operations, the Directorate of Intelligence, and the Directorate of Science and Technology. Each is led by a Deputy Director. Below we briefly describe the relevant structure and positions within each directorate.

a. Directorate of Operations

The Directorate of Operations is responsible for the clandestine collection of foreign intelligence. This takes place in field offices known as "stations."[161] Smaller cities may have "bases," which are sub-offices of the stations. "Operations officers," also known as "case officers," are responsible for collecting intelligence through contacts with human sources and through the use of technology. Collection management officers, also known as "reports officers," are responsible for taking raw intelligence reported by the operations officers and removing from it the information that reveals the source, method of collection, or other sensitive information. The reports officers publish intelligence information in a form that can be made available to the Intelligence Community.

The head of a station or base is usually an operations officer and is known as a Chief of Station (COS) or Chief of Base (COB). Stations and bases

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[161] The CIA also has field offices within the United States that are part of the National Resources Division within the Directorate of Operations. They are responsible for the overt collection of foreign intelligence volunteered by individuals and organizations in the country.

are usually grouped by geographic division and report to the chief of the geographic division at CIA Headquarters. Within the geographic division at CIA Headquarters are "staff operations officers," or "desk officers," who provide operational research, advice, and other forms of case management support to the officers in the field.

The CIA's Counterterrorist Center (CTC), which is based in the Directorate of Operations but which draws on all CIA resources, is charged with preempting and disrupting international terrorism. The CTC is staffed by managers, analysts, operations officers, desk officers, and reports officers. The CTC collects and analyzes strategic intelligence on terrorist groups and state sponsors of terrorism to ascertain the capabilities, sources of support, and likely targets of terrorist elements, and to furnish detailed information on terrorist-related intelligence to the Intelligence Community.

At the time of the events relevant to our review, the CTC operated a unit – that we call the "Bin Laden Unit" – that dealt exclusively with issues related to al Qaeda and Usama Bin Laden. The Bin Laden Unit was later merged into a larger group in the CTC. Although staffing levels fluctuated, approximately 40-50 people worked within the Bin Laden Unit before September 11, 2001. The Bin Laden Unit was known as a "virtual station" because it operated from within CIA Headquarters but collected and operated against a subject, much as stations in the field focus on a country.

b. Directorate of Intelligence

The Directorate of Intelligence, the analytical branch of the CIA, is responsible for the production and dissemination of timely, accurate, and objective intelligence analysis on foreign policy issues. It focuses analysis on key foreign countries, regional conflicts, and issues such as terrorism and narcotics trafficking.

The Directorate of Intelligence is primarily composed of analysts who concentrate on particular areas of expertise. For example, intelligence analysts are assigned a particular geographic region to monitor the leadership, motivations, plans, and intentions of foreign governments in relation to U.S. national security interests. Additionally, counterterrorism analysts stationed in the CTC produce a range of long-term intelligence products about terrorist organizations and provide tactical analytic support to intelligence operations.

c. Directorate of Science and Technology

The Directorate of Science and Technology is responsible for creating and applying technology in support of the intelligence collection mission. It employs a broad range of professionals, including computer programmers, engineers, scientists, and linguists.

3. The CIA's collection and internal dissemination of information

Official internal communications between entities within the CIA are normally conducted by an electronic communication known as a "cable." Cables are addressed to the stations, offices, or units within an office from which some action is expected. Information acceptable for sharing with a foreign government service is put into a section of a cable called a "tear line."

4. Passing of intelligence information by the CIA to the FBI

The CIA shares intelligence with the rest of the Intelligence Community through a communication known as a "TD" ("Telegraphic Dissemination"). TDs can be sent to other Intelligence Community agencies, including the FBI, and are available to the Intelligence Community through the Intelink system.

Another type of intelligence report used by the CIA when conducting business with other agencies is a CIR, or "Central Intelligence Report." CIRs are used for disseminating information to a specific agency or group of agencies. CIRs to the FBI normally concern something occurring in the United States, involving a U.S. person or an ongoing FBI investigation.

In addition to formal methods of communicating by the CIA to the FBI, much information can be shared with the FBI informally. CIA and FBI employees who have similar positions and expertise develop relationships and communicate informally while working together on related matters, either by secure telephones or in person. In addition, meetings are sometimes held to discuss a matter or a piece of intelligence that is of value to both agencies. According to the CIA employees we interviewed, when the CIA passed intelligence information or other kinds of information verbally or by another informal mechanism to the FBI, the information exchange normally would be documented through a TD or a CIR. However, they said that not every telephone call or conversation was documented.

C. FBI detailees to the CIA Counterterrorist Center

In 1996, the FBI began detailing employees to work in the CIA's CTC. During the time period relevant to this chapter of the report, five FBI employees were detailed to the CTC's Usama Bin Laden Unit in four separate positions. Two of the positions were filled by personnel from the FBI's Washington Field Office, and one position each was filled from the FBI's New York Field Office and FBI Headquarters.[162]

1. FBI Headquarters detailees

One of the FBI detailees assigned to Bin Laden Unit, who we call "Eric," held a supervisory position as a deputy chief of the Bin Laden Unit.[163] Eric, an FBI Headquarters supervisor in the Radical Fundamentalist Unit, was detailed to the CTC as a branch chief for a particular terrorist group in September 1997. In March 1999, FBI Headquarters transferred him from that part of the CTC to the deputy chief position in the Bin Laden Unit. According to Eric, he was told by FBI Assistant Director Neil Gallagher that there were a lot of problems between the FBI's New York Field Office and the Bin Laden Unit and that he needed to mend the relationship.[164] Eric stated that although he acted as a liaison between the CIA and the FBI, his primary job was to perform substantive work related to the Bin Laden Unit's mission.

Eric left the Bin Laden Unit in January 2000 and was replaced in July 2000 by an FBI employee who we call "Craig."[165] By this time, the Bin Laden Unit had been placed into a newly formed group, which was a much larger

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[162] Other FBI employees were also detailed to the CIA during this time. However, the FBI detailees to the CTC's Bin Laden Unit were the only ones relevant to the issues in this review.

[163] A CIA employee was the other deputy chief in the Bin Laden Unit. Both the FBI detailee and the CIA employee reported to the chief of the Bin Laden Unit, a CIA employee.

[164] Eric told the OIG that when he arrived at Bin Laden Unit, he "walked into a buzz saw" and there was a great deal of animus from CIA employees toward the FBI detailees. Eric said this experience was vastly different from his tenure in another CTC section, where he was readily accepted and integrated into the CIA's operations.

[165] No one filled the deputy chief position between January 2000 and July 2000.

organization than the Bin Laden Unit. Craig was designated as a deputy chief in the new, larger group. He described his primary job as being a "referent" for law enforcement issues. He explained this role as involving coordination between the FBI and CIA when they wanted to conduct joint interviews or when the CIA requested assistance with a law enforcement matter.

Eric and Craig had access via computers on their desks to the CIA's internal cables. Eric said that while he was at the CIA, he attempted to read all incoming Bin Laden Unit cables. However, he said that the amount of cable traffic was overwhelming and was too much for one individual to read consistently. In contrast, Craig told the OIG that he did not believe his job was to read all the cable traffic and that he did not even attempt to do so.

2. Washington Field Office detailees

Another FBI employee detailed to the Bin Laden Unit, an Intelligence Operations Specialist (IOS) who we call "Mary," was assigned to CIA Headquarters from the FBI's Washington Field Office in April 1998. Although she was assigned to work on issues of mutual interest to the FBI and the CIA, such as the East African embassy bombings,[166] she also was assigned to work on unilateral CTC matters. She said that as a desk officer, she read and responded to cable traffic that was pertinent to the matters she was assigned. She nominally reported to a supervisor in the FBI's Washington Field Office, but her work was assigned by her CTC supervisors at the Bin Laden Unit.[167]

The Washington Field Office also detailed to the CTC a special agent, who we call "Dwight." His performance evaluations were done by the Washington Field Office, but his assignments came from CTC managers. He focused on the financial aspects of terrorism and obtained information through the CTC to help identify and investigate persons who were responsible for

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[166] On August 7, 1998, nearly simultaneous vehicle bombs were detonated at the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, killing over 200 people and injuring over 4,000.

[167] Her position was later transferred from the Washington Field Office to FBI Headquarters' Usama Bin Laden Unit.

funding terrorism. He had access to CIA cables and reviewed them for potential leads or other information related to terrorist financing.

3. New York Field Office detailee

An FBI New York Field Office agent from its Bin Laden squad, who we call "Malcolm," was also detailed to the CIA's Bin Laden Unit in early 1999 at the request of John O'Neill, the New York Field Office Special Agent in Charge for Counterterrorism at the time. Malcolm replaced another New York Field Office Bin Laden squad agent who had left the CIA's Bin Laden Unit in August 1998. Malcolm told the OIG that he was not given instructions as to his specific duties at the CIA. He said he understood his job there was to be the "eyes and ears" of the New York Field Office and "to monitor" New York Field Office cases. He said his role was to "facilitate inquiries of mutual interest" and to act as a liaison for FBI offices around the country by following up on tracing requests and reporting on their status. He stated that he also spent a significant amount of time coordinating with the CTC in preparation for and during the trials that arose out of the FBI's investigations into the East African Embassy bombings. He told the OIG that he did not review all cables; he reviewed only the cables that he thought were interesting, generally based solely on his review of the cable subject line. He said he reported to an SSA in the New York Field Office, not to anyone at the CIA.

III. Factual chronology regarding Hazmi and Mihdhar

In this section of the report, we discuss in detail the five junctures before September 11, 2001, during which the FBI had an opportunity to obtain or develop information about Mihdhar and Hazmi but did not. We describe in chronological order the sequence of events regarding these five opportunities, including the information that the FBI obtained or could have obtained about Hazmi and Mihdhar.

Many of the witnesses told the OIG they did not have specific recollection of the events and conversations related to the Hazmi and Mihdhar matter. In addition, we found few notes and documents relating to these events and conversations. The following is our best reconstruction of the events based on the participants' recollections and the existing documentary evidence.

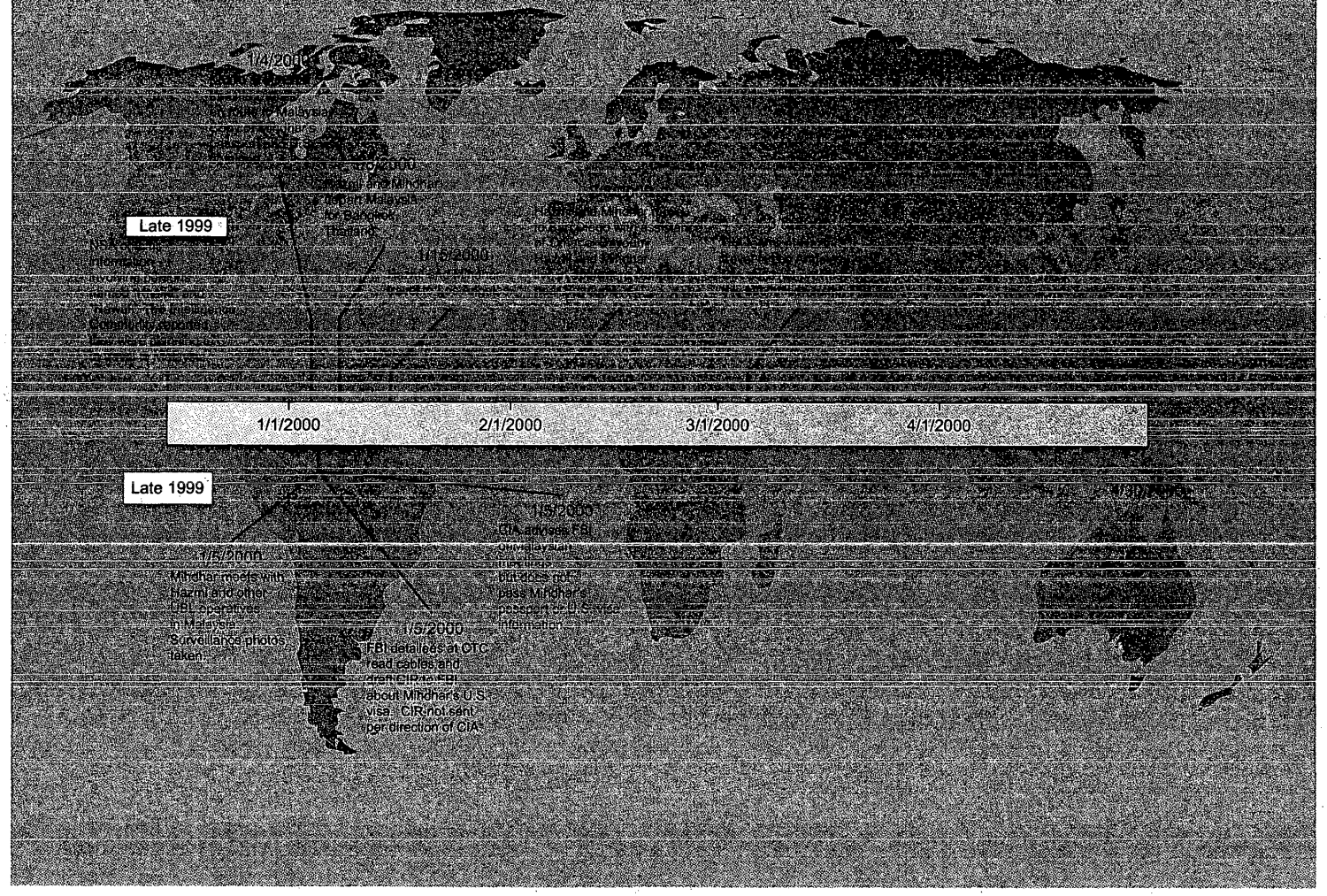
We show a timeline of the Hazmi and Mihdhar events described in this chapter on the next two pages of the report.

A. Identification in January 2000 of Hazmi and Mihdhar as al Qaeda operatives

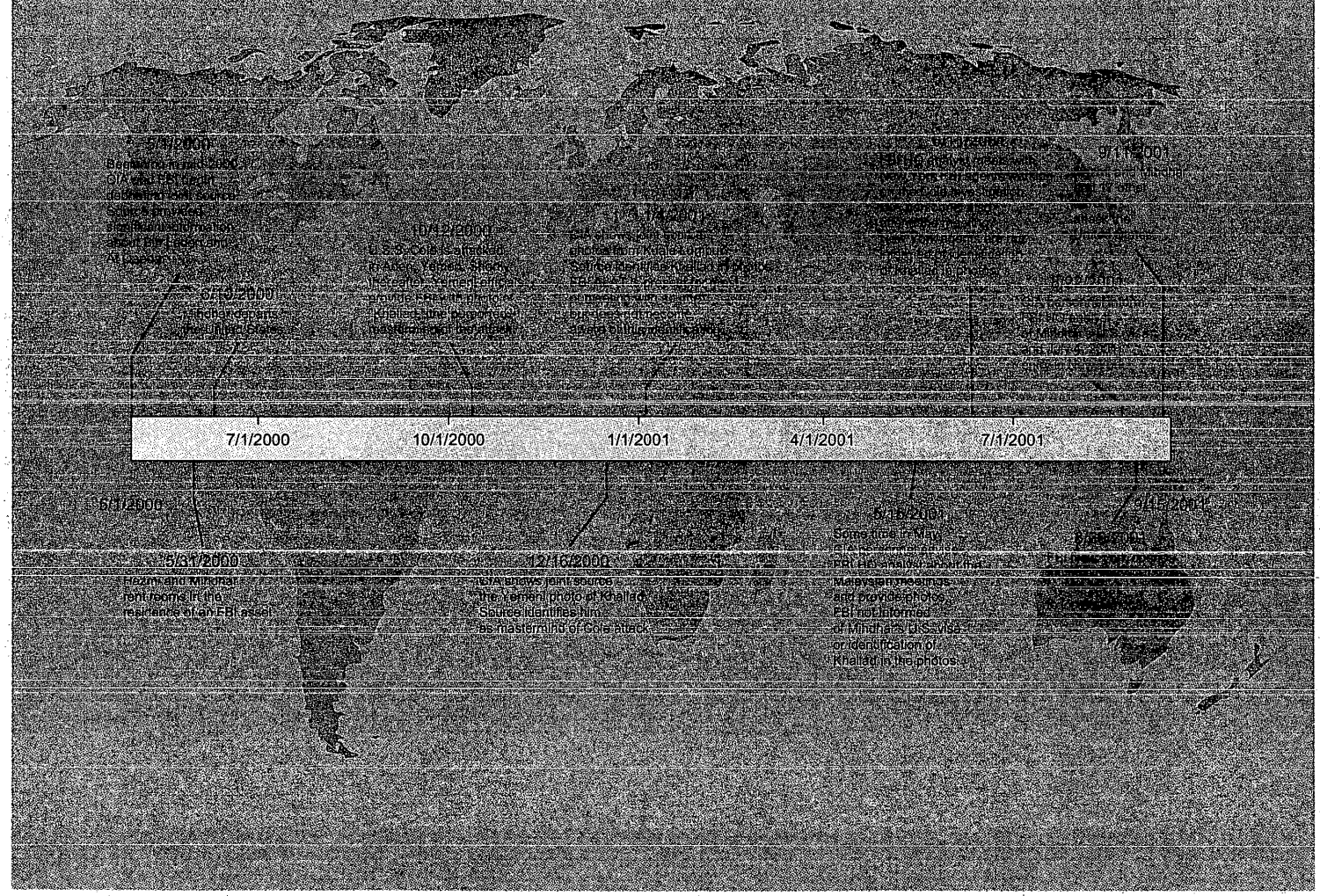
This section describes the initial development and dissemination of intelligence information concerning Hazmi and Mihdhar. This intelligence was obtained by the NSA in late 1999 and early 2000. The intelligence led to a surveillance operation in Malaysia in which it was discovered that Mihdhar had a valid multiple-entry U.S. visa and photographs of Mihdhar meeting with other al Qaeda operatives were taken.

There were several ways the FBI could have acquired this information from the CIA – through a CIR from the CIA to the FBI, informally through conversations between a CIA employee and FBI Headquarters employees, and through the FBI employees detailed to the CIA reviewing the CIA cable traffic. We reviewed whether this information was in fact passed to the FBI by the CIA, and based on the evidence, concluded that while the CIA passed some of the information about Mihdhar to the FBI, it did not contemporaneously pass the information about Mihdhar's U.S. visa to the FBI. We concluded it was not disclosed by the CIA until late August 2001, shortly before the September 11 terrorist attacks. We also reviewed whether FBI detailees to the CIA contemporaneously acquired this information and what action, if any, they took with respect to this information.

Hazmi and Mihdhar Timeline – Part I



Hazmi and Mihdhar Timeline – Part II



In addition, the CIA learned in March 2000 that Hazmi had boarded a United Airlines flight in Bangkok, Thailand, bound for Los Angeles, California, on January 15, 2000.[168] We also reviewed whether the FBI was informed of this information, and concluded that it did not learn about this information until August 2001.

1. Background

In late 1999, the Intelligence Community developed significant intelligence information regarding Hazmi and Mihdhar. At this time, the Intelligence Community was on high alert because of concerns involving possible terrorist activity planned in conjunction with the coming of the new Millennium. In addition to concerns about attacks at New Year's Eve celebrations, the Intelligence Community was concerned that a terrorist attack was planned for January 3, 2000, which in the Islamic calendar is considered a "night of destiny."[169] There were additional concerns about potential terrorist attacks coinciding with the end of Ramadan, around January 6, 2000.[170]

Several of these planned attacks were uncovered in December 1999. For example, on December 1, 1999, in Jordan, a plot to disrupt New Year activities with explosives designed to kill thousands of revelers, including U.S. citizens, was uncovered and thwarted with the arrest of 16 people. On December 14, 1999, Ahmad Ressam was stopped at the United States/Canadian border in Washington state as he attempted to enter the United States in a vehicle loaded with explosives. It was determined later that he had intended to detonate the explosives at the Los Angeles airport.

To be prepared for possible terrorist activity at the end of 1999, the FBI activated its Strategic Information Operations Center (SIOC). The SIOC is

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[168] Mihdhar was also on the same flight, but that fact apparently was not known within the Intelligence Community until much later, in August 2001.

[169] During the course of the Cole bombing investigation, it was learned that an attack also had been planned against the *U.S.S. The Sullivans* in Aden, Yemen, on the same date. That attack failed because the attack boat sank before reaching its target.

[170] Ramadan is the ninth month of the Islamic calendar. Ramadan begins when authorities in Saudi Arabia sight the new moon of the ninth month.

located in a secure area within FBI Headquarters and contains several meeting rooms, conferencing equipment, communications equipment, computers, and other operational equipment. It allows the FBI to manage major investigations or other significant operations 24 hours a day, 7 days a week.

During the Millennium period, the FBI operated its International Terrorism Operations Section from within the SIOC. In addition, the FBI detailed field supervisors with counterterrorism experience and other counterterrorism personnel to the SIOC for around-the-clock monitoring and response to possible terrorist activities.

At the CIA, additional personnel were called in to work at the CTC and planned leave was canceled. In addition, personnel from the CIA and other Intelligence Community agencies were detailed to work in the FBI's SIOC.

During this period, personnel in the FBI's SIOC prepared two daily briefings for the FBI Director and his executive staff, one at 7:30 a.m. and the other at 4:30 p.m. The daily briefings contained summaries of significant terrorism investigations and the latest intelligence related to counterterrorism. Accompanying the briefings were daily threat updates prepared each afternoon for the Director and his executive staff. The briefings and the threat updates were prepared by various people throughout the course of the day and night in the SIOC.

2. NSA provides intelligence regarding planned travel by al Qaeda operatives to Malaysia

In the midst of the Millennium period concerns in late 1999, the NSA analyzed communications associated with a suspected terrorist facility in the Middle East linked to Al Qaeda activities directed against U.S. interests. The communications indicated that several members of an "operational cadre" were planning to travel to Kuala Lumpur, Malaysia, in early January 2000. Analysis of the communications revealed that persons named Nawaf, Khalid and Salem were involved. In early 2000, the NSA analyzed what appeared to be related communications concerning a "Khalid."[171]

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[171] The NSA had additional information in its database further identifying "Nawaf" as Nawaf al-Hazmi, a friend of Khalid. However, the NSA informed the OIG that it was not (continued)

The NSA's reporting about these communications was sent, among other places, to FBI Headquarters, the FBI's Washington and New York Field Offices, and the CIA's CTC. At the FBI, this information appeared in the daily threat update to the Director on January 4, 2000.

3. Mihdhar's travel and discovery of his U.S. visa

A CIA desk officer working in the Bin Laden Unit who we call "Michelle" determined that there were links between these people and Al Qaeda as well as the 1998 East African embassy bombings. In addition, the CIA identified "Khalid" as Khalid al-Mihdhar.

Mihdhar arrived in Kuala Lumpur, Malaysia, on January 5, 2000. Mihdhar was traveling on a Saudi passport. This passport contained a valid U.S. visa. Mihdhar's passport was photocopied and sent to CIA Headquarters.

Several CIA cables contemporaneously discussed Mihdhar's travel and the discovery of his U.S. visa in his Saudi passport. CIA records show that a CIA employee, who we call "James"[172] and who was detailed to FBI Headquarters during the Millennium period, accessed one of these cables approximately two hours after it was disseminated in the morning, and he accessed another of the cables about eight hours after it was disseminated on the next morning. James discussed some information about Mihdhar with two FBI Headquarters employees on the evening of January 5, which we detail in Section 7 below.

4. CIR is drafted to pass Mihdhar's visa information to the FBI

Dwight, the special agent detailed to the CIA's Bin Laden Unit from the FBI's Washington Field Office, also read the cables discussing Mihdhar's U.S. visa within hours of each cable being disseminated. CIA records also show

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(continued)
asked to conduct research on these individuals at that time, and it did not uncover that information on Hazmi. It was thought at the time that Salem might be Hazmi's younger brother, and this was later confirmed.

[172] The CIA has asked the OIG not to identify the true names of CIA employees for operational reasons.

that Dwight's immediate supervisor in the Bin Laden Unit opened one of the cables soon after Dwight.

Dwight opened one of the cables, which reported that Mihdhar's visa application had been verified and that he had listed New York as his intended destination.

Around 9:30 a.m. on the same morning, Dwight began drafting in the CIA's computer system a CIR addressed to the UBL Unit Chief at FBI Headquarters and an SSA in the UBL Unit at FBI Headquarters who we call "Bob." Dwight's CIR also was addressed to the FBI's New York Field Office. The CIR first described the NSA information that had been received about Mihdhar, including the planned travel to Kuala Lumpur, Malaysia in early January. The CIR also discussed the potential links between the suspected terrorist facility in the Middle East and the 1998 East Africa embassy bombings. The CIR stated that photographs of Mihdhar had been obtained and would be sent to the FBI under separate cover. The CIR detailed Mihdhar's passport and visa information, including that Mihdhar had listed on his visa application his intended destination as New York and that he planned to stay three months. Dwight also wrote that the CTC was requesting "feedback" on "any intelligence uncovered in FBI's investigation" resulting from the information in the CIR.

Michelle, the Bin Laden Unit desk officer who originally had taken notice of the information about Mihdhar and his connections to Al Qaeda, accessed Dwight's draft CIR less than an hour after Dwight drafted it at approximately 9:30 a.m. Around 4:00 p.m. on the same day, Michelle added a note to the CIR in the CIA's computer system: "pls hold off on CIR for now per [the CIA Deputy Chief of Bin Laden Unit]."

CIA records show that the same morning, the CIA Deputy Chief of Bin Laden Unit, who we will call "John," also had read the cable indicating that Mihdhar's visa was valid and that New York had been listed as his intended destination. Around 6:30 p.m. on the same day, John again accessed this cable and then another cable, the same two CIA cables about Hazmi and Mihdhar in

the CIA's computer system that Dwight had used in drafting the CIR. CIA records do not indicate that John accessed Dwight's draft CIR.[173]

CIA records show that the CIA employee detailed to FBI Headquarters who we call James and who discussed the Mihdhar information with two FBI Headquarters employees, also accessed the draft CIR on the day it was drafted. In addition, two other FBI detailees accessed the draft CIR: Eric, the other Deputy Chief of the Bin Laden Unit, accessed it two hours after Dwight began writing it, and Malcolm, the New York Field Office's detailee to the Bin Laden Unit, accessed it two days later.

CIA records show that as of eight days later the CIR had not been disseminated to the FBI. In an e-mail to John in mid-January, Dwight had attached the draft CIR and wrote, "Is this a no go or should I remake it in some way." The CIA was unable to locate any response to this e-mail.

By mid-February, the CIR had not been sent to the FBI and was still in draft form in the CIA's computer system. CIA records show that Dwight e-mailed a CIA contractor who handled computer matters and asked him to delete several draft cables in the computer system unrelated to this matter, but to save the draft CIR concerning Mihdhar. The contractor accessed the draft cable in the system the next day.

When we interviewed all of the individuals involved with the CIR, they asserted that they recalled nothing about it. Dwight told the OIG that he did not recall being aware of the information about Mihdhar, did not recall drafting the CIR, did not recall whether he drafted the CIR on his own initiative or at the direction of his supervisor, and did not recall any discussions about the reasons for delaying completion and dissemination of the CIR. Malcolm said he did not recall reviewing any of the cable traffic or any information regarding Hazmi and Mihdhar. Eric told the OIG that he did not recall the CIR.

The CIA employees also stated that they did not recall the CIR. Although James, the CIA employee detailed to FBI Headquarters, declined to

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[173] According to John, once CIRs were drafted the CIA's standard operating procedure was for the drafter to "coordinate" the CIR in the computer system, which notified the persons designated by the drafter that there was a CIR that required their attention. He said that it was not standard operating procedure to access CIRs in draft form.

be interviewed by us, he told the CIA OIG that he did not recall the CIR. John (the Deputy Chief of the Bin Laden Unit) and Michelle, the desk officer who was following this issue, also stated that they did not recall the CIR, any discussions about putting it on hold, or why it was not sent.

5. Mihdhar in Dubai

On the same day that Dwight was drafting the CIR, the CIA reported in an internal cable additional information about Mihdhar. The cable stated that it appeared that, despite his multiple entry visa, Mihdhar had not yet traveled to the United States. The cable then stated that it was up to the CTC as to whether anyone should inquire with the INS to verify whether Mihdhar had traveled to the United States.[174]

The cable also reported additional information about Mihdhar while he was in Dubai.

CIA records reveal that this cable also was read by FBI detailee Dwight. However, Dwight did not include in the draft CIR the additional information about the lack of any indication that Mihdhar had traveled to United States or the additional information about Mihdhar in Dubai.[175]

6. CIA cable stating that Mihdhar's visa and passport information had been passed to FBI

Also on the same day that Dwight was preparing the CIR, Michelle, the Bin Laden Unit desk officer who was following the issue of Mihdhar, prepared a lengthy cable to several stations summarizing the information that had been collected at that point on Mihdhar and three other individuals who also were possibly traveling to Malaysia. The cable began, "After following the various reports, some much more credible than others, regarding a possible [Bin

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[174] We did not determine whether the CIA actually contacted the INS pursuant to this suggestion. As we discuss below, we did determine INS records reflect that Mihdhar first entered the United States on January 15, 2000, and only entered again on July 4, 2001.

[175] This cable also was read by James, the CIA employee detailed to the FBI's SIOC. As detailed below, he later discussed some of its contents with an FBI Headquarters employee.

Laden]-associated threat against U.S. interests in East Asia, we wish to note that there indeed appears to be a disturbing trend of [Bin Laden] associates traveling to Malaysia, perhaps not for benign reasons."

This cable then summarized the CIA's information that indicated several individuals were planning to travel to Malaysia. In the paragraph describing Mihdhar, Michelle stated that Mihdhar's travel documents, including a multiple entry U.S. visa, had been copied and passed "to the FBI for further investigation."

This cable –the fifth CIA cable to discuss Mihdhar's U.S. visa – did not state by whom or to whom Mihdhar's travel documents were passed. It also did not indicate how they had been passed, or provide any other reference to the passage of the documents. Because this cable was an internal, operational cable, it was not forwarded to or copied to the FBI.

This cable was disseminated to various CIA stations approximately three hours after Michelle had noted in the cable system that Dwight was directed to hold off on sending his draft CIR to the FBI "for now per [the CIA Deputy Chief of the Bin Laden Unit]."

When we interviewed Michelle, she stated that she had no recollection of who told her that Mihdhar's travel documents had been passed to the FBI or how they had been passed. She said she would not have been the person responsible for passing the documents. According to Michelle, the language in the cable stating "[the documents] had been passed" suggested to her that someone else told her that they had already been passed, but she did not know who it was. The CIA Deputy Chief of the Bin Laden Unit also said he had no recollection of this cable, and he did not know whether the information had been passed to the FBI.

Neither we nor the CIA OIG was able to locate any other witness who said they remembered anything about Mihdhar's travel documents being passed to the FBI, or any other documents that corroborated the statement that the documents were in fact passed to the FBI.

7. The Malaysia meetings and surveillance of Mihdhar

After he arrived in Malaysia, Mihdhar was followed and photographed in various locations meeting with several different people. These events are

referred to as "the Malaysia meetings." CIA employees wrote several cables contemporaneously about the Malaysia meetings, which we discuss below.

a. First cable regarding Mihdhar in Malaysia

The CIA prepared an internal cable stating that Mihdhar had arrived in Kuala Lumpur on the evening of January 5. The cable also described his activities with other Arabs who were unidentified at the time. This cable, which we refer to as the "first Malaysia meetings cable," did not contain any information regarding passports or visas.

b. January 5 FBI threat update

It appears that this first Malaysia meetings cable was provided to the FBI. Sometime before the daily FBI executive briefing that took place on January 6 at 7:30 a.m., the January 5 threat update information concerning Mihdhar was edited in the FBI's SIOC.

This January 5 threat update reflected an almost verbatim recitation of portions of the CIA's first Malaysia meetings cable, including the same spelling mistake in reference to a particular place in Malaysia, which indicates that the CIA provided a copy of the first Malaysia meetings cable to the FBI. However, we were not able to determine who in the FBI received this information from the CIA or who edited the January 5 threat update. No one we interviewed at the FBI said they recalled handling information related to Mihdhar or the January 5 threat update. The threat update contained no reference to Mihdhar's passport information or his U.S. multiple-entry visitor's visa.

The January 5 threat update also was made part of the January 6 7:30 a.m. executive briefing document. This briefing did not contain any additional information about Mihdhar. The January 5 threat update was the only official document from this period located by the FBI that referenced the Malaysia meetings that were discussed in the first CIA Malaysia meetings cable.

c. Discussion between CIA and FBI employees about Malaysia meetings

As noted above, computer records show that James, the CTC employee detailed to the FBI's SIOC, read the cables and the draft CIR indicating that Mihdhar had a U.S. visa. Contemporaneous e-mails show that James discussed the Malaysia meetings with two FBI Headquarters employees in the SIOC in the early morning hours of January 6. Below we detail the cables and the evidence about the discussions that took place between the CIA and FBI personnel in the SIOC about the Malaysia meetings.

Contemporaneous e-mail messages among CIA employees show that during the night of January 5 James briefed the FBI SSA who we call Bob about Mihdhar's travel. At the time, Bob was an SSA in the UBL Unit in FBI Headquarters, which was operating out of the SIOC during this period.

James wrote an e-mail to several CIA employees in which he stated that he was detailing "exactly what [he] briefed [the FBI] on" in the event the FBI later complained that they were not provided with all of the information about Mihdhar.[176] This e-mail did not discuss Mihdhar's passport or U.S. visa.

As previously mentioned, James told the CIA OIG that he had no recollection of these events. He declined to be interviewed by us.

Bob told the OIG that he had no independent recollection of any briefing from a CIA employee regarding the Malaysia meetings. However, he was able to locate a scant contemporaneous note that confirmed he had been briefed regarding Mihdhar and his trip to Malaysia. This note contained no details as to the content of the briefing and no reference to Mihdhar's U.S. visa.

Bob told the OIG that he does not believe that he had been told in this conversation about Mihdhar's U.S. visa. Bob stated to us that the presence of a

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[176] James wrote these e-mails in response to an e-mail from another CIA employee who was detailed to the FBI SIOC. That employee reported on the morning of January 6 that he had been asked by an FBI employee for the latest on Mihdhar. James responded in a series of e-mails that he had already briefed the FBI. The final e-mail by James sets forth the details of his briefings.

U.S. visa in Mihdhar's passport would have been extremely important and would have triggered a more significant response than his minimal notes.

Bob also told the OIG that he did not know why James chose to brief him about Mihdhar. Bob said that he was not a designated point of contact for the CIA while the SIOC was activated, although he also said that he did not know whether there was a designated point of contact in the SIOC. Bob said that he knew James because James had previously been detailed from the CTC to FBI Headquarters and had worked in ITOS with Bob.

d. Second cable regarding Mihdhar and the Malaysia meetings

The day after the CIA employee discussed the Malaysia meetings with the two FBI SIOC employees, the CIA sent another internal cable providing new information about the activities of Mihdhar. This cable, "the second Malaysia meetings cable," provided information about Mihdhar's activities once he left the Kuala Lumpur airport and his meetings with various individuals.

e. Discussion between CTC officer and FBI employee about Malaysia meetings

Shortly after 7:30 a.m. on January 6, James briefed another FBI SSA – who we call "Ted" – who was detailed to the SIOC from an FBI field office, about information contained in the second Malaysia meetings cable. Ted told the OIG he was working in the SIOC as an "assistant" to the day shift commander and the UBL Unit Chief, but that he had no specific duties. Because Bob had left FBI Headquarters on a trip to New York by this time, James briefed Ted to ensure that someone at FBI Headquarters had the latest information on Mihdhar.

In the same e-mail in which he had detailed what he told Bob, James provided specifics of what he told Ted. The e-mail also stated that the CIA would "continue to run this down and keep the FBI in the loop." The e-mail did not contain any reference to Mihdhar's passport or U.S. visa.

Based on this briefing by James, Ted prepared an update for the January 6 afternoon FBI executive briefing. Ted e-mailed the update to the ITOS Assistant Section Chief at 8:40 a.m. This update reflected the details of the

information Ted had received from James. It did not contain any reference to Mihdhar's passport or U.S. visa.

Like Bob, Ted told the OIG that he had no recollection of being briefed regarding the Malaysia meetings. Although he said he did not recall these events, Ted asserted he did not believe that he had received Mihdhar's passport or U.S. visa information because if he had he would have unquestionably recognized their significance and documented such information in the update for the executive briefing.

Ted told the OIG that he did not know why James briefed him about the Mihdhar information. Like Bob, Ted stated he was not a designated point of contact for the CIA while the SIOC was activated. Ted also knew James because of James' previous detail to ITOS in FBI Headquarters when Ted served as an SSA in the RFU.

f. Cables updating the Malaysia meetings information, including Mihdhar's travel to Bangkok

On January 8, the CIA reported in another internal cable that a new individual had joined Mihdhar and the others, and that additional surveillance photographs were taken. The cable did not state how many photographs were taken or what would be done with the photos.

In another cable sent five hours later, the CIA reported in an internal cable that Mihdhar and two of the unidentified men – one of whom turned out to be Hazmi – departed Malaysia from Kuala Lumpur airport en route to Bangkok, Thailand.

g. Cables regarding Hazmi's travel to the United States

On January 9, the CIA's Bin Laden Unit prepared a cable asking that Mihdhar and his associates be identified while in Thailand. CIA records show that on January 13, the CIA was attempting to locate Mihdhar and his traveling companions. In addition, Mihdhar had been watchlisted at the airport in the event that he attempted to leave Thailand.

Several weeks later, CIA officers in Kuala Lumpur followed up with their Bangkok counterparts for additional information about Mihdhar and his traveling companions. Approximately two weeks later, Bangkok reported that

there was a delay in responding due to difficulties in obtaining the requested information.

In early March 2000, officials in Bangkok reported internally that it had identified one of Mihdhar's traveling companions as Nawaf al-Hazmi. The cable reported that Hazmi had traveled to Bangkok on January 8 and had subsequently traveled on a United Airlines flight to Los Angeles, California on January 15. The cable also stated that Mihdhar had arrived in Bangkok on January 8 but that it was unknown if and when he had departed.[177] In addition, the cable identified the third traveler as Salah Saeed Mohammed Bin Yousaf.[178]

CIA records show that none of the FBI detailees accessed this early March cable. The OIG found no documents or witnesses indicating that the information that Hazmi had traveled to Los Angeles on January 15, 2000, was shared with the FBI at this time. Rather, as we discuss below, this fact was not shared with the FBI until August 2001.

We found no indication that CTC personnel took any action with regard to the important information that Hazmi had traveled to the United States. For example, he was not placed on any U.S. watchlists. The day after Bangkok Station reported about Hazmi's travel to Los Angeles, one office that received the Bangkok cable sent a cable to the CTC stating the Bangkok cable regarding Hazmi's travel had been read "with interest." Yet, despite this effort to flag the significance of this information, the cable was not shared with the FBI and did not result in any specific action by the CIA.

As we discuss below, it was not until August 2001 that FBI Headquarters personnel learned that on January 15, 2000, both Mihdhar and Hazmi had left Thailand and traveled to Los Angeles, California, where they were both

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[177] In fact, Mihdhar had traveled to the U.S. with Hazmi on January 15, 2000. This fact was not discovered by anyone in the Intelligence Community until August 2001.

[178] Yousaf left Bangkok on January 20 for Karachi, Pakistan. Some time after September 11, Yousaf was determined to be Tawfiq Muhammad Salih Bin Rashid al Atash, a/k/a Khallad, the purported mastermind of the Cole attack. We discuss the FBI's discovery of information about Khallad and the Cole attack, and the FBI's opportunities to connect Khallad to the Malaysia meetings, in Section III, C below.

admitted into the United States on non-immigrant visas and authorized to remain until July 14, 2000.

8. OIG findings regarding FBI's knowledge about Mihdhar and the Malaysia meetings

We discuss here our findings regarding the FBI's knowledge of information about Mihdhar and the January 2000 Malaysia meetings, including whether the intelligence information concerning Mihdhar's valid multiple entry U.S. visa and Hazmi's travel to the United States in January 2000 was passed to the FBI. Several witnesses told the OIG that Mihdhar's possession of a U.S. visa provided a clear domestic nexus that should have triggered the passing of this information from the CIA to the FBI.

At the outset, we note that the CIA has acknowledged that it obtained information that Mihdhar had a U.S. visa and that Hazmi had traveled to the United States, and that the CIA should have placed their names on U.S. watchlists, but that this did not occur.[179] The CIA OIG is reviewing this matter to determine why this failure occurred and who is responsible for it.

a. Formal passage of information from the CIA to the FBI

As noted above, the formal method of communicating intelligence information between the CIA and the FBI was an intelligence report called a CIR. CIA records show that between July 1999 and September 10, 2001, the Bin Laden Unit disseminated over 1,000 CIRs, most of which were sent to the FBI. CTC employees as well as FBI detailees to Bin Laden Unit had authority to draft CIRs, and the detailees collectively drafted over 150 CIRs to the FBI during this period. However, CIRs could only be disseminated by persons with authority to "release" the CIRs.[180] In the Bin Laden Unit, only supervisors,

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[179] Mihdhar and Hazmi were placed on watchlists by other countries, including Thailand.

[180] Once a supervisor approved a CIR for release, it was electronically disseminated by a unit in the CIA known as the Policy Community Action Staff.

including John and Eric as the deputy chiefs of the station, had authority to release CIRs.[181]

Dwight drafted a CIR in which he summarized the information that had been disseminated by the NSA about Mihdhar. He also provided detailed information about Mihdhar's passport, visa, and visa application indicating that New York had been his intended destination. According to CIA records, this CIR never was disseminated to the FBI. A desk officer's note on the draft CIR indicated that the Deputy Chief of the Bin Laden Unit, John, had instructed the draft CIR be put on hold, and Dwight contacted him through an e-mail about the disposition of the CIR a week later. Despite this e-mail, the evidence clearly shows that the CIR never was disseminated to the FBI.

The evidence shows, however, that Dwight acted in accordance with the system that was in place at the time by drafting the CIR to formally pass the visa information to the FBI. In accordance with Bin Laden Unit policy, Dwight was not permitted to pass the CIR to the FBI without permission.

All of the witnesses stated, however, that they did not recall the CIR or any communications about it. Other than the note written by the desk officer, we found no documentary evidence about why the CIR was not disseminated. Thus, we were unable to determine why it was not sent.

The information in the CIR, which was documented in the appropriate format for passage to the FBI, was potentially significant to the FBI and should have been passed to the FBI. We believe it was a significant failure for the CIR not to be sent to the FBI.

b. Informal passage of information from CIA to FBI

We also considered what information that James, a CIA detailee to the FBI, informally passed to FBI Headquarters and whether he informed anyone of the visa information about Mihdhar. Based on the contemporaneous e-mails in which James documented in detail what he told FBI SSAs Bob and Ted, we concluded that he reported to the FBI the information regarding Mihdhar's

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[181] CIA records show that Eric released five CIRs during his tenure at the Bin Laden Unit.

transit through Dubai, his arrival in Kuala Lumpur, his activities after his arrival, and his meeting with other suspected al Qaeda operatives. It is far less clear, however, whether he provided Mihdhar's passport and U.S. visa information to the FBI.

We do not believe that James briefed either Bob or Ted on Mihdhar's passport or U.S. visa information. First, nothing in Bob's contemporaneous notes or Ted's e-mail or briefing update referred to Mihdhar's passport or visa information. Bob and Ted also stated forcefully and credibly to us that they would have recognized the significance of a U.S. visa in the hands of a suspected al Qaeda operative and at a minimum would have included such information in their notes or reports.

Moreover, James wrote a detailed e-mail to document the contents of his conversations with Bob and Ted. Since the stated purpose of James' e-mail was to prevent the FBI from later claiming he had failed to brief them on some important details, he had every incentive to include all relevant details in that e-mail. At the time he wrote this e-mail, he had read three of the CIA cables indicating that Mihdhar had a U.S. visa, as well as the draft CIR. Yet, James' e-mail contained no mention of Mihdhar's passport or visa.

We found only one piece of evidence suggesting that the FBI was made aware in January 2000 of Mihdhar's U.S. visa – the early January cable by the desk officer who we call Michelle which stated that Mihdhar's travel documents, including a multiple entry U.S. visa, had been copied and passed "to the FBI for further investigation." We could not, however, find any evidence to corroborate that this information actually had been passed to the FBI.

This cable did not state by whom or to whom the documents were passed or make any other reference to the passage of the documents. The cable was an internal cable, which means it would not have been forwarded to or accessible to the FBI. In addition, Michelle, the CIA desk officer who wrote the cable, had no recollection of who told her that the documents had been passed or how they had been passed. She said that she would not have been responsible for passing the information but instead would have been told by someone else that the documents had been passed.

We were unable to locate any witness who said they remembered anything about the documents being passed to the FBI, as Michelle's cable

asserted. Even if her cable was accurate, and she had been told by someone that the documents had been passed to the FBI, there is no evidence that such information was correct. The CIA and FBI witnesses we interviewed described this period as very hectic and said they were flooded with information. Several witnesses suggested that these hectic circumstances could have created an environment where unintentional misunderstandings might have occurred about whether information was actually passed to other Intelligence Community agencies.

We also searched ACS for any FBI record of the travel documents having been provided to the FBI, since this cable indicated that a physical copy of the documents, not merely information about the documents, was passed. We found no reference to the documents.

Aside from this cable, we found no other evidence that the information or documents about Mihdhar's passport or visa information was in fact provided to the FBI during this time period.

c. FBI detailees' handling of information on Mihdhar

As discussed above, five FBI employees were detailed to the CTC to work on Bin Laden matters during 2000 and 2001, and all had access at their desks to CIA internal cable traffic. Four of those employees – the supervisor who we call Eric, the IOS who we call Mary, and the agents who we call Dwight and Malcolm – were at the Bin Laden Unit in January 2000 when the Malaysia meetings occurred.[182] We considered how each handled the intelligence information concerning Mihdhar during this period.

After reading two of the cables indicating that Mihdhar had a U.S. visa, Dwight prepared a draft CIR to officially notify the FBI about that information, since the U.S. visa presented a nexus between Mihdhar and the United States. But the CIR was not provided to the FBI. However, we also examined whether any of the detailees took any other action to notify FBI Headquarters or, in Malcolm's case, the New York Field Office, about the information concerning Mihdhar.

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[182] The fifth detailee – the manager who we call Craig – did not arrive at the CTC until July 2000.

The evidence shows that each FBI detailee reviewed some of the cables about Mihdhar's U.S. visa. Dwight accessed several of the cables that indicated Mihdhar had a U.S. visa, such as the cables stating that Mihdhar had transited through Dubai and had a U.S. visa, the cable stating that Mihdhar's visa application listed New York as his intended destination in May 1999, and the cable stating that based on a review of Mihdhar's visa, it did not appear that he had actually traveled to the United States.

Malcolm also accessed the cable stating that Mihdhar's visa application listed New York as his intended destination in May 1999, and the cable stating that it did not appear that Mihdhar had actually traveled to the United States. Malcolm also accessed the two cables stating that Mihdhar had arrived in Kuala Lumpur and that surveillance photos showed him meeting with others in Malaysia. Malcolm also accessed Dwight's draft CIR indicating passage of the visa information to the FBI, including the New York Field Office.

Mary accessed the January cable stating that Mihdhar's travel documents, including a multiple-entry U.S. visa, had been passed to the FBI, but she did not access the previous cables reflecting the visa information or Dwight's CIR. She also accessed the two cables stating that Mihdhar had arrived in Kuala Lumpur and that surveillance photos showed him meeting with others in Malaysia.

Eric did not access these cables, but he accessed Dwight's draft CIR which detailed Mihdhar's visa information and which summarized the NSA information.

However, Dwight, Malcolm, Mary, and Eric all told the OIG that they did not recall anyone from the CIA bringing to their attention the fact that Mihdhar had a U.S. visa. In addition, despite the records of their access to the cable traffic or the CIR, they all told the OIG that they did not recall discovering at the time – such as by reading a cable – that Mihdhar had a U.S. visa.[183] As discussed above, Dwight told the OIG that he did not even recall

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[183] The detailees also told the OIG that they did not necessarily read all of the cables they accessed. They explained that they often skimmed cables to determine if any action was required on their part or to find specific information in connection with a particular assignment or issue.

writing the CIR or even being aware of the Malaysia meetings or of the fact that Mihdhar had a U.S. visa. Eric told the OIG that his CIA counterpart – John, the CIA Bin Laden Unit Deputy Chief – mentioned the Malaysia meetings and that surveillance photos had been taken, but Eric did not recall ever hearing anything about Mihdhar having a U.S. visa. Mary told the OIG that she did not recall even being contemporaneously aware of the Malaysia meetings.[184] Mary explained that she did not have reason to be made aware of the Malaysia meetings at the time because the matter had been assigned to another CIA desk officer – Michelle (the one who wrote the cable indicating that Mihdhar's travel documents had been passed to the FBI).

Malcolm said he was not aware of the fact that Mihdhar had a U.S. visa until after September 11. He stated that he recalled being shown the Kuala Lumpur photos, but he could not remember whether that was before or after September 11. He said that it was not until he was shown the Kuala Lumpur photos that he became aware of the Malaysia meetings.

Yet, the evidence shows that all had accessed contemporaneously cables indicating that Mihdhar had a U.S. visa, which was important intelligence information that was never provided to FBI Headquarters. They did not violate any specific policy or procedure in their handling of the information, and they did not have the authority to unilaterally pass CTC information to the FBI without permission. This restriction included any informal passage of the information, such as by telephone call or in-person discussions. However, none of them, particularly Dwight, ensured that the information was provided to the FBI. Dwight drafted a CIR that would have provided the FBI with the important information about Mihdhar, but the CIR was not released by the CIA. Although Dwight followed up a few days later to ask whether the cable was going to be sent or whether he should remake it in some other way, there is no record of a response to his request, and no one could explain why the cable was not sent. We believe it was critical that the information be sent. We found no indication that this ever happened.

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[184] When we showed Mary copies of an e-mail written by the CTC officer who had briefed SSA Bob and Ted, which indicated that she was copied on the e-mail, she said that she did not recall having read the e-mail.

This failure to send the information to the FBI, in our view, was also attributable to problems in how the detailees were instructed and supervised, and that these problems significantly impeded the flow of information between the CIA and the FBI. We discuss these systemic problems in detail in our analysis section later in this chapter.

d. OIG conclusion

In sum, the evidence shows that in January and March 2000, the CIA uncovered important intelligence information about Mihdhar and Hazmi:

- They were al Qaeda operatives who had traveled to Malaysia, where they were photographed meeting with other suspected al Qaeda operatives;
- They traveled to Bangkok with a third person;
- Mihdhar had a valid, multiple-entry U.S. visa; and
- Hazmi had traveled to Los Angeles in January 2000.

Yet, we found that the CIA did not share significant pieces of this information with the FBI – that Mihdhar had a U.S. visa and that Hazmi had traveled to Los Angeles. An FBI detailee at the CIA drafted a CIR to share this information with the FBI, but that information was not released by the CIA to the FBI. We were unable to determine why this did not occur. No one we interviewed said they remembered the CIR or why it was not sent to the FBI. We consider it a significant failure for this CIR not to be sent to the FBI.

In addition, the evidence shows that the limited information that was provided to FBI Headquarters – that Mihdhar traveled to Malaysia and met with other suspected al Qaeda operatives – was never documented by the FBI in any system that was retrievable or searchable, thus limiting the usefulness of the information that was shared. The FBI's only official record of having received this information was in the hard copies of the January 5 threat update, which was attached to the January 6 executive briefing, and Ted's e-mail summarizing information from his discussion with the CIA employee. We discuss this and other systemic problems in our analysis section below.

B. Hazmi and Mihdhar in San Diego

1. Introduction

The second set of events that may have led the FBI to discover Mihdhar and Hazmi's presence in the United States related to their stay in San Diego. As noted above, on January 15, 2000, Mihdhar and Hazmi boarded a flight in Bangkok, Thailand, for Los Angeles. They were admitted to the United States on non-immigrant visitor visas and authorized to remain in the U.S. until July 14, 2000. Shortly after arriving in Los Angeles, they traveled to San Diego, California, where they were aided in finding a place to stay by Omar al-Bayoumi. Bayoumi had been the subject of an FBI preliminary intelligence investigation that had been closed.

In late May 2000, Hazmi and Mihdhar rented a room in the residence of an FBI asset.[185] Mihdhar remained in San Diego until June 10, 2000, when he left the United States.[186] Hazmi remained in the San Diego area until approximately December 2000, when he moved to the Phoenix, Arizona area. In Phoenix, Hazmi lived for approximately three months with another September 11 hijacker, Hani Hanjour. In April 2001, Hazmi and Hanjour moved to New Jersey and remained on the East Coast until September 11.

While residing in San Diego in 2000, Mihdhar and Hazmi did not act in an unusual manner that would draw attention, but they did not attempt to hide their identities. Using the same names contained in their travel documents and known to at least some in the Intelligence Community, they rented an apartment, obtained driver's licenses from the state of California Department of Motor Vehicles, opened bank accounts and received bank credit cards, purchased a used vehicle and automotive insurance, took flying lessons at a local flying school, and obtained local phone service that included Hazmi's listing in the local telephone directory.

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[185] This kind of individual is often referred to as an "informant" - the common vernacular for an individual providing information to an investigative agency. Within the FBI's foreign intelligence program, they are known as assets.

[186] Mihdhar departed from Los Angeles on Lufthansa Airlines.

Although Hazmi and Mihdhar were in San Diego for a significant period of time, the FBI did not learn of their presence there until after September 11, 2001. After September 11, much would be learned about Hazmi and Mihdhar's time in San Diego and the Intelligence Community's missed opportunities to find and investigate them before the terrorist attacks in which they participated. In this section, we describe the facts surrounding Hazmi and Mihdhar's residence in San Diego, including their associations with two persons known to the FBI.

2. Hazmi and Mihdhar's association with Bayoumi

Omar al-Bayoumi is a Saudi Arabian national who came to the United States in 1993. In early 2000 he had been living with his wife and four children in San Diego for at least four years. Although he described himself to others in San Diego as a graduate student in business administration, he took classes intermittently and was not enrolled in a program of study. He did not work in the United States and received a monthly stipend of $4,000 plus "other allowances," ranging from $465 to $3,800 each month, from Dallah/Avco, a Saudi contractor to the Presidency of Civil Aviation.[187] Bayoumi was active in the San Diego Muslim community and was involved in the establishment of several mosques in the United States.

In September 1998, the FBI's San Diego Field Office opened a preliminary inquiry on Bayoumi based on allegations raised by the manager in the apartment complex where he was living at the time. The manager alleged that Bayoumi had received a suspicious package from the Middle East, and the maintenance worker for the apartment complex had noted strange wires in Bayoumi's bathroom. In addition, the manager reported frequent gatherings of young Middle Eastern males at Bayoumi's apartment on weekend nights.

The FBI case agent conducted a limited investigation of Bayoumi, but the preliminary inquiry was closed in June 1999 and was not converted to a full

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[187] Bayoumi was employed by the Saudi Presidency of Civil Aviation from 1975 until 1995 and became a contractor for the organization beginning in 1995.

field investigation.[188] As a result, the FBI was no longer investigating Bayoumi at the time that Hazmi and Mihdhar met Bayoumi in February 2000. However, the following paragraphs describe what was later learned about Bayoumi's interactions with Hazmi and Mihdhar.

On February 1, 2000, Bayoumi traveled by car from San Diego to Los Angeles, to resolve a visa issue at the Saudi consulate. Bayoumi invited an associate, Isamu Dyson, to accompany him.[189] Dyson provided the following account to the FBI of the trip with Bayoumi.[190]

Dyson said that at the time of the invitation, Bayoumi mentioned a Los Angeles restaurant serving halal food where they could eat lunch after Bayoumi's meeting at the consulate.[191] After Bayoumi spent approximately one hour at the Saudi consulate, he and Dyson went to the restaurant but discovered it had been converted to a butcher shop. The butcher shop employees recommended another nearby halal restaurant, the "Mediterranean Gourmet." Bayoumi and Dyson walked to that restaurant. While they were eating there, Hazmi and Mihdhar entered the restaurant and the four talked in Arabic. Although Dyson had limited Arabic language skills, he said that Bayoumi kept him apprised of the content of the conversation. Hazmi and Mihdhar told Bayoumi that they were in the United States to study English, but they did not like living in Los Angeles. Bayoumi invited the men to visit San Diego and offered to assist them. Bayoumi provided the men with his phone number. Bayoumi and Dyson left the restaurant, and after stopping at a nearby mosque for sunset prayers, returned to San Diego. Dyson asserted that the encounter with Hazmi and Mihdhar seemed to be a coincidental meeting.

Within several days of the meeting, Hazmi and Mihdhar accepted Bayoumi's invitation and traveled to San Diego. In San Diego, Bayoumi

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[188] In Section IV B 1 of this chapter, we examine the investigative steps taken by the FBI in this preliminary inquiry and assess the appropriateness of the decision to close the inquiry.

[189] Dyson is an American Caucasian who converted to Islam. He has since changed his name to Caysan Bin Don.

[190] Dyson provided the information to the FBI in an interview after September 11.

[191] Halal is an Arabic word meaning "lawful" or "permitted."

arranged for Hazmi and Mihdhar to rent an apartment on Mount Ada road in the same apartment complex where Bayoumi lived. Bayoumi also co-signed their lease. Shortly after Hazmi and Mihdhar moved into the apartment, Bayoumi hosted a party to introduce them to the local Muslim community.

Within a few weeks of moving into the apartment, Hazmi and Mihdhar filed a 30-day notice to vacate the apartment, apparently to move to another apartment. However, they later rescinded the vacate notice and continued to lease the apartment until June 2, 2000.[192]

The apartment manager told the FBI that Bayoumi paid Hazmi and Mihdhar's first month's rent and security deposit because they had not yet established a local bank account and the apartment complex would not accept cash. A review of Bayoumi and Mihdhar's financial records after September 11, 2001, indicate that Bayoumi was reimbursed for this expense on the same day it was paid.[193]

3. Hazmi and Mihdhar's communications

On March 20, 2000, a long distance telephone call was placed from Mihdhar and Hazmi's Mount Ada apartment to a suspected terrorist facility in the Middle East linked to al Qaeda activities. (See section III, A, 2 above.) A record of the call was captured in the toll records. After the September 11 attacks, the call was identified through a record check.

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[192] Bayoumi left the United States for some of the time Hazmi and Mihdhar lived in the apartment. INS records do not indicate when Bayoumi left the country, but the records indicate that he obtained a United States visa in Jeddah on May 10, 2000, and returned to the United States on May 31, 2000. Bayoumi left the United States permanently in July 2001 and was living in England on September 11, 2001.

[193] Bayoumi's bank records show a cash deposit in the exact amount of the rent and security deposit ($1,558). Mihdhar's financial records also indicate that he opened an account with a deposit of $9,900 in cash within seven minutes of Bayoumi's cash deposit, which suggests that they were in the bank together.

4. Hazmi and Mihdhar's association with an FBI asset beginning in May 2000

Sometime in May 2000, Hazmi and Mihdhar moved out of the apartment Bayoumi had found for them on Mount Ada Road and moved as boarders into the home of an asset of the FBI's San Diego Field Office.[194] Hazmi and Mihdhar met the asset at the mosque they attended.[195] Mihdhar stayed at the asset's residence until June 10, 2000, when he left the United States. Hazmi resided in the asset's house until December 10, 2000, when he moved to Arizona.

a. Background on the FBI asset

In 1994, the asset was recruited by San Diego FBI Special Agent who we call "Stan." The FBI had interviewed the asset in connection with a bombing investigation several years before. Stan remained the asset's handling agent – or "control agent" – until Stan retired in February 2002.[196]

The asset was opened as an asset on May 14, 1994.[197] He worked as an informational source, providing to the FBI information acquired in his normal daily routine. He normally was questioned about specific individuals who were under investigation by the FBI, although he occasionally volunteered information that he thought might be relevant. According to Stan, during some

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[194] The OIG was not able to interview the asset. The Joint Intelligence Committee Inquiry had attempted to interview the asset without success. The Committee then submitted interrogatories that the asset declined to answer, asserting his Fifth Amendment privilege. The asset indicated through his attorney that if subpoenaed by the Committee, he would not testify without a grant of immunity.

[195] There is some dispute about whether Hazmi and Mihdhar actually responded to an advertisement for boarders posted by the asset or whether they were introduced to the asset. The OIG did not have access to the witnesses who could address this issue.

[196] Stan was interviewed twice by the JICI staff, and he testified before the Joint Intelligence Committee. After his retirement from the FBI, Stan declined repeated requests for an OIG interview. The OIG does not have authority to subpoena individuals and cannot compel former Department of Justice employees to submit to an interview.

[197] Initially the asset was not paid. In July 2003, the asset was given a $100,000 payment and closed as an asset.

periods, he would talk to the asset several times per day, but there were periods in which he did not talk to him for several weeks or months. Stan said that many of their conversations were about family matters, the informational asset's health, and other non-substantive issues.

In 1996, the asset began renting out rooms in his home. Prior to September 11, 2001, he had 14 different boarders in his house, including Hazmi and Mihdhar. When Hazmi and Mihdhar rented rooms from the asset in 2000, two other persons also were renting rooms there.

b. Information from asset on Hazmi and Mihdhar

It is not clear what information the asset provided to the FBI about Hazmi and Mihdhar before the September 11 attacks.

After the September 11 attacks, the FBI interviewed the asset and asked about the conduct and activities of Hazmi and Mihdhar while they were living with the asset. In those interviews, the asset described them as quiet tenants who paid their rent. He said they were good Muslims who regularly prayed at the mosque. The asset said that Hazmi and Mihdhar often would go outside when using their cellular telephones. The asset insisted that he noted no indicators of nefarious activity by Hazmi or Mihdhar that should have resulted in his reporting their identities to the FBI.[198]

The asset was asked what information he provided to Stan about Hazmi and Mihdhar before September 11. In these interviews, the asset provided conflicting accounts regarding the information on Hazmi and Mihdhar that he had disclosed to Stan. The agent who interviewed the asset - this agent had taken over as the asset's control agent after Stan's retirement from the FBI - told us that the asset said he told Stan about his boarders in general terms, although he had not fully identified Hazmi and Mihdhar. The control agent said that the asset later said that he had not told Stan about the boarders at all.

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[198] The FBI opened an investigation after September 11 to determine whether the asset was involved in the attack. The asset has consistently maintained after September 11 that he had no suspicions about Hazmi and Mihdhar. The results of a polygraph examination on his potential role were inconclusive. Based on its investigation, however, the San Diego FBI concluded that the informational asset had not been complicit in plotting the attacks.

Although Stan declined to be interviewed by the OIG, after September 11, his FBI supervisors had interviewed him about the asset. Stan also had discussed the asset with co-workers and was interviewed by, and subsequently testified in, a closed session before the Joint Intelligence Committee.[199] Stan reported that the asset had told him contemporaneously that two Saudi national visitors were residing in a room at his residence. Stan said that the asset merely provided the first names of the boarders, Nawaf and Khalid. Stan contended that he had asked the asset for the boarders' last names but never received them and did not follow up. He said that the asset told him that his boarders were in the U.S. on valid visitors' visas, and they planned to visit and to study while they were in the country. In addition, Stan said that the asset told him that he believed that the two boarders were good Muslims because of the amount of time that they spent at the mosque. Stan stated that he did not recall the asset ever telling him that either of the boarders had moved out. According to Stan, the asset did not describe his boarders as suspicious or otherwise worthy of further scrutiny. Stan reported that he never obtained Hazmi and Mihdhar's full identities from the asset and that he did not conduct any investigation of them.

5. OIG conclusion

In sum, the FBI did not obtain information about Mihdhar's and Hazmi's time in San Diego, either as a result of the Bayoumi preliminary inquiry or from the asset. In the analysis section of this chapter, we evaluate Stan's actions with regard to Hazmi and Mihdhar and whether he should have pursued additional information about who was living with one of his assets.

C. Mihdhar's association with Khallad, the purported mastermind of the Cole attack

The third potential opportunity for the FBI to acquire information about Hazmi and Mihdhar occurred in January 2001, when a joint FBI/CIA source identified an al Qaeda operative in photographs of the January 2000 Malaysia meetings that Hazmi and Mihdhar had attended. However, the FBI has

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[199] The OIG was permitted to review the transcripts of Stan's testimony before the Joint Intelligence Committee's Inquiry.

asserted that it did not learn of the source's identification of the al Qaeda operative at the Malaysia meetings until much later in 2001, just before the September 11 attacks. This section of the report describes the events surrounding this third opportunity for the FBI to focus on Hazmi and Mihdhar.

1. Background

In 2000, the CIA and the FBI began debriefing a source who provided significant information on operatives and operations related to Usama Bin Laden. The source gave the CIA and the FBI information about an al Qaeda operative known as "Khallad" and described him as being involved with the East African embassy bombings in August 1998. Shortly after the *U.S.S. Cole* was attacked in October 2000, the CIA and the FBI received a photograph and information that a man named "Khallad" was the purported mastermind behind the attack on the Cole. In December 2000, the CIA and the FBI showed the source the photograph of Khallad, and the source identified the person in the photograph as the same Khallad he had described as involved with the East African bombings. As part of the Cole investigation, the FBI sought to find Khallad.

In January 2001, the source was shown photographs from the Malaysia meetings in an effort to determine whether Khallad was in the photographs. The source identified Khallad in one of the photographs, thus connecting the purported mastermind of the attack on the Cole with the Malaysia meetings known to have been attended by Mihdhar and others.[200]

FBI officials told the OIG, however, that the FBI was not aware of the identification of Khallad in the Kuala Lumpur photographs. The FBI officials said that if they had known that Khallad – the purported mastermind of the Cole attack who they were seeking to find – was identified in the Kuala Lumpur photographs, they would have aggressively pursued information on the circumstances of the Malaysia meetings and the other participants, including Mihdhar. As a result, they said, they may have uncovered earlier the CIA's

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[200] Information developed after September 11, 2001, revealed this was a misidentification, and the person identified as Khallad was actually Hazmi. We discuss this misidentification in detail below.

information about Mihdhar and Hazmi and found them in the United States well before the summer of 2001.

On the other hand, the CIA has contended the FBI in fact was aware in January 2001 of the source's identification of Khallad from the Kuala Lumpur surveillance photographs. For example, on September 26, 2002, Cofer Black, who served as Director of the CIA's CTC from 1999 until May 2002, testified before the Joint Intelligence Committee:

> FBI agents and analysts had full access to information [the CIA] acquired about the Cole attack. For example, we ran a joint operation with the FBI to determine if a Cole suspect was in a Kuala Lumpur surveillance photo. I want to repeat – it was a joint operation. The FBI had access to that information from the beginning. More specifically, our records establish that the Special Agents from the FBI's New York Field Office who were investigating the USS Cole attack reviewed the information about the Kuala Lumpur photo in late January 2001.

We therefore examine in detail the evidence relating to whether the FBI was aware of the identification of Khallad in the photographs of the Malaysia meetings.

2. Source's identification of Khallad

a. The source

In mid-2000, Drug Enforcement Administration (DEA) personnel arranged for FBI Legal Attaché (Legat) Office personnel overseas to meet a source who had substantial information on Bin Laden and his operatives and operations. This particular FBI Legat office was staffed by the Legal Attaché (the "Legat") and the Assistant Legal Attaché (the ALAT), who were FBI Special Agents.[201]

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[201] The primary mission of FBI Legat Offices is to establish liaison with foreign law enforcement agencies to support the FBI's investigative activities overseas. While Legat staff may become involved in specific investigations, they have no law enforcement authority in foreign countries. For a description of the role and responsibilities of FBI (continued)

Because of the FBI Legat personnel's inability to converse in any of the source's languages, limits on the FBI's authority to conduct unilateral intelligence activities overseas, and the source's potential value as a source of intelligence information relevant to the CIA, the FBI contacted the CIA for assistance with the source. The source was subsequently handled as a joint FBI/CIA source. Even though the FBI ALAT – who we call "Max" – was unable to directly communicate with the source due to the lack of a common language, he was designated as the FBI control agent for the source.

Because the source had significant information about Bin Laden and his operatives and operations, the FBI New York Field Office – the office that was leading the investigations on the East African embassy bombings, the Cole attack, and other Bin Laden-related investigations – also became involved with the source. This joint handling of the source created concerns within the CIA. The CIA's most significant concern was the FBI's desire to use the source for the criminal investigations involving Bin Laden conducted by the FBI's New York Field Office. The CIA believed that the source should not face possible exposure in criminal proceedings.

CIA Headquarters was asked to work with FBI Headquarters to convert the source to purely an intelligence role, solely under CIA control. According to CIA documents, the CIA and the Legat had discussed the FBI's "wall" whereby separate but concurrent intelligence and criminal investigations were conducted within the FBI, but the CIA expressed concerns about the CIA's ability to continue clandestine handling of the source if the FBI was involved. Although the CIA acknowledged that the source had value to the FBI's criminal case, the CIA argued that the source's potential as an intelligence asset was more important then his potential assistance in the criminal case. Despite the CIA's concerns, the source remained a joint FBI/CIA asset.

b. Debriefings of the source

Beginning in 2000, the CIA and FBI began to debrief the source on a regular basis. Over the course of several [illegible]

(continued)
Legats, see the OIG report entitled, "Federal Bureau of Investigation Legal Attaché Program" (March 2004).

shown photographs and asked to identify people in them. Although Max was the source's designated control agent, a CIA officer who spoke one of the source's languages conducted the debriefings. Max was present for some of these debriefings, but not all. Some of the debriefings were unilateral CIA interviews. The time spent with the source was kept short because of issues of travel and security.

According to Max, during the debriefings the CIA officer usually did not immediately translate the source's statements for the benefit of Max. He said that the CIA case officer would only immediately translate something when Max had specific questions for the CIA officer to ask the source. The CIA case officer told the OIG he recalled translating for Max things that the source said, but he did this only when he recognized the significance of the information to Max or an FBI operation.

In an effort not to duplicate the reporting of information received from the source, the CIA and the FBI agreed that the CIA would be responsible for reporting the information from the debriefings. However, in instances where the source was solely being shown FBI photographs or questioned based on an FBI lead, Max would document the source's information, either in an EC or an FBI FD-302 form, and the CIA would not document the same information.

After the debriefings, the CIA officer would write internal cables covering the debriefings and forward them to the CTC and other appropriate offices. These cables were internal CIA communications and were not provided to or shared with Max or other FBI personnel.[202] Instead, Max and FBI Headquarters would be informed of the debriefings when the information was reported by the CIA in a TD. As previously discussed, TDs were prepared by CIA reports officers who reviewed the internal cables and determined what information needed to be disseminated and to which agencies. Based on our review of internal cables reporting the source's debriefings and the TD reporting of the same interviews, it is clear the TDs often contained only a part of the information obtained during the source debriefings. As a result, either

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[202] As discussed above, FBI detailees to the CTC had access to these CIA cables, but the review and dissemination of source information to the FBI was not considered their responsibility.

through direct knowledge or through the TDs, Max had access to only some of the information obtained from the source during the debriefings.

In addition to the debriefings of the source by the CIA case officer, FBI agents from the New York Field Office working Bin Laden-related criminal investigations also interviewed the source with the CIA case officer present. Max occasionally was present for these interviews. After each of these interviews, the New York agents documented the source's information in detail in an FD-302 that was entered into ACS and retrievable by all FBI personnel working on the Bin Laden cases.[203] These FD-302s were routinely shared with CIA personnel in the field and at the CTC.

c. Source identifies Khallad from Yemeni-provided photograph

Over a 3-month period in 2000, FBI New York Field Office personnel interviewed the source overseas four times. During one of these interviews, the source described an individual known as "Khallad" as a trusted senior Bin Laden operative with potential connections to the East African embassy bombings.

As noted above, on October 12, 2000, two terrorists in a boat laden with explosives committed a suicide attack on the *U.S.S. Cole*, a U.S. naval destroyer, during its brief refueling stop in the port in Aden, Yemen. The FBI's investigation into the attack was led by the FBI's New York Field Office.

After the attack on October 12, the Yemenis provided the FBI and the CIA with information on the Bin Laden operative known as "Khallad." According to this information, Khallad had been described as the purported mastermind of the Cole attack. U.S. intelligence agencies had already

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[203] When a witness is interviewed as part of a criminal investigation, the FBI prepares an FD-302 to document what was said in the interview. When information is being obtained as part of an intelligence investigation, the FBI documents the information in an EC. There was often a significant lag time between the interview and the completion of the documentation due to a variety of factors, including the intensity of investigative activity, the agents' extensive travel, and the required review of the documentation by FBI supervisors before dissemination.

connected Khallad to the East African embassy bombings. The Yemenis also identified "Khallad" as Tawfiq Muhammad Salih Bin Rashid al Atash. On November 22, 2000, the Yeminis provided the FBI with a photograph of Khallad ("the Yemeni-provided photograph"). Around this same time, the Yemenis provided the FBI with several photographs of other Cole suspects.

The New York FBI agents investigating the Cole bombing wanted to determine whether the Khallad identified by the Yemenis was the same Khallad who had been previously described by the source. At the same time, a CIA internal cable to was sent to several CIA offices suggesting that the photographs of the Cole suspects that the FBI had obtained from the Yemenis, including the Khallad photograph, be shown to the source. Because the FBI did not have the technological capability to easily transmit the Khallad photograph from Yemen to the ALAT who was handling the source and who we call Max, the photograph was forwarded through CIA channels to the nearby CIA office in order to show the photograph to the source.[204]

CIA documents show that on December 16, 2000, the CIA officer conducted a debriefing of the source. Max was present for the debriefing.[205] During the debriefing, the CIA case officer showed the source many photos of Cole bombing suspects and other suspected Arab terrorists, including the Yemeni-provided photograph of Khallad. The source immediately identified the individual in the Yemeni-provided photograph as the same Khallad he had previously described as a trusted senior Bin Laden operative with potential connections to the East African embassy bombings.

The CIA officer prepared a cable documenting the debriefing, which was addressed to several CIA offices. The CIA officer wrote in the cable that the source was shown the many photographs and "quickly" identified Khallad in

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[204] Max told the OIG that at the time he and the CIA case officer believed that this photograph had come from the FBI's New York Field Office. Max added that it was not uncommon for him not to know the source of photographs that were shown to the source and that the source was shown hundreds of photographs.

[205] Although FBI agents from New York had traveled overseas several times in 2000 to interview the source, in December 2000 the agents with the appropriate language abilities were tied up in Yemen after the Cole attack and were unable to travel to debrief the source. Therefore, the FBI relied on the CIA to conduct this debriefing.

the Yemeni-provided photograph. Notably, the CIA cable stated that the CIA officer had the source repeat the identification specifically for the benefit of Max. In addition, the cable stated that before the debriefing ended, the CIA officer again showed the photographs to the source and asked the source to verify the Khallad identification.

Max acknowledged to the OIG that he was contemporaneously aware of the identification of Khallad in the Yemeni-provided photograph by the source on December 16. Max stated that he recalled specific circumstances of the debriefing and recounted them to us. Max told us that he recalled the source immediately identifying Khallad in the photograph.

d. CIA suspects that Khallad may be Mihdhar in Kuala Lumpur surveillance photographs

Around this same time, CIA personnel were beginning to connect Khallad with Mihdhar and the January 2000 Malaysia meetings. In a December 2000 cable, CIA personnel overseas asked for copies of the January 2000 Kuala Lumpur surveillance photographs of Mihdhar. The cable noted that further connections had been made between Mihdhar and Al Qaeda. As a result of these further connections, the CIA believed there might be a connection between Mihdhar and the Cole perpetrators.

The CIA office reported in the December 2000 cable that the it had learned that Fahd al Quso, who was in Yemeni custody for his participation in the Cole attack, had received $7,000 from someone named Ibrahim, which Quso had taken to Bangkok, Thailand, on January 6, 2000, to deliver to "Khallad," a friend of Ibrahim's. It was noted in the cable that because Mihdhar had departed Kuala Lumpur around that same time to travel to Bangkok, the CIA suspected that the "Khallad" mentioned by Quso could actually be Khalid al Mihdhar or one of his associates.[206] It was noted further that this information had "added significance" because Khallad had been

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[206] As previously discussed, the CIA had reported previously in an internal March 2000 cable that Mihdhar, Hazmi, and another individual had left Malaysia on January 8, 2000, and traveled together to Bangkok.

identified as a "key operative likely serving as an intermediary between Usama Bin Laden and the [Cole] perpetrators."

In another December 2000, cable the CTC concurred with the overseas CIA office's theory and forwarded a Kuala Lumpur surveillance photo of Mihdhar to the CIA case officer to show to the source. According to the cable, the purpose was "to confirm/rule out this particular Khalid [Mihdhar] as a match for [Khallad]."[207] The next day, the CIA officer received permission to show the Kuala Lumpur surveillance photographs to the source.

Max told the OIG, however, that he was not aware of the CIA cables or the theory that Khallad was actually Mihdhar. We found no other evidence that Max knew about the information that Mihdhar was at the Malaysia meetings, or the CIA's theory that Khallad was actually Mihdhar.[208]

e. Source identifies Khallad from Kuala Lumpur photograph

The CIA case officer debriefed the source again in early January 2001. At some point, the CIA case officer showed the source photographs, including two of the surveillance photographs taken during the January 2000 Malaysia meetings. One of the photographs from the Malaysia meetings, which we call

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[207] The CIA cable referred to its forwarding of only one Kuala Lumpur surveillance photograph, although subsequent cables showed that the receiving office received two Kuala Lumpur photographs to show the source. It is unclear why the sending office sent only two of the photographs instead of all three of the Kuala Lumpur photographs it had.

[208] In fact, CIA cables suggest this information was not shared with the FBI. We saw several CIA cables during this time that discussed working with the FBI in relation to the FBI's investigation of the Cole attack. For example, we saw a December 2000 cable stating that the FBI had provided an update on its investigation of the location associated with telephone numbers the CIA had provided to the FBI in connection with an investigation, and the office that drafted the cable asked to be advised of whether the two offices to whom the cable was addressed were aware of additional information that could assist the FBI. However, we saw another December 2000 cable, which discusses Khallad and other information not related to Khallad, which specifically instructed two CIA offices to share with the FBI the other information in the cable that was not related to Khallad, but it did not instruct the offices to share the information regarding the possible connection of the Malaysia meetings and Khallad.

"Photo No. 1" included an unknown subject. The source identified one of the individuals in this photograph as Khallad. According to a January 2001, cable written by the CIA case officer, the source was asked if he was sure, and he replied that he was "ninety percent" certain.[209]

The second photograph from the Malaysia meetings, which we call "Photo No. 2," contained a picture of the person the CIA knew to be Mihdhar. The source could not identify the person in the photograph.[210]

However, the source's identification of Khallad in the first photograph was significant. First, the source previously provided information that Khallad was a Bin Laden operative who was connected to the Cole attack and the East African embassy bombings. Second, as a result of the identification, it was suspected that Khallad was at the Malaysia meetings along with other suspected al Qaeda operatives. From other information, it also was known that Mihdhar was at the meetings, and it was suspected that Hazmi was there also. Thus, the source's identification of Khallad at the Malaysia meetings raised the question whether Mihdhar and Hazmi also were linked to the Cole attack.

We tried to determine if the FBI's ALAT learned of the source's identification of Khallad in the photograph. Max told the OIG that he did not specifically recall the early January 2001 debriefing of the source. He stated he also did not recall being aware of any early January 2001 identification of Khallad from the Kuala Lumpur surveillance photographs. In addition, Max asserted he was not aware of the Malaysia meetings and the photographs until he was questioned about them by the JICI staff on June 27, 2002.

The CIA case officer told the OIG that he had no independent recollection of any particular meeting with the source, including the meeting in early January 2001.

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[209] As noted above, information developed after September 11, 2001, revealed this was a misidentification, and the person identified as Khallad was actually Hazmi.

[210] This failure to identify Khallad in the photograph known to be of Mihdhar should have ended the theory that Mihdhar and Khallad were the same person.

f. Documentation regarding the source's identification of Khallad in the early January 2001 debriefing

(1) CIA cables

To examine whether the FBI learned of the source's identification of Khallad in the Kuala Lumpur photographs, we reviewed the CIA documentation concerning the meeting with the source in early January 2001. In an internal cable written the day after the debriefing, the CIA case officer reported that the source had identified Khallad in one of the Kuala Lumpur photographs with a "ninety percent" certainty. However, unlike in the December 2000 CIA cable, which stated that the CIA officer had the source repeat the identification of Khallad in the Yemeni-provided photograph to Max, the January 2001 cable did not suggest the identification was repeated for Max or was brought to the attention of Max. The January 2001 cable did not provide any other details about the debriefing, such as where the meeting took place, when exactly during the debriefing the photographs were shown to the source, who was present when the photographs were shown to the source, or what other topics were discussed with the source.

We also reviewed a detailed January 2001 CIA TD to the Intelligence Community regarding the early January 2001 debriefing. The TD reported specifics about what the source discussed and that he had provided a stack of documents to his CIA and FBI handlers. The TD made no mention of any photographs being shown to the source or any identification of Khallad.[211]

A few days later, the CIA case officer wrote another cable describing the logistics of the early January 2001 meeting with the source. In addition, the cable summarized what was discussed during the meeting. This cable also did not mention the photographs being shown to or discussed with the source, but the CIA case officer told the OIG that these kinds of cables were not always comprehensive with respect to the information obtained from the source.

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[211] Although no witness can recall the details of this particular debriefing, it is possible that Max, who lacked the appropriate language skills for a debriefing, either photocopied or hand wrote the information from the documents thus explaining his absence at the time that the photographs were shown to the source.

(2) FBI documents

We also reviewed FBI documents from this period relating to the source. On January 9, 2001, a New York FBI agent who was the FBI's lead case agent on the Cole investigation sent Max an e-mail stating that he and his co-case agent wanted to meet with the source to talk about some of the Cole suspects, including Khallad. The New York agent wrote that he was "specially [sic] interested in all [the source] knows about Khallad and his associates." The agent noted that the source previously had given the agents important information regarding Khallad and the Cole attack.

In a January 10 e-mail response, Max referred to the December 16 meeting with the source in which the source had been shown many photographs and had immediately identified the Yemeni-provided photograph as Khallad. Max also mentioned the early January 2001 meeting, summarizing specific information provided by the source in the debriefing. Max wrote that, due to the lack of technological capabilities in the Legat Office, he promised to make the CIA TD numbers relating to the source available to the case agent within a few days so the agent could read them before his trip to interview the source. However, Max made no mention of any identification of photographs by the source in the early January 2001 debriefing.

Around the same time as this e-mail exchange, Max was criticized by the head of the FBI's UBL Unit at Headquarters for insufficient reporting regarding the source's information. The UBL Unit chief wanted to know from Max what information the source was providing. She also was concerned because Max was not producing any reports regarding the source.

In response, on January 16, 2001, Max wrote a 34-page EC summarizing the source's debriefings and other information obtained from the source since mid-2000, most of which was based on the information that had been disseminated in the TDs by the CIA. Max explained in the EC that he merely was repeating what the CIA had previously reported in TDs, which had already been forwarded to FBI Headquarters. He noted the agreement with the CIA that there would not be duplicative reporting on the source's information. He explained the CIA was doing the primary reporting on the source debriefings Max noted that the interview was conducted in the foreign language, and he would read the CIA's report of the interview (the TD) once it was completed.

Max then listed all of the CIA's TDs that summarized what the source had said.

On page 29 of this January 16 EC, Max summarized the CIA's reporting of what had occurred at the December 16, 2000, meeting with the source. The EC stated the source was handed a stack of many photographs and immediately identified the top photograph as a photograph of Khallad, the person the source had previously implicated in the attack on the Cole. The EC stated, "At that time it was the clear impression of [the Legat] and [the CIA officer] that both FBIHQ CTD and NYO were receiving all of the reporting above from CIA liaison in the U.S., as soon as it was being filed."

In the next paragraph of the EC, Max summarized what the CIA had reported in the TD about the early January 2001 debriefing of the source. This summary is contained on pages 29 through 33 of the EC. Max reported at length about the source's information, and the EC provided a lengthy description of the documents provided by the source. Again, there was no mention of any photographs from the Malaysia meetings or the identification of Khallad.

Max discussed with the CIA case officer the complaint from FBI Headquarters about Max's reporting on the source. As a result, the CIA case officer provided Max with a report of the next debriefing of the source in late January 2001. The day after this debriefing, Max prepared a lengthy EC summarizing this debriefing. He noted in the EC that the report was based on the CIA's report of an interview conducted by a CIA officer and, although Max was present for the debriefing, he only became aware of what was said after the CIA officer provided the report.[212]

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[212] Around the same time, the CIA officer sent a cable to CIA Headquarters that described the FBI's need for reporting directly through FBI channels, as opposed to CIA channels. The CIA office then asked permission to provide electronic copies of TDs to Max so that Max could send the same reporting through FBI channels.

g. New York FBI agents' interview of source on February 1, 2001

Around the same time, Max was preparing for the arrival of the Cole case agent from the FBI's New York Field Office. The Cole case agent was traveling to interview the source about Khallad, along with another FBI agent who spoke one of the languages of the source and was going to assist in the preparation of the FD-302 for the criminal investigation. Max had received a January 17 e-mail from one of the Cole agents stating that the information being provided by the source was very important to the FBI's criminal investigation of the Cole attack and discussing the arrangements for the upcoming interview of the source by the Cole agents.

The New York Cole agents also asked Max to prepare an FD-302 documenting Max's personal knowledge of the source's identification of Khallad from the Yemeni-provided photograph on December 16. On January 24, 2001, Max sent an EC to the New York Field Office and FBI Headquarters with an attached FD-302 regarding the source's December 16, 2000, identification of Khallad.

On February 1, 2001, the New York Cole case agent and another agent who spoke one of the source's languages interviewed the source overseas.[213] The CIA case officer who had shown the Kuala Lumpur photographs to the source in early January was also present at the interview. During the interview, they showed the source the Yemeni-provided photograph of Khallad, which previously had been shown to the source by the CIA officer on December 16, 2000. The source again identified Khallad in the photograph.

As discussed above, the agents had received information indicating that Quso, who was in custody for his participation in the Cole attack, had traveled to Bangkok and met Khallad in January 2000. The New York agents were investigating the circumstances of that trip. The agents knew that Quso previously had claimed that he had intended to meet Khallad in Malaysia. The

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[213] In anticipation of the Cole agents' interview of the source, the CIA case officer had sent a cable asking the Bin Laden Unit to touch base with FBI Headquarters regarding the case status and the planned trip of the New York FBI agents. The CIA case officer noted that the source was "currently of very high interest to our [FBI] colleagues."

agents were concerned about Quso's veracity and whether Quso, as well as Khallad, had actually traveled to Malaysia. Therefore, an identification of Khallad in Malaysia during this period would have been very significant to the agents.

Both FBI agents who participated in the February 1 debriefing of the source told the OIG that they were not informed about surveillance photographs of the Malaysia meetings, that they did not know such photographs existed, and that they did not show any such Kuala Lumpur photographs to the source. They stated that they were not told that the source had identified Khallad from a Kuala Lumpur surveillance photograph in early January. They added that if they had been aware of any such identification of Khallad, they would have wanted to have the source repeat the identification for them since Khallad was a subject in the Cole criminal investigation.[214] However, they stated that they were never informed of such an identification.

3. OIG conclusions regarding whether the FBI was aware of the source's identification of Khallad in the Kuala Lumpur photograph

We concluded that the evidence shows that the FBI was not made aware that during the early January 2001 debriefing the source identified Khallad in the photographs of the Malaysia meetings. Max insisted in his interviews with us that he was unaware of this identification of Khallad and that he was not even aware of the existence of the Kuala Lumpur surveillance photographs until after the September 11 attacks. Neither Max nor the CIA case officer specifically recalled the early January debriefing, but the documentary evidence supports this conclusion. In numerous CIA and FBI documents discussing the source and the early January debriefing, other important information from the source is described, but the source's identification of Khallad in the Kuala Lumpur photograph is never mentioned. Given the importance of that identification and the other details reported in the

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[214] The CIA's Review Group has also asserted that the FBI may have received the Kuala Lumpur photographs from another source. The CIA did not refer to any witnesses for this claim but instead referred to a series of CIA cables and FBI documents. Our review of the cables and other documentary evidence did not support this claim.

documents, we believe such information would have been included had the FBI been made aware of the identification.

For example, as described above, in the CIA case officer's cable reporting the December 16 debriefing of the source during which the source had identified Khallad in the Yemeni photograph, the CIA officer specifically noted that ALAT heard the identification and that the identification was repeated for the benefit of him. Max said he recalled this debriefing and the identification of Khallad being brought to his attention by the CIA case officer.

By contrast, in his cable reporting the early January source debriefing, the CIA case officer did not state that he brought to the attention of Max the identification of Khallad in the Kuala Lumpur photographs. Likewise in his cable describing the logistics of the debriefing, the CIA case officer provided a description of what was discussed with the source and stated that Max was present for a significant portion of the meeting with the source, but did not mention any Kuala Lumpur photographs or that the CIA case officer had brought the identification of Khallad to the attention of Max.

The documents prepared at the time by Max about the early January debriefing also suggest that Max was not aware of the identification of Khallad in the Kuala Lumpur photographs. For example, in response to the Cole case agent's January 9 e-mail specifically requesting "all [the source] knows about Khallad," Max did not include any information about the Khallad identification from the Kuala Lumpur photographs. This was shortly after the early January debriefing, and the case agent had specifically indicated his interest in any information about Khallad.

Max's January 16 EC to FBI Headquarters in which he described at length what the source had reported in the early January meeting also did not mention the identification of Khallad or that any Kuala Lumpur photographs were shown to the source. In addition, Max prepared an FD-302 to document the source's identification of Khallad from the Yemeni photograph to provide documentation for the criminal investigation. We believe that if Max had known of the source's identification of Khallad in the Kuala Lumpur photos, he likely would have prepared a similar FD-302 of that identification as well.

We also found that the New York Field Office agents who interviewed the source overseas in February 2001 were not made aware of the early January identification of Khallad. The agents insisted that they were completely

unaware that any Kuala Lumpur surveillance photographs had been shown to the source or that the source had identified Khallad in any photographs other than the Yemeni-provided photograph. In addition, we found no documentary evidence that the New York FBI agents were even aware of the Malaysia meetings or the resulting surveillance photographs at the time they interviewed the source. Because the agents were keenly interested in Khallad and had asked the source to confirm his identification of Khallad from the Yemeni photograph, we believe the agents would have noted, remembered, and acted upon any information regarding another Khallad identification. We also believe that had the FBI known about the identification of Khallad in the Kuala Lumpur photographs, they would likely have sought information about the other participants in the meeting, including Mihdhar and Hazmi, which could have increased the FBI's chances of locating them before the September 11 attacks.

Due to the OIG's lack of complete access to CIA employees and documents, we were unable to fully examine why the CIA did not inform Max or the New York agents that the source had identified Khallad in the Kuala Lumpur photographs at the early January debriefing. We believe the FBI should have been made aware that the joint FBI/CIA source had provided such significant information about the person purported to be the mastermind behind the Cole attack. This failure demonstrated significant problems in communication between the FBI and the CIA. However, the FBI employees' inaccurate belief that CIA reporting in TDs was comprehensive contributed to the FBI's failure to obtain this critical piece of information. We discuss this and other systemic problems that this case revealed in the analysis section of this chapter.

D. FBI and CIA discussions about the Cole investigation in May and June 2001

The fourth opportunity for the FBI to have acquired intelligence information about Hazmi and Mihdhar – including Mihdhar's possession of a U.S. visa, Hazmi's travel to the United States, and the source's identification of Khallad from the Kuala Lumpur photographs – occurred in May and June 2001 when the CIA and FBI Headquarters discussed the status of their information concerning the Cole attack. Once again, these discussions could have caused the FBI and the CIA to focus on the other persons attending the Malaysia

meetings with Khallad, and thereby led the FBI to search for Mihdhar and Hazmi earlier than it did. But, as we describe below, the FBI did not obtain the critical information about the identification of Khallad at the Malaysia meetings, despite several interactions in May and June 2001 between the FBI and the CIA about Khallad.

1. Background

a. The Cole investigation

As discussed above, the FBI's investigation on the Cole attack was led by the FBI's New York Field Office.[215] One of the case agents investigating the Cole attack was an agent who we call "Scott," and who was assigned to the New York FBI's counterterrorism squad that handled only al Qaeda investigations (the "Bin Laden squad").[216] After serving eight years in the U.S. Navy as a fighter pilot, in April 1996 Scott became a special agent in the FBI's New York Office. In July 1996 he was assigned to the TWA Flight 800 investigation because of his experience as a military pilot. Shortly after the East African embassy bombings in August 1998, he was transferred to the New York's Bin Laden squad to assist with the embassy bombings investigation, and then was assigned as one of the case agents on the investigation the Cole attack.

The New York FBI was assisted on the Cole investigation by several Intelligence Operations Specialists (IOS) assigned to the UBL Unit and the Radical Fundamentalist Unit (RFU) at FBI Headquarters.

One of the primary IOSs who worked on the Cole investigation was an IOS who we call "Donna." She had joined the FBI in 1988 as a clerk while she completed her college education. After graduating from college in 1995, she entered the FBI's language training program and became a Russian language

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[215] Through their work on the 1993 attack on the World Trade Center and the subsequent discovery of the terrorist plot to attack New York landmarks, the New York FBI became the primary office for the investigation of al Qaeda, eventually leading to the indictment of Bin Laden in the Southern District of New York in November 1998.

[216] The other primary case agent on the Cole investigation was out of the country during the events discussed in this section of the report.

specialist working on foreign counterintelligence matters. In November 1997, she became an Intelligence Research Specialist (IRS), and a year later was assigned to assist the RFU on the East African embassy bombings investigation. In 2000 she was permanently assigned as an IOS in the UBL Unit and was assigned to work on the Cole investigation in October 2000.

With regard to Donna's work on the Cole investigation, she stated that she and the other UBL Unit IOSs conducted the investigation as directed by the New York Field Office, sent out requests for information to other law enforcement and intelligence agencies, obtained budget enhancements to support the investigation, and performed other duties in support of the investigation. She and the other UBL IOSs often traveled to New York where they met with the Cole agents and worked on the investigation.

b. The wall and the caveat on NSA information

The information relevant to this section of the report includes NSA information disseminated about Mihdhar in late 1999 and early 2000. As noted in Chapter Two, by the summer of 2001 NSA counterterrorism intelligence information could not be disseminated within the FBI without adhering to certain procedures and protocols. At this time, the FBI was required by the Department and the FISA Court to keep criminal investigations separate from intelligence investigations, a policy which was commonly referred to as "the wall." Information obtained from FISA intercepts and search warrants had to be screened by someone not involved in the criminal investigation and then "passed over the wall" from the intelligence investigation to the criminal investigation. The FISA Court became the screening mechanism for FISA information obtained from al Qaeda intelligence investigations that the FBI wanted to pass to criminal investigators.

As described in Chapter Two, in response to notification that there had been many errors in FISA applications approved by the FISA Court, the Court imposed additional restrictions before information could be shared. First, based on the FISA Court's concerns about the errors in the FISA applications, the FBI directed that only intelligence agents were permitted to review FISA intercepts and materials seized pursuant to a FISA warrant (called "FISA-obtained material") or any CIA and NSA intelligence provided to the FBI based on information obtained through FISA search or intercept (called "FISA-derived" material) without further Court approval. The Court required anyone

who reviewed the FISA-obtained or FISA-derived intelligence to sign a certification acknowledging that the Court's approval was required for dissemination to criminal investigators.

Because FISA-obtained information often was passed from the FBI to the NSA and the CIA, the question was raised to the FISA Court whether the FBI was required to obtain certifications from all NSA or CIA employees who reviewed the FISA-obtained material. The Court exempted the NSA and CIA from the certification but required that the two agencies note on any intelligence shared with the FBI if it was FISA-derived. This was referred to as "a caveat."

When made aware of this requirement, the NSA reported to the Department of Justice that for the NSA to determine in real-time which counterterrorism intelligence that it had acquired was FISA-derived would delay dissemination of the information. As a result, the NSA decided to indicate on all its counterterrorism intelligence provided to the FBI as being FISA-derived so that it could not be disseminated to criminal agents or prosecutors without approval from the NSA.[217] Therefore, when the FBI wanted to pass this NSA intelligence to criminal investigators, it had to contact the NSA General Counsel's Office to determine whether the information was in fact FISA-derived before it could be passed.[218]

2. Discussions in May 2001

In May 2001, the potential connection of Khallad to the Malaysia meetings was again discussed by CIA personnel. FBI personnel also discussed Khallad in reference to his nexus to the Cole attack. There were also

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[217] According to the NSA, its average response time to FBI requests for approval to pass information to criminal investigators was one to five business days.

[218] The NSA information concerning Hazmi and Mihdhar was from late 1999 and early 2000, and contained the initial caveat stating that information could not be disseminated to law enforcement officials without approval from OIPR. By the time FBI Headquarters was dealing with this information in the summer of 2001, the new caveat was being placed on NSA reporting, and FBI Headquarters was operating under the understanding that the NSA General Counsel had to approve dissemination of NSA counterterrorism information to criminal investigators.

discussions between the CIA and FBI in reference to the Kuala Lumpur photographs. But, as described below, the identification of Khallad in the Kuala Lumpur photographs and Khallad's connection to other suspects, such as Hazmi and Mihdhar, were not addressed during these May discussions between the FBI and the CIA.

a. John's inquiries about Khallad

Between the early January 2001 debriefing of the source and May 2001, the CIA's focus on whether Khallad, the suspected mastermind behind the Cole attack, had attended the Malaysia meetings appears to have subsided. In May 2001, John, a former Deputy Chief of the Bin Laden Unit, who by that time was detailed to ITOS in FBI Headquarters, had continuing concerns about the Malaysia meetings, especially whether they had any nexus to the Cole attack.[219] John also noted to the OIG that during this period there were heightened concerns in the Intelligence Community about the threat of an imminent terrorist attack in Southeast Asia.

CIA records show that on May 15, 2001, John accessed the March 2000 cable stating that Mihdhar, Hazmi, and another person had traveled to Bangkok from Malaysia on January 8, 2000. The cable also stated that Hazmi had left Bangkok on January 15, 2000, flying from Bangkok to Hong Kong and then to Los Angeles.

Around this same time in May, John began inquiring about the Malaysia meetings with a CTC analyst, who we call "Peter," at CIA Headquarters. John said he knew that Peter had been "down in the weeds" and knew the "nuts and bolts" of the Cole investigation because Peter had been assigned to prepare a CTC report on who was responsible for the Cole attack.

Peter told the OIG that his area of expertise and focus since August 1999 was the Arabian Peninsula. He said that because the Cole attack took place in Yemen, he was assigned to develop an intelligence report on who was

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[219] John told the OIG that in this detail to the FBI he acted as the CIA's chief intelligence representative to ITOS Section Chief Michael Rolince. John stated that he did not have line authority over anyone at the FBI and that his primary role was to assist the FBI in exploiting information for intelligence purposes.

responsible for the Cole attack. He completed his report in January 2001, finding that UBL/al Qaeda was circumstantially tied to the attack.[220] Peter stated that while working on the Cole report he regularly interacted with the IOSs in the FBI's UBL Unit. By the spring 2001, he was no longer working directly on the Cole attack, and had moved on to potential threats in Saudi Arabia and Yemen. However, Peter said he had a continued interest in the Cole information and continued to gather information on an ad hoc basis.

According to John, he and Peter discussed the Malaysia meetings, and Peter provided him with a copy of the timeline of events related to the Cole investigation that Peter had compiled as part of his work on the Cole attack.[221] In addition, John said they discussed Quso, a Cole perpetrator in Yemeni custody, and any connections Quso may have had with the individuals in Malaysia. John and Peter were aware that Quso had stated that he was supposed to take money to a person named "Khallad" in Malaysia but had met him in Bangkok instead in January 2000. John told the OIG that Peter had posited that perhaps Quso had gone to Malaysia and met with the others who had been observed there in January 2000, and therefore Quso might have been in one of the Kuala Lumpur photographs.

In an e-mail to Peter in mid-May 2001, John noted that Mihdhar had arranged his travel to Malaysia and was associated with "[another terrorist organization] courier travel at the same time." John also noted in the e-mail that Quso, who was believed to be a courier since he had stated he had traveled to take money to Khallad, had traveled a few days earlier than Mihdhar.[222] In addition, John wrote that he was interested because Mihdhar was traveling with two "companions" who had left Malaysia and gone to Bangkok, Los Angeles, and Hong Kong and "also were couriers of a sort." John noted in the e-mail

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[220] The report did not mention Mihdhar's visa, Hazmi's travel to the United States or the Khallad identification from the Kuala Lumpur photographs.

[221] The timeline did not mention the Kuala Lumpur photographs, Mihdhar's U.S. visa, or Hazmi's subsequent travel to the United States.

[222] As previously discussed, after Quso was detained in Yemen, he acknowledged that he had received $7,000 from someone named Ibrahim, which Quso asserted he took to Bangkok, Thailand on January 6, 2000, to deliver to "Khallad," a friend of Ibrahim's. Mihdhar had traveled to Bangkok on January 8.

that "something bad was definitely up." Peter replied in an e-mail dated May 18, "My head is spinning over this East Asia travel. Do you know if anyone in [the CIA's Bin Laden Unit] or FBI mapped this?"

b. Discussions among FBI and CIA employees

Around this same time, FBI IOS Donna and other FBI IOSs working on the Cole investigation were focusing on Quso's connection to Bangkok and his trip to deliver money to Khallad. The FBI, like the CIA, was aware that in January 2000 Quso had planned to travel to Malaysia to take money to Khallad. According to an FBI document drafted by Donna in May 2001, Quso had claimed that on January 6, 2000, he and Ibrahim Al-Nibras went to Bangkok first but were unable to travel on to Kuala Lumpur because of problems with their travel documents, and Khallad had traveled to Bangkok to meet them there instead. The FBI began researching telephone numbers that appeared to be connected to Quso's trip and requested that several Legat Offices contact local law enforcement authorities to obtain subscriber information.

Donna told the OIG that she and others were tracking the information related to the telephone numbers associated with Quso in an attempt to determine the truth of his statements. In addition, she said that she was focused on the identity and whereabouts of Khallad, since he was the purported mastermind of the Cole attack.

At some point before the end of May 2001, John discussed with Donna the East Asian travel of Quso. In response to Peter's May 18 e-mail that asked whether anyone had "mapped" the East Asia travel, John replied in an undated e-mail that "key travel still needs to be mapped" and stated "[Donna] sounds really interested in comparing notes in a small forum expert to expert so both sides can shake this thing and see what gaps are common."

In addition to reviewing the East Asia travel of several Bin Laden operatives in January 2000, John also began looking in CIA records for the Kuala Lumpur photographs. John obtained three of them. John told the OIG that he had not read the cable stating that the joint source had identified Khallad in the photographs, but he was aware that an identification of Khallad in the photographs had been made. At the end of his e-mail to Peter, John stated that he had obtained three surveillance photographs of Mihdhar in

Malaysia, but he did not see "Khallad" in any of the photographs, and he believed he was "missing something" or "someone saw something that wasn't there." John also questioned whether there was a cable somewhere that documented the identification of Khallad.[223]

In response to John's e-mail, Peter wrote in an e-mail dated May 24 that he had thought one of the Kuala Lumpur photos was of Khallad. Peter added that Donna and another FBI IOS in the UBL Unit, who we call "Kathy," were meeting with Peter on May 29 to discuss the Cole investigation. Peter suggested that he could raise the issue of the Kuala Lumpur photographs and the possible identification of Khallad with the FBI IOSs. Peter told the OIG that he had learned about the source's identification of Khallad in the Kuala Lumpur photographs when it had occurred, but by May of 2001 it had been several months since he had worked on the Cole matter and he could not recall whether Khallad had been identified in the photographs.

On May 24, Donna sent John an e-mail stating that a meeting with Peter and others was "tentatively scheduled" for May 29 for "an in depth discussion about the Cole."

We were unable to determine with certainty whether a meeting with Peter, Donna, and Kathy actually took place on May 29. None of the witnesses had notes of any such meeting, nor were there any e-mails discussing the meeting after it would have taken place. The witnesses told the OIG that they could not recall whether a meeting took place on May 29. For example, when asked whether she knew Peter, Kathy told the OIG that his name sounded familiar and that she may have met him, but she did not recall a meeting on May 29, 2001, about the Cole investigation. A May 29 e-mail from Peter to Mary indicates that he met with Mary earlier in the day, but it does not identify the other participants or what was discussed.

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[223] As noted above, John was correct – Khallad was not in any of these three photographs. After September 11 it was learned that the person the source had identified as Khallad was actually Hazmi. It was also learned after September 11, however, that Khallad was in another Kuala Lumpur surveillance photograph that had not been shown to the source.

However, it is clear that at some point before the end of May 2001, Donna became aware of the existence of the Kuala Lumpur photographs in January 2000. Donna told the OIG that she recalled John printing one of the CIA photographs on the printer in his office at FBI Headquarters, and Donna acknowledged that she obtained two other Kuala Lumpur photographs from him. According to Donna, Peter had raised the photographs in a discussion with her prior to her obtaining the photographs from John, although she said that she did not recall the details of their discussion about the photographs. Donna said she did recall that, at the time, Peter had posited that one of the photographs could relate to Quso, which if true would contradict Quso's statements about going only to Bangkok and not going to Malaysia. According to Donna, the FBI was attempting to determine the veracity of Quso's information, so the photographs potentially were connected to the Cole investigation. She stated, however, that outside of this potential connection, the photographs were "another piece of a thousand things coming in" at the time. She said that if Quso were determined to be in the photographs, then the photographs would have become significant to the Cole investigation.

Donna also told the OIG that she did not recall a "substantive conversation" with John about the photographs or the Malaysia meetings. Donna told the OIG that she wrote on the back of the photographs what John told her about the photographs, which included that "Khalid Al-Midar" traveled from Sana, Yemen, via Dubai, to Kuala Lumpur on January 5, 2000, and he was in Kuala Lumpur between January 6 and 8. She also wrote Khalid Mihdhar's name on the back of the photograph in which he had been identified.

According to Donna, neither John nor Peter discussed with her the fact that Khallad had been identified in these photographs. Donna told the OIG that she believes she would have noted being told that Khallad was in the photographs because she was interested in identifying Khallad and because it would have meant that the photographs had a definite connection to the Cole investigation. Donna also said that no one told her that Mihdhar had a U.S. visa or that Hazmi had traveled to the United States.

John told the OIG that he did not recall anything about his discussion with Donna when he printed the Kuala Lumpur photographs for her. John said he recalled that at the time the FBI was trying to "nail down Quso's story." He said that he did not recall ever discussing the Khallad identification from the Kuala Lumpur photographs with Donna or anyone else at the FBI.

John emphasized that the FBI was focused on the Cole investigation, not the Malaysia meetings. He stated that while he had begun to theorize that Khallad had been in Malaysia, it was only "speculative" and he had not confirmed any of the information about a source identifying Khallad in the Kuala Lumpur photographs. Therefore, according to John, he would not have discussed the identification of Khallad with Donna. John emphasized that a significant impetus for the CIA's interest in Khallad's activities revolved around concerns that Khallad was planning a future terrorist operation in Malaysia.

Peter told the OIG that he recalled talking to FBI IOSs, including Donna, about mapping the telephone number information based on information provided by Quso. But he said that he did not recall discussions with Donna about the Kuala Lumpur photographs or the Khallad identification.

3. June 11, 2001, meeting

a. Planning for the meeting

Around the same time that Donna was discussing Quso and the Cole investigation with Peter and John, she also was planning a meeting at the New York FBI Office to discuss the Cole investigation. The planned participants for the New York meeting included personnel from FBI Headquarters, the CIA's CTC, and the New York FBI agents working on the Cole investigation. FBI documents show that Donna began organizing the meeting as early as May 24.

There was no record of an agenda for the meeting, and no supervisors were involved in the preparation for this meeting or were consulted regarding what should be accomplished at the meeting. Donna told the OIG that she organized the meeting in an effort to consolidate information and determine what further action was warranted on the Cole investigation. She stated that the purpose of the meeting at the New York FBI Office was to address unresolved issues and produce additional leads or other activities focusing on

the Cole investigation. According to a May 24 e-mail by Donna, the meeting was "to discuss our direction, particularly as it relates to Nashiri."[224]

Donna stated that she planned to take the Kuala Lumpur photographs with her to New York to find out whether the New York FBI Cole agents, who had met and debriefed Quso, could identify him in the photographs. She said that if Quso was in the photographs, the FBI would have reason to question Quso's statement that he had not gone to Malaysia but had met Khallad in Bangkok instead.

Sometime after obtaining the Kuala Lumpur photographs from John, Donna queried CTLink for the name Khalid al-Midhar [sic], which John had provided to her and which she had noted on the back of one of the photographs.[225] In CTLink she discovered the NSA information from late 1999 and early 2000 referencing Mihdhar's planned travel to Malaysia and Mihdhar's association with a suspected terrorist facility in the Middle East linked to al Qaeda activities. She also queried ACS about Mihdhar but did not obtain any additional information about him.

Mary, an FBI detailee to the Bin Laden Unit who worked as a CTC desk officer, also attended the June 11 meeting, as did Peter, the CTC analyst. According to Mary, Donna invited her to the meeting and told her the meeting was intended for information sharing and as a "brainstorming session" concerning the Cole investigation. Mary told the OIG she had recently been given the assignment by CTC management of "getting up to speed" in her spare time on the Malaysia meetings and determining any potential connections between the Malaysia meetings and the Cole attack. Mary said that she had not yet begun reviewing the Malaysia meetings at the time of Donna's invitation.

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[224] Abdul Rahim al-Nashiri was al Qaeda's chief of operations in the Persian Gulf and was suspected to have been involved in the attack on the Cole. According to Donna, at the time he was believed to be the "on-scene commander" for the Cole attack, and the IOSs had been assigned the task of trying to locate him based on the intelligence reporting on him. He has since been arrested outside the United States.

[225] CTLink is a database administered by the CIA and used to disseminate information within the Intelligence Community.

According to Peter, the meeting was also described to him as an "information sharing and brainstorming session" to determine whether any further leads should be pursued. Peter said that he heard about the meeting from Mary and contacted Donna about attending because he was interested in learning what the New York FBI agents had uncovered in their investigation of the Cole attack.

According to FBI personnel in New York, Donna told them that FBI Headquarters and CIA personnel had indicated they had "information to share" regarding the Cole investigation. The FBI New York personnel anticipated the meeting would be a mutual exchange of information. Scott, one of the New York case agents on the Cole investigation, said he was told that the CIA representatives who would be attending the meeting wanted a briefing on the Cole investigation. On his own initiative, Scott arranged for David Kelley, an AUSA from the SDNY who was assigned to the Cole matter, to discuss with the CIA representatives other issues related to the Cole investigation, one of which was the impact on the prosecution if some of the targets of the Cole investigation were captured or detained outside the United States.

b. The June 11 meeting

On June 11, the meeting was held in a conference room at the FBI's New York Field Office. We could not determine with certainty all the participants at the meeting. There was no list of attendees, and the witnesses could not recall exactly who was there. However, we confirmed that Donna, Mary, Peter, Scott, and another New York agent assigned to the Cole investigation who we call "Randall," attended. AUSA Kelley attended for part of the meeting. Although it was unclear exactly how long the meeting lasted, the witnesses said it lasted between two and four hours.

In interviews with the OIG, the attendees said they did not recall the specifics of what was discussed at the meeting. The only contemporaneous notes from the meeting that we were able to obtain were Donna's. Her notes indicate that the latest developments in the Cole investigation were discussed. The second page of the notes is labeled "to do" and referenced several items.

Randall said he recalled that at the beginning of the meeting, Scott gave an update of the results and status of the investigation. Mary said she recalled that the attendees "brainstormed" various issues, but she did not recall any

significant ideas being developed during the meeting. Peter said he recalled that the New York agents "railed" about the U.S. Ambassador to Yemen and the lack of cooperation they believed they were receiving from the Yemeni government. At some point during the meeting, AUSA Kelley discussed the feasibility of prosecution in the Cole case.

Toward the end of the meeting, Donna produced the three Kuala Lumpur surveillance photographs and asked the agents if they recognized Quso in any of the photographs. Donna said she told the agents that the photographs had been taken in Malaysia around the Millennium. Donna said she provided Khalid al Mihdhar's name to at least some of the agents present. A New York agent tentatively identified one of the pictured individuals as Quso, but he could not make a definitive identification.[226] The witnesses' accounts of what happened next differ.

Scott told the OIG that after reviewing the Kuala Lumpur photographs, the FBI agents began to ask questions, such as whether there were additional photographs or information concerning the background on the photographs, including questions about Mihdhar, who was in the photographs. According to Scott, he pressed Donna and Peter for details of the Malaysia meetings. Scott told the OIG he was interested in the fact that the photographs were from Malaysia because from the Quso's debriefings he knew that Khallad had planned to meet Quso in Malaysia, and any information linking Khallad to Malaysia was "directly related" to the Cole investigation.

Scott contended that Donna "refused" to provide any further information about the photographs or the Malaysia meetings due to "the wall." Scott told the OIG that he previously had numerous conversations about the wall with Donna, which had been an issue between them. He stated that during this June 11 meeting, he disputed that the wall was applicable to the information at hand because the photographs had not been obtained as the result of a FISA Court order, and he continued to press Donna for more information. Scott said the meeting degenerated into an argument about the wall.

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[226] Only a limited number of New York agents had actually met Quso. The others had only seen photographs of him.

In his initial OIG interview, Scott described the meeting as very contentious and combative.[227] In a second OIG interview, although Scott did not characterize the meeting as having the same level of combativeness, he contended that he pressed Donna for more information but none was forthcoming. Scott stated he had heated telephone conversations and e-mail exchanges with Donna over this issue after the June 11 meeting.

Donna, Mary, and Peter described the showing of the Kuala Lumpur photographs as a sidebar to the main meeting and generally inconsequential. All three asserted that neither the display of the surveillance photographs nor the meeting overall was contentious. Although Donna agreed that the FBI agents asked further questions regarding the origin of the photographs and asked for additional information regarding the Malaysia meetings, she contended that she responded simply by saying she did not know anything further. She told the OIG that these questions made sense to her when they were asked, but she did not know the answers. She stated that someone asked what kind of passport Mihdhar was traveling on, and Peter responded that it was a Saudi passport.[228] According to Donna, she had not known this information prior to Peter stating it. Donna told us that this was the only information volunteered by Peter, and she believed he would have provided additional information if he knew it.

Peter told the OIG that he was not asked any questions at the June 11 meeting, he had no formal role, and he did not brief anyone on anything at the June 11 meeting. Peter explained that it is not within his purview or authority as an analyst to share CIA information. He said he did not recall the meeting becoming heated or contentious. He said he did not recall any time during the

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[227] When we asked Scott whether an intelligence-designated agent could have been provided the information outside the presence of the criminal agents, Scott agreed that could have been done, but he did not think of it at the time and no one else suggested it. During his subsequent testimony before the Joint Intelligence Committee, however, Scott said that the wall must not have been at issue because the criminal agents could have just left the room and any information could have been related to an intelligence agent.

[228] Donna's contemporaneous notes reflect this information. It appears as the last entry on the notes, indicating that this was discussed at the end of the meeting.

meeting where Donna said, "I can't answer that question" or directly refused to answer a question.[229]

Mary stated that she had not been "up to speed" on the case at this time, so she was not in a position to provide information at the meeting. She stated that she and Peter were not asked any questions during the meeting. She said that she did not recall any serious disagreements arising during the meeting.

According to Donna, she remained in New York after the meeting, without Peter and Mary, and she continued the discussions with the New York agents regarding the photographs after the meeting. She said that these subsequent conversations became fairly "heated," as the agents pressed her with questions such as whether there were additional photographs and any documentation about the photographs.[230]

Donna told the OIG she had provided to the agents all the information she had received from the CIA regarding the photographs. She told us that all she knew was that these three photographs were taken in Malaysia around the Millennium, and one of the persons in the photographs was someone named Khalid al Mihdhar. Donna stated she advised the agents of this and told them that efforts would be made to obtain the requested information. She said she was not aware that there would have been additional information to provide. She added that she recalled having the impression that the agents did not believe her when she said that she did not have the information about the photographs that the agents were requesting.

As discussed earlier, however, Donna had additional NSA information about Mihdhar that she had discovered through her CTLink query. The information related to the planned travel to Malaysia of several members of an "operational cadre" and Mihdhar's association with a suspected terrorist facility in the Middle East linked to al Qaeda activities. Donna told us that she

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[229] As described earlier, Peter and John had exchanged several e-mails about the Malaysia meetings and the photographs. However, it is unclear based upon the information available to us exactly what Peter knew at this point. He said he was unable to remember exactly what additional information he had on June 11, 2001.

[230] We believe it likely that the agents were confusing the post-meeting discussions with the showing of the photographs at the meeting.

could not provide this information directly to the agents working the Cole criminal investigation due to the caveat, which prevented all NSA counterterrorism-related intelligence information from being provided to FBI criminal agents without approval from the NSA.[231]

Donna told us that the New York FBI primarily worked criminal terrorism investigations and the sharing of intelligence information with the criminal agents was often an issue. She said that some of the New York agents had become "overly sensitive" about a perceived lack of information sharing. Donna emphasized that any information could be shared but often a process had to be followed before certain intelligence information could be shared with agents working criminal investigations. She added that it was not her job to keep information from the agents but instead to ensure they had the tools necessary to do their job.

According to Donna, the only issue regarding the Kuala Lumpur photographs would have been obtaining permission from the CIA to allow individuals outside of the FBI to see the photographs in furtherance of the Cole investigation, such as in interviews conducted in Yemen.[232] Donna said at some point while she was in New York, she and the agents discussed providing the photographs to the agents working in Yemen in order to get a positive identification of Quso in the photographs and to conduct further investigation.[233] She stated that she told the agents that she would attempt to obtain the requisite permission to provide the photographs to the agents working the Cole investigation in Yemen.

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[231] It is important to note, however, that this NSA information originally had been routed not only to FBI Headquarters but also to the New York FBI Office in late 1999 and early 2000.

[232] A policy in the Intelligence Community, which is designed to protect intelligence sources and methods, is that the originator of intelligence information controls the further dissemination of the information. This policy is described as originator controlled, or "ORCON." Dissemination of ORCON information requires permission from the originating agency to further disseminate the information outside the receiving agency.

[233] Apparently unbeknownst to the involved FBI and CIA personnel, the Yemeni authorities already had been given the photographs on January 3, 2001, six months before anyone at the FBI received the photographs.

Although she had no explicit discussion with John regarding the use of the photographs, Donna stated she understood that the photographs were "not formally passed" to the FBI when John gave them to her, but only provided for limited use in the meeting. Therefore, Donna said she did not believe that she could leave the photographs with the New York agents until the requisite permission to show the photographs outside of the FBI had been obtained.

However, John told the OIG that that since the photographs had been given to Donna, an FBI employee, they could be further distributed within the FBI. John agreed that the photographs could not be used by the FBI in any manner where they would be disclosed to a foreign government. For example, he said that without approval from the CIA, the FBI agents could not keep the photographs and show them to Quso, who was in Yemeni custody, because Yemeni officials also would see the photographs.

c. Follow-up after the June 11 meeting

We looked for evidence as to whether Donna or the New York agents conducted any follow-up efforts about the Kuala Lumpur photographs or obtaining permission from the NSA to pass the intelligence information to the New York agents. Donna said that she "probably" had follow-up conversations with John, Peter, and Mary about the photographs, but she did not specifically recall the conversations or obtaining additional information. Mary told the OIG that she recalled conversations with Donna about obtaining permission for the FBI to use the photographs of the Malaysia meetings in their investigation.

Donna stated she was not contacted by Scott after the meeting, although she was working with another agent on the squad, who we call "Glenn," in connection with tracking telephone toll records. Those records related to the Cole participants, the travel of Quso to Bangkok, and Quso's potential travel to Malaysia.

According to Scott, over the course of the summer, he had several more conversations with FBI Headquarters asking about any additional information on the Kuala Lumpur photographs, but he was not provided any additional information. He stated that he did not seek assistance from any supervisor in obtaining additional information. He told us that he and the rest of the New York Field Office had been fighting a battle with FBI Headquarters over

information sharing for months, and he was "dumbfounded" that he could not obtain the information about the Kuala Lumpur photographs. He stated that in hindsight he probably should have sought the intervention of a supervisor.

Documentary evidence shows that, as a result of the June 11 meeting, Donna and the New York agents discussed the Kuala Lumpur photographs in several follow-up conversations. In an e-mail dated August 22 from Donna to Glenn, she wrote that there were additional photographs of the Malaysia meetings and that the reason that Mihdhar was of interest at the time was because of some threat information that led to the CIA looking at all persons named "Khalid." In addition, she wrote that she had received assurances that the FBI would be able to use the Kuala Lumpur photographs outside the FBI. We discuss this e-mail in further detail in the next section.

Documents also show that on August 27 Donna requested permission from the NSA to provide the intelligence information about Mihdhar to the New York Cole criminal agents. However, this request came after the FBI had discovered on August 22 that Mihdhar might be in the United States and had opened an investigation to determine whether he was in the country. We discuss the events that led to that investigation and the investigative efforts of the FBI in the next section of the report.

4. OIG conclusions on May and June discussions

While there were several interactions between FBI and CIA personnel in May and June 2001 that could have resulted in the FBI learning more about the Kuala Lumpur photographs and Mihdhar, the FBI personnel did not become aware of significant intelligence information about Mihdhar and Mihdhar's connections to Khallad. The fact that Mihdhar had possessed a United States visa was not disclosed at this time by the CIA to Donna or the FBI. The fact that Hazmi had been at the Malaysia meeting and then traveled to Los Angeles also was not disclosed by the CIA. In addition, the fact that the source had identified Khallad, the purported mastermind of the Cole bombing, from the Kuala Lumpur surveillance photographs was not disclosed during these interactions.

Although Donna knew about the Kuala Lumpur surveillance photographs, we do not believe that she was informed that Mihdhar had a U.S. visa or that Khallad had been identified in the photographs. Donna's

contemporaneous notes on the back of the Kuala Lumpur photographs reflect the limited information that she had obtained about the photographs and the Malaysia meetings. The notes do not mention anything about Mihdhar's possession of a U.S. visa. In addition, Donna stated that she was aware of the significance of Khallad to the Cole investigation, but the notes on the photographs also do not mention Khallad. Moreover, John, who provided the photographs to Donna, told the OIG he did not recall discussing the Kuala Lumpur photographs with her, and he did not believe that he would have discussed with Donna that Khallad had been identified in the photographs, because at the time he was not sure that this was true and he thought the information was "speculative." Although an e-mail message indicated that Peter was planning to discuss the Khallad identification with Donna in a meeting on May 29, we were unable to determine that this meeting actually occurred.

It was impossible for us to determine exactly what happened at the June 11 meeting with respect to the Kuala Lumpur photographs because the witnesses cannot recall the specifics of the discussions and there is little documentary evidence. It is clear, however, that the information regarding Mihdhar's U.S. visa and the fact that Khallad had been identified in the Kuala Lumpur photographs was not discussed at the June 11 meeting.

Donna told the agents about the photographs and provided them limited information that she had obtained from the CIA about the photographs. Most of the questioning about the photographs took place after the meeting, when Peter and Mary had left. We believe those interactions after the meeting became very contentious, with the New York FBI wanting more information. Donna did not provide the New York agents with the NSA intelligence information about the Mihdhar's association with a suspected terrorist facility in the Middle East linked with al Qaeda activities, which she obtained through her research. She said she did not because of the restrictions placed on sharing such NSA information. As we discuss further in the next section, Donna subsequently contacted the NSA in reference to having the NSA information passed to the agents, but this did not occur until much later, on August 27, 2001.

We found little attempt by either the FBI agents or Donna after June 11 to follow up on the information about the photographs that was discussed at the meeting. There is little evidence of follow-up until some time in August 2001,

when, as we discuss in the next section, the FBI learned that Mihdhar had recently entered the United States, and the FBI opened an investigation to locate him.

The interaction between the CIA and the FBI in May and June 2001 was another failed opportunity for the FBI to obtain the critical information about Mihdhar and Khallad. The failure of the FBI to learn about Mihdhar, his connection to Khallad, and his travel to the United States at that time demonstrated significant problems in the flow of information between the CIA and the FBI. We discuss these deficiencies in the analysis section of this chapter.

E. The FBI's efforts to locate Mihdhar in August and September 2001

The fifth and final opportunity for the FBI to locate Mihdhar and Hazmi occurred in late August 2001, when it was informed that Mihdhar and Hazmi had traveled to the United States. The FBI learned in August 2001 that Mihdhar had entered the United States in July 2001 and that Mihdhar and Hazmi had previously traveled together to the United States in January 2000. On August 29, the FBI began an investigation to locate Mihdhar, but it did not assign great urgency or priority to the investigation. The New York FBI criminal agents who wanted to participate in the investigation were specifically prohibited from doing so because of concerns about the wall and the procedures to keep criminal and intelligence investigations separate. The FBI did not locate Mihdhar before the September 11 attacks.

We review the facts surrounding the FBI's discovery of this information about Mihdhar and Hazmi and what the FBI did with this information in August. We also examine the FBI's unsuccessful efforts to locate Mihdhar before the September 11 attacks.

1. Continuing review of the Malaysia meetings in July and August 2001

As discussed above, John, the CIA Bin Laden Unit Deputy Chief, was detailed to the FBI's ITOS in May 2001. Shortly before assuming his duties at the FBI, John had asked CTC management to assign a CTC desk officer with "getting up to speed" on the Malaysia meetings and determining any potential

connections between the Malaysia meetings and the Cole attack. This assignment was given to Mary. She told the OIG that "getting up to speed" meant she would have to research and read the pertinent cable traffic as her schedule permitted. She emphasized that her priority assignment during this period was the credible threats of an imminent attack on U.S. personnel in Yemen, and she said that she worked the Malaysia meetings connections to the Cole attack whenever she had an opportunity.

In early July 2001, based on recent intelligence information, the CIA had concerns about the possibility of a terrorist attack in Southeast Asia. On July 5, 2001, John sent an e-mail to managers at the CTC's Bin Laden Unit noting "how bad things look in Malaysia." He wrote that there was a potential connection between the recent threat information and information developed about the Malaysia meetings in January 2000. In addition, he noted that in January 2000 when Mihdhar was traveling to Malaysia, key figures in the failed attack against the *U.S.S. The Sullivans* and the subsequent successful attack against the *U.S.S. Cole* also were attempting to meet in Malaysia, and that one or more of these persons could have been in Malaysia at that time. Therefore, he recommended that the Cole and Malaysia meetings be re-examined for potential connections to the current threat information involving Malaysia. He wrote, "I know your resources are strained, but if we can prevent something in SE Asia, this would seem to be a productive place to start." He ended the e-mail by stating that "all the indicators are of a massively bad infrastructure being readily completed with just one purpose in mind."

On July 13, John wrote another e-mail to CTC managers stating that he had discovered the CIA cable relating to the source's identification of "Khallad" from the Kuala Lumpur surveillance photographs in early January 2001. John began the e-mail by announcing "OK. This is important." He then described Khallad as a "major league killer who orchestrated the Cole attack and possibly the Africa bombings." The e-mail recommended revisiting the Malaysia meetings, especially in relation to any potential information on Khallad. Significantly, John ended the e-mail asking, "can this [information] be sent via CIR to [the FBI]?"

Despite John's recommendation that this information be forwarded to the FBI in a CIR, we found no evidence indicating that the CIA provided this information to the FBI until August 30, 2001, which, as we describe below, was after the FBI learned about Mihdhar's presence in the United States.

In a response e-mail dated July 13, 2001, a CTC Bin Laden Unit supervisor stated that Mary had been assigned to handle the request for additional information on the Malaysia meetings. In addition, the e-mail stated that another FBI detailee to the CTC, Dwight, who was out of the office at the time, would be assigned to assist Mary upon his return.

Later in July, Mary drafted a cable to another CIA office requesting follow-up information about the Malaysia meetings. The cable included a reference to the source's identification of Khallad in one of the Kuala Lumpur photographs and that Khallad and Mihdhar had been in Malaysia at the same time, possibly together. A week later, the CTC supervisor forwarded the cable to John for his review prior to release, and the cable was sent to the office to which it was addressed three days after that.

On the same day she drafted the cable referencing the source's identification of Khallad, Mary located one of the CIA cables referencing Mihdhar's possession of a U.S. visa. On the same date, Mary also reviewed the CIA cable that stated this visa information had been passed to the FBI in January 2000.[234]

In early August, Mary and Donna continued to discuss the Kuala Lumpur photographs. In an e-mail on August 7 from Donna to Mary, Donna requested a copy of the flight manifest for Mihdhar's January 2000 trip to Malaysia in order to determine whether Quso had traveled with Mihdhar. She also asked, "if we could get the pictures cleared to show Al-Quso."[235] She continued, "the reasoning behind this would be that first, we do not have a concensous [sic] that the individual with Midhar [sic] is in fact Al-Quso . . . [second] to determine if Al-Quso can identify Midher by an other [sic] name." Donna then discussed her continuing efforts to track telephone number information developed in the investigation. At the close of the e-mail, Donna wrote, "I plan to write something up, but perhaps we should schedule another sit down to compare notes on both sides. Let me know."

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[234] As discussed above, we found no evidence that this information had, in fact, been provided to the FBI.

[235] Apparently the desk officer was unaware that clearance had been received and that the photographs had been shared with Yemeni officials.

In a response e-mail on the same date, Mary wrote, "okay, all sounds good." Mary also wrote that she thought Donna had Mihdhar's flight manifest because John had mentioned it, but Mary indicated she would find the manifest. She wrote, "I think we will be able to clear the pictures, they are for passage to Quso, right?" Mary also asked whether the FBI would be able to meet with Quso again. Mary ended the e-mail, "I think a sit down again would be great" and mentioned the potential logistics of arranging the meeting.

In another e-mail exchange on August 7, Donna thanked Mary and advised her that the FBI would again have access to Quso. Donna continued by stating that the Kuala Lumpur photographs also would be passed to a foreign government because Quso was currently in its custody. She stated that John could call if he had any questions. Donna tentatively scheduled a meeting with Mary at FBI Headquarters on August 15, 2001. However, it appears that the meeting did not take place.[236]

2. Discovery of Mihdhar's entry into the United States

On August 21, Mary located the CIA cables referencing Hazmi's travel to the United States on January 15, 2000.[237] Mary checked with a U.S. Customs Service representative to the CTC about Hazmi's and Mihdhar's travel. She discovered that Mihdhar had entered the United States on July 4, 2001, and had not departed. In addition, she confirmed that Hazmi had traveled to the United States in January 2000.

Mary immediately relayed to Donna in a voicemail message on August 21 that Mary had something important to discuss with her. Donna was on annual leave on August 21. Mary told the OIG she did not have an

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[236] Mary told the OIG that she took a week of annual leave during August, which she thought was during that week, and she thought that the meeting therefore had not occurred. Although the e-mail references a meeting, Mary and Donna both told us that they had no recollection of any meeting on August 15 or any one prior to August 22.

[237] Mary was copied on an e-mail from John to Peter in mid-May, 2001, in which John discussed the travel of Mihdhar and others who appeared to be "couriers on a sort." In this e-mail John stated, among other things, that "Nawaf" [Hazmi] had traveled with someone from Bangkok to Los Angeles to Hong Kong. Mary stated to the OIG that she received this e-mail before she was "up to speed" on the Malaysia meetings.

opportunity to focus on the Malaysia meetings until August, but upon discovering on August 21 that Hazmi had traveled to the United States "it [the importance of the information] all clicks for me."

On August 22, Mary met with Donna at FBI Headquarters and informed her of Mihdhar's July 4 entry and Hazmi's travel to the United States in March 2000.[238] Donna verified in INS indices Mihdhar's recent entry. She also learned that both Mihdhar and Hazmi had entered the United States on January 15, 2000, and that they were allegedly destined for the Sheraton Hotel in Los Angeles, California. The INS records showed Mihdhar had departed the United States from Los Angeles on June 10, 2000, on Lufthansa Airlines. No departure record could be located for Hazmi. An INS representative advised Donna that departure information often was not captured in INS indices.[239] Therefore, she incorrectly surmised Hazmi had also departed on June 10, 2000.[240]

Further INS indices checks confirmed Mihdhar had re-entered the U.S. on July 4, 2001, at the JFK Airport in New York, allegedly destined for the "Marriott hotel" in New York City. By the terms of his entry, Mihdhar was authorized to remain in the United States until October 3, 2001. The INS had no record indicating Mihdhar had departed the United States as of August 22, 2001.

Mary and Donna met with John on August 22 in his office at FBI Headquarters to discuss their discovery that Mihdhar recently had entered the United States and there was no record of his departure. All of them said they could not recall the specifics of the conversation, but all agreed that they

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[238] There is some discrepancy in witness statements on whether this meeting occurred on August 22 or August 23. Although it is unclear on which date this meeting occurred, we believe the meeting occurred on August 22, 2001.

[239] The problem of INS departure records not being complete or accurate is described in an August 2001 OIG report entitled "The Immigration and Naturalization Service's Automated I-94 System."

[240] Investigation conducted after September 11 found that Hazmi had remained in the United States.

realized it was important to initiate an investigation to determine whether Mihdhar was still in the United States and locate him if he was.

On August 22, 2001, Donna sent an e-mail to the New York FBI Special Agent who we call "Glenn." He was one of the agents assigned to the Cole investigation. In the e-mail, Donna advised Glenn that she had obtained Mihdhar's flight manifest. Donna also wrote, "the reason they [the intelligence community] were looking at Midhar [sic] is relatively general – basically they were looking at all individuals using the name Khalid because of some threat information." Significantly, the e-mail also advised that the CIA had additional surveillance photographs beyond those she had taken to New York, and the source had identified one of the individuals in these additional photographs as Khallad. Donna said that she was "requesting the details on that [Khallad's identification]." Donna also stated in her e-mail that the clearance to show the Kuala Lumpur surveillance photographs to Quso should not be a problem.[241]

This e-mail was the first reference we identified that the FBI had been informed of additional Kuala Lumpur surveillance photographs in the CIA's possession. It is also the first reference in any FBI document to the identification of Khallad in the Kuala Lumpur photographs.

After her meeting with Donna on August 22, 2001, Mary asked another CTC officer to draft a CIR to the State Department, INS, U.S. Customs Service, and FBI requesting the placement of Mihdhar and his travel companions, Hazmi and Salah Saeed Muhammed bin Yousaf, on U.S. watchlists.[242] The CIR briefly outlined Mihdhar's attendance at the Malaysia meetings and his subsequent travel to the U.S. in January 2000 and July 2001. On August 24, the State Department placed Mihdhar and his travel companions

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[241] Donna was unable to recall how she first discovered the information on the Khallad identification. We were unable to find any documents or other evidence clarifying this issue.

[242] At this time, several agencies maintained separate watchlists. The State Department watchlist was the VISA/VIPER system. Within VISA/VIPER, the TIPOFF system focused on suspected terrorists. The INS maintained the LOOKOUT system, which was also available to the Customs Service through TECS.

on its terrorism watchlist. This is the first record of the placement of Mihdhar or Hazmi on any U.S. watchlist.

On August 23, 2001, Donna contacted the State Department and requested a copy of Mihdhar's most recent visa application from the U.S. Consulate in Jeddah, Saudi Arabia.

3. The FBI's intelligence investigation on Mihdhar

a. Steps to open the investigation

On August 23, Donna contacted her supervisor, an SSA who we call "Rob," regarding the information about Mihdhar's travel to the United States. As discussed in Chapter Three, Rob was the acting Unit Chief of the UBLU at the time.[243]

After reviewing the information, Rob concurred with Donna that the appropriate course of action would be to open an intelligence investigation in New York, Mihdhar's last known destination in the United States, to locate Mihdhar.

To expedite the investigative process and provide a "heads up [alert]" to the New York Field Office that the information was coming, on August 23 Donna telephoned an agent on the Bin Laden squad in the New York Field Office who we call "Chad." To comply with the wall, the New York Field Office had designated agents as either "criminal" or "intelligence," and Chad was an intelligence agent. Donna discussed with Chad Mihdhar's most recent entry into the United States and FBI Headquarters' request for the New York office to open a full field intelligence investigation to locate Mihdhar. Donna told the OIG that she did not normally telephonically contact the field on these types of issues, but there was some urgency to her request because the FBI did not want to lose the opportunity to locate Mihdhar before he left the United States. She told us, however, that Mihdhar's significance continued to be his potential connection to Khallad and the Cole attack – not that he was operational in the U.S.

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[243] He was the acting Unit Chief of the UBL from June 28, 2001, until September 10, 2001.

Chad told the OIG that although he routinely worked with Donna, this was the first time that Donna had relayed a need for urgency in an intelligence investigation. Chad told us, however, that he questioned both the urgency and the need for a separate intelligence investigation. Chad explained that the attempt to locate Mihdhar seemed to relate to the criminal investigation of the Cole attack, and efforts to locate an individual normally would be handled through a sub-file to the main investigation and not as a separate full field investigation. Nevertheless, he told Donna that New York would open an intelligence investigation.

On August 23, Donna sent an e-mail to John concerning her telephone conversation with Chad. She advised in the e-mail that "[Chad] will open an intel[ligence] case." In the e-mail she also discussed a connection that had been made between Mihdhar in Malaysia to another suspect in the Cole attack. She wrote, "I am still looking at intel, but I think we have more of a definitive connection to the Cole here than we thought." She ended by stating that she was working on the EC requesting a full field investigation, but doubted that it would be completed that day.

On August 27, Donna requested permission through the NSA representative to the FBI to pass to the FBI agents working on the Cole investigation the information associating Mihdhar with a suspected terrorist facility in the Middle East linked to al Qaeda activities. Donna told the OIG that she thought that the NSA information on Mihdhar could be useful to the Cole criminal investigators, even if the Mihdhar search remained an intelligence investigation.

On the morning of August 28, Donna sent Chad a draft copy of an EC requesting the intelligence investigation to locate Mihdhar. In the cover e-mail, Donna stated, "here is a draft" and that the EC had not been uploaded due to some tear line information that was not yet approved for passage.[244] She concluded, "I do want to get this going as soon as possible."

The EC, entitled "Khalid M. Al-Mihdhar" with various aliases, stated in the synopsis, "Request to open an intelligence investigation." The EC outlined Mihdhar's travel to the United States in July 2001, his previous travel to the

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[244] According to the NSA, the request was approved later that same day.

United States with Hazmi in January 2000, the background on and his attendance at the Malaysia meetings, his association with a suspected terrorist facility in the Middle East linked to al Qaeda activities, and similarities between Mihdhar's travel and that of Cole suspects Quso, Ibrahim Nibras, and Khallad. As to the identification of Khallad in the Kuala Lumpur photographs by the source, Donna told the OIG that she did not include this information because it had not yet been officially passed to the FBI, although she had requested the passage from a CTC Representative to the FBI.[245]

While Donna had relayed urgency to opening the investigation in her telephone conversation with Chad and in her cover e-mail, she designated the EC precedence as "routine," the lowest precedence level.[246] She explained this by saying this case was "no bigger" than any other intelligence case. She also told us, however, that there was a time consideration because Mihdhar could be leaving the United States at any time and that is why she had personally contacted Chad.

b. The FBI opens the intelligence investigation

On August 28, Chad forwarded Donna's draft EC to his immediate supervisor, a Supervisory Special Agent who we call "Jason." Jason became a supervisor on the JTTF in the New York Field Office in 1996. He had been on the New York JTTF since 1985.

At approximately 2:00 p.m. on August 28, Jason forwarded the EC to various agents on the Bin Laden squad, including the Cole criminal case agent who we call "Scott." In the cover e-mail, Jason directed the Relief Supervisor, who we call "Jay," to open an intelligence investigation and assign it to a Special Agent who we call "Richard." Jason also directed another agent to

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[245] This information officially was passed to the FBI in a CIR on August 30, 2001.

[246] As discussed in Chapter Three, ECs are marked with a precedence level based on an escalating scale beginning at "routine;" "priority," connoting some urgency; and "immediate," connoting the highest level of urgency.

check on an investigative lead related to Mihdhar while the agent was in Malaysia.[247]

Scott received the EC on August 28. Scott, who had been at the June 11 meeting and had discussions with Donna about the Kuala Lumpur photographs, contacted Donna to discuss the appropriateness of opening an intelligence investigation as opposed to a criminal investigation. Donna told the OIG that when she realized that the EC had been disseminated to Scott, she asked Scott to delete it because it contained NSA information and therefore required approval for review by criminal agents. Scott told the OIG that he deleted the EC as she requested.

Shortly thereafter, Scott, Donna, and Rob engaged in a conference call to discuss whether the case should be opened as a criminal instead of an intelligence investigation. Scott told the OIG that he argued that the investigation should be opened as a criminal investigation due to the nexus to the Cole investigation and the greater investigative resources that could be brought to bear in a criminal investigation. Scott explained that more agents could be assigned to a criminal investigation due to the squad designations. He also asserted that criminal investigation tools, such as grand jury subpoenas, were far quicker and easier to obtain than the tools available in an intelligence investigation, such as a national security letter.

Donna told the OIG that the information on Mihdhar was received through intelligence channels and, because of restrictions on using intelligence information, could not be provided directly to the criminal agents working the Cole investigation. The only information that could be provided directly to them was the limited INS information. She stated that without the intelligence information on Mihdhar, there would have been no potential nexus to the Cole investigation and no basis for a criminal investigation. Rob told the OIG he had concurred with Donna's assessment that the matter should be an intelligence investigation. He added that there was also a process through

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[247] Jason told the OIG that he did not specifically recall this e-mail. He said he was out of the office the majority of the time from June until September 11, 2001, due to a serious medical condition, and he did not return to work full-time until September 11, 2001.

which the information could potentially be shared with the criminal agents in the future.[248]

Scott was not satisfied with that response, and he asked for a legal opinion from the FBI's National Security Law Unit (NSLU) whether the investigation should be opened as a criminal matter relating to the Cole criminal investigation. Additionally, Scott wanted a legal opinion on whether a criminal agent could accompany an intelligence agent to interview Mihdhar if he was located.

According to Donna, she subsequently contacted the NSLU attorney who we call "Susan" on August 28, and she and Rob discussed the issue with Susan. It is unclear how she presented the matter to Susan because there were no documents about the conversation and she and Susan had little or no recollection of the specific conversation. Donna told the OIG that she provided the EC to Susan. According to Donna, Susan agreed with her that the matter should be opened as an intelligence investigation. Donna said Susan also advised that a criminal agent should not be present for an interview of Mihdhar if he was located. During an OIG interview, Susan said she could not specifically recall this matter or the advice she gave. Rob told the OIG that he did not recall the specifics of this consultation, but he stated that the NSLU opinion was supportive of FBI Headquarters' determination that the case should be opened as an intelligence investigation.

At approximately 7:30 a.m. on August 29, Donna sent an e-mail to Jason, which stated:

> I think I might have caused some unnecessary confusion. I sent the EC on Al-Midhar [sic] to [Chad] via email marking it as DRAFT so he could read it before he went on vacation. There is material in the EC...which is not cleared for criminal investigators. [Scott] called and [Rob] and I spoke with him and tried to explain why this case had to stay on the intel. side of the house...In order to be confident...for this case to be a 199,

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[248] Rob told the OIG that the squad's Supervisory Special Agent acted as "the wall" between intelligence and criminal investigations during this period, and Jason could subsequently open a criminal investigation if warranted.

> and to answer some questions that [Scott] had, [Rob] and I spoke with the NSLU yesterday afternoon[249]...The opinion is as follows: Al-Mihdar [sic] can be opened directly as a FFI [Full Field Investigation]...The EC is still not cleared for criminal investigators...Per NSLU, if Al-Mihdar [sic] is located the interview must be conducted by an intel agent. A criminal agent CAN NOT be present at the interview. This case, in its entirety, is based on intel. If...information is developed indicating the existence of a substantial federal crime, that information will be passed over the wall according to the proper procedures and turned over for follow-up criminal investigation.[250]

Approximately 15 minutes after sending the e-mail to Jason, Donna sent an e-mail to Scott with the same language advising that the NSLU agreed the investigation should be an intelligence investigation and a criminal agent could not attend the interview if Mihdhar was located. That same morning, Scott responded in an e-mail to Donna stating:

> ...where is the wall defined? Isn't it dealing with FISA information? I think everyone is still confusing this issue...someday someone will die – and wall or not – the public will not understand why we were not more effective and throwing every resource we had at certain 'problems.' Let's hope the National Security Law Unit will stand by their decisions then, especially since the biggest threat to us now, UBL, is getting the most 'protection'.

Later that morning, Donna replied in an e-mail:

> I don't think you understand that we (FBIHQ) are all frustrated with this issue. I don't know what to tell you. I don't know how many other ways I can tell this to you. These are the rules.

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[249] Rob told the OIG that he could not recall whether he had talked to anyone from the NSLU about this issue.

[250] Rob told the OIG that the New York Field Office technically could have ignored Headquarters' recommendation and opened a criminal investigation. However as a practical matter, the field would not normally ignore Headquarters' decision.

NSLU does not make them up and neither does UBLU. They are in the MIOG[251] and ordered by the [FISA] Court and every office of the FBI is required to follow them including FBINY...

4. The New York Field Office's investigation

On August 29, 2001, the FBI's New York Field Office opened a full field intelligence investigation to locate Mihdhar. The investigation was assigned to a Special Agent who we call "Richard." Richard was a relatively inexperienced agent, who had recently been transferred to the Bin Laden squad.[252] This was Richard's first intelligence investigation.

On August 29, Donna received Mihdhar's visa application from the U.S. Consulate in Jeddah. The application indicated that Mihdhar planned to travel as a tourist to the United States on July 1, 2001, for a purported month long stay. On the application, Mihdhar falsely claimed that he had not previously applied for a U.S. non-immigrant visa or been in the United States.[253]

On August 30, 2001, Donna sent an e-mail to Richard. After a paragraph introducing herself, Donna advised she was attaching Mihdhar's visa application form, which included Mihdhar's photograph, and that she would be faxing the remaining documents. Donna stated she would send a couple of pages from the Attorney General Guidelines "which apply to your case" and then she would mail the documents.

Richard told the OIG that on August 30, he received a telephone call from Donna in reference to the investigation. He said that Donna said the goal of the intelligence investigation was to locate and identify Mihdhar for a

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[251] The MIOG is the FBI operational manual - Manual of Investigative Operations and Guidelines. Donna asserted this reference actually related to the Attorney General's FCI Guidelines that are contained in the MIOG.

[252] Richard began working in the New York Field Office after graduating from the FBI Academy in June 2000. After serving briefly on an applicant squad, a drug squad, and a surveillance squad, Richard was assigned to the UBL squad in July 2001.

[253] Donna said she did not notice this discrepancy. As we discuss below, neither did the New York FBI.

potential interview. According to Richard, Donna did not indicate the investigation was an emergency or identify any other exigent circumstance.

On August 30, 2001, the CIA sent a CIR to the FBI outlining the identification of "Khallad" from one of the Kuala Lumpur surveillance photographs in January 2001 by the source. The first line of the text stated the information should be passed to Rob. The CIA cable stated the FBI should advise the CIA if the FBI did not have the Kuala Lumpur photographs so they may be provided. This is the first record documenting that the source's identification of Khallad in the Kuala Lumpur photographs was provided by the CIA to the FBI.

Richard told the OIG that he began to work on locating Mihdhar on September 4. He stated that he had received the assignment on Thursday, August 30, but he worked all weekend and Monday on another exigent investigative matter involving a Canadian hijacking. As a result, he said he did not have the opportunity to begin work on the Mihdhar investigation until Tuesday, September 4.

On September 4, Richard completed a lookout request for the INS, identifying Mihdhar as a potential witness in a terrorist investigation. Due to his unfamiliarity with completing the lookout form, Richard contacted an INS Special Agent who was assigned to the FBI's JTTF in New York. We call this Special Agent "Patrick." The INS lookout form has a box indicating whether the individual was wanted for "security/terrorism" reasons. Richard did not check this box. He said that he thought Patrick told him to identify the subject on the form as a witness, not a potential terrorist, to prevent overzealous immigration officials from overreacting. By contrast, Patrick, who was assigned to the JTTF since September 1996, told us that he did not provide this advice to Richard and he always checked the security/terrorism box whenever he completed the lookout form for a potential witness in a terrorism investigation.

However, Richard asked Patrick to review the lookout request form for completeness, and Patrick sent the form to INS Inspections for inclusion in the

INS lookout system, without making any changes.[254] During his initial interview with the OIG, Richard asserted that he also asked Patrick to review and explain Mihdhar's travel documents, including the INS indices printouts and the visa application. In a follow-up interview, Richard said he could not definitively recall whether he had actually provided the predicating materials to Patrick or whether he merely had Patrick review the INS lookout request form.

Patrick told the OIG that he recalled this request because it was the first one from Richard and because of Mihdhar's subsequent involvement in the September 11 attacks. Patrick stated that he had not reviewed the predicating materials, but had only checked the request form for completeness. He added that if he had been shown any of the predicating materials on Mihdhar's travel, the review would only have been cursory. Patrick and Richard both acknowledged that they did not notice the false statements on Mihdhar's visa application.

Richard also contacted a U.S. Customs Service representative assigned to the JTTF and verified that a TECS lookout was in place for Mihdhar. Richard conducted other administrative tasks such as uploading the initial information about Mihdhar into ACS.

On September 4, Richard requested a local criminal history check on Mihdhar through the New York City Police Department. Richard told the OIG that he initially focused on Mihdhar, since he was captioned as the subject of the investigation in the predicating EC. After reviewing the EC several times, Richard noted the connection to Hazmi, so he conducted the same record checks on Hazmi as he had on Mihdhar. On September 5, Richard requested an NCIC criminal history check, credit checks, and motor vehicle records be searched in reference to Mihdhar and Hazmi.

On September 5, Richard and another JTTF agent contacted the loss prevention personnel for the New York area Marriott hotels, since Mihdhar had indicated when he entered the United States in July 2001 that his destination

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[254] Patrick explained that agents often provided just the information and he completed the lookout form, but "new" agents often completed the form themselves. Patrick estimated he received approximately 10 lookout requests each month.

was the Marriott hotel in New York. Richard learned that Mihdhar had not registered as a guest at six New York City Marriotts.

Richard stated he also conducted Choicepoint™ searches on Hazmi and Mihdhar.[255] Richard said he recalled he had another JTTF officer assist him with the searches because he was not familiar with the system. Richard did not locate any records on either Hazmi or Mihdhar in Choicepoint™.[256] Richard told the OIG that it was not uncommon not to find a record because of variations in spelling of names or other identifying information.

Hazmi and Mihdhar had traveled to Los Angeles, California on January 1, 2000, via United Airlines, and INS records indicated that they claimed to be destined for a "Sheraton hotel" in Los Angeles. Therefore, on September 10, 2001, Richard drafted an investigative lead for the FBI Los Angeles Field Office. He asked that office to request a search of the Sheraton hotel records concerning any stays by Mihdhar and Hazmi in early 2000. He also requested that the Los Angeles office check United Airlines and Lufthansa Airlines records for any payment or other information concerning Mihdhar and Hazmi. However, the lead was not transmitted to Los Angeles until the next day, September 11, 2001.

By the morning of September 11, when the American Airlines flight 77 that Mihdhar and Hazmi hijacked and crashed into the Pentagon, Richard had not uncovered any information regarding Mihdhar's or Hazmi's location in the United States.

5. OIG conclusions on the intelligence investigation

Although FBI and CIA personnel had many discussions throughout July and August 2001 about the Cole attacks and the Malaysia meetings, the CIA

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[255] Choicepoint™ is a commercial service that mines information such as names, addresses, phone numbers, and other identifying information from public sources (such as telephone directories, local taxing authorities, and court records), as well as purchase information from merchants or other companies. The information is then consolidated into a large database and is accessible to law enforcement and other subscribers for a fee.

[256] After September 11, however, the FBI located records on Hazmi in this commercial database.

did not provide and the FBI did not become aware of the significant intelligence information about Mihdhar's U.S. visa, the Malaysian matter, and the identification of Khallad in the Kuala Lumpur photographs until August 22, 2001. In May 2001, one detailee to the CTC was assigned to "get up to speed" on the Malaysian matter in her spare time but said she had been unable to focus on the matter until August 2001. On July 13, even after John had suggested in an e-mail to the CTC that the Khallad identification from the Kuala Lumpur photographs be passed to the FBI via CIR, this was not done for several weeks. The CIR was not sent to the FBI until August 30, after the FBI learned of Mihdhar's presence in the United States.

The CIA also did not provide to the FBI the information about Hazmi's travel to the United States in January 2000 until August 22. Donna stated that she did not receive this information until August 22, and her actions upon receipt of the information clearly indicate that she understood the significance of this information when she received it. She took immediate steps to open an intelligence investigation when she learned of this information.

On August 22, once the FBI was aware of the intelligence information about Mihdhar and that he was in the United States, the FBI took steps to open an intelligence investigation to locate him. Yet, the FBI did not pursue this as an urgent matter or assign many resources to it. It was given to a single, inexperienced agent without any particular priority. Moreover, the dispute within the FBI about whether to allow a criminal investigation to be opened again demonstrated the problems with the wall between criminal and intelligence investigations. The FBI was not close to locating Mihdhar or Hazmi when they participated in the terrorist attacks on September 11, 2001. In the analysis section of this chapter, we address in more detail the FBI's decision to open the matter as an intelligence investigation instead of a criminal investigation, and the inadequacy of the FBI's efforts to investigate Mihdhar in late August and early September 2001.

F. Summary of the five opportunities for the FBI to learn about Mihdhar and Hazmi

In summary, there were at least five opportunities for the FBI to have learned about Mihdhar and Hazmi, including their connection to the purported mastermind of the Cole attack and their presence in the United States, well before the September 11 attacks. First, in early 2000, the FBI received the

NSA information about Mihdhar's planned travel to Malaysia. Although the CIA informed the FBI of the Malaysia meetings in January 2000, the existence of Mihdhar's U.S. visa and the surveillance photographs was not disclosed to the FBI. FBI detailees at the CTC read the pertinent CIA cable traffic with this information and drafted a CIR to pass this information to the FBI. But the CIR was not released to the FBI, purportedly at the direction of a CIA supervisor, and the FBI did not learn of this critical information until August 2001. In addition, in March 2000 a CIA office discovered that Hazmi had traveled to the United States in January 2000, but no one from the CIA shared this information with the FBI.

Second, in February 2000, Mihdhar and Hazmi moved to San Diego, where they were aided in finding a place to live by the former subject of an FBI preliminary inquiry. In May 2000, Hazmi and Mihdhar moved in with an FBI asset in San Diego, California. However, the FBI did not learn of this information until after the September 11 attacks.

Third, in early January 2001, the CIA showed the Kuala Lumpur surveillance photographs to a joint CIA/FBI source, and the source stated that "Khallad" was in one of the photographs. This identification could have led the FBI to focus on who else was at the Malaysia meetings with Khallad, the purported mastermind of the Cole attacks, which could have led the FBI to identify and locate Mihdhar. However, we concluded that, despite the CIA's assertions, the source's identification of Khallad in these photographs was not known by the FBI.

Fourth, in May and June 2001, due to concerns about possible terrorist activities, CIA employees were again examining the Kuala Lumpur photographs, Hazmi's and Mihdhar's travel (including Hazmi's travel to Los Angeles), and the identification of Khallad in the Kuala Lumpur photographs. At the same time, these CIA employees were discussing with FBI employees the Cole investigation and the Kuala Lumpur photographs. Yet, despite these interactions between the two agencies on the telephone, in e-mails, and in a June 11 meeting in New York, the FBI never was informed of the critical intelligence information that Khallad was identified in the Kuala Lumpur photographs with Mihdhar, and that Hazmi had traveled to the United States. Again, this information could have led the FBI to initiate a search for Hazmi and Mihdhar earlier than it eventually did.

Fifth, in July 2001 a former Bin Laden Unit Deputy Chief who was working in ITOS in FBI Headquarters confirmed that Khallad had been identified in the Kuala Lumpur photographs and wrote in an e-mail to CTC managers that this information needed to be sent in a CIR to the FBI. However, this information was not sent in a CIR to the FBI until several weeks later. On August 22, an FBI employee detailed to the CTC notified the FBI that Mihdhar had entered the United States on July 4, 2001. The FBI began an intelligence investigation to locate Mihdhar and Hazmi. However, the FBI assigned few resources to the investigation and little urgency was given to the investigation. The FBI was not close to locating Mihdhar and Hazmi before they participated in the September 11 attacks.

IV. OIG's analysis of the FBI's handling of the intelligence information concerning Hazmi and Mihdhar

We found systemic and individual failings in the FBI's handling of the Hazmi and Mihdhar matter. As a result of these failings, there were at least five opportunities for the FBI to connect information that could have led to an earlier investigation of Hazmi and Mihdhar and their activities in the United States.

In this analysis section, we first discuss the systemic problems involving the breakdowns in the gathering or passing of information about Hazmi and Mihdhar between the FBI and CIA. We then turn to the problems in handling intelligence information within the FBI. Finally, we discuss the actions of individual FBI employees in handling information about Hazmi and Mihdhar information.

In this section, we do not make recommendations regarding the actions of the CIA and its employees. We believe the CIA shares a significant responsibility for the breakdowns in the Hazmi and Mihdhar case, and that several of its employees did not provide the intelligence information to the FBI as they should have. We leave it to the CIA OIG, the entity with oversight jurisdiction over the CIA and its employees, to reach conclusions and make recommendations on the actions of the CIA and its employees.

A. Systemic impediments that hindered the sharing of information between the CIA and the FBI

The most critical breakdown in the Hazmi and Mihdhar case was the failure of the FBI to learn from the CIA critical information about them; their travel to the United States; and their association with Khallad, the purported mastermind of the Cole attack. These breakdowns reflected serious problems in the process before the September 11 attacks for sharing information between the FBI and the CIA.

The FBI failed to receive from the CIA three critical pieces of intelligence about Mihdhar and Hazmi in a timely manner:

- Mihdhar's possession of a valid, multiple-entry U.S. visa;
- Hazmi's travel to the United States; and
- The identification of Khallad in a surveillance photograph of the Malaysia meetings attended by Hazmi and Mihdhar and other al Qaeda operatives in January 2000.

The CIA became aware of these three pieces of intelligence in January 2000, March 2000, and January 2001. Despite claims to the contrary, we found that none of this information was passed from the CIA to the FBI until August 2001. Although the CIA failed to timely pass this information to the FBI, there were several opportunities for the FBI to have obtained this information in other ways. But significant systemic problems, which we describe below, hindered the flow of information between the CIA and the FBI.

1. Use of detailees

One of the most significant opportunities for the FBI to have obtained the intelligence information relating to Hazmi and Mihdhar was through the FBI detailees at the CTC. As discussed above, the FBI detailees to the CTC had access to CIA cable traffic and could read the cables that discussed Mihdhar's U.S. visa, the surveillance of the meetings of al Qaeda operatives in Malaysia, Hazmi's subsequent travel to the United States, and the Khallad identification from the Kuala Lumpur photographs. Several of the FBI detailees accessed and read some of these cables. Significantly, in January 2000, one detailee, Dwight, prepared a draft CIR to pass to the FBI the information about Mihdhar's visa, his al Qaeda connections, and his travel to Malaysia. The FBI

should have been informed of this information because of its clear domestic nexus.

However, the CIR was never sent to the FBI. According to a note on the CIR, John, a Deputy Chief of the Bin Laden Unit, directed that the CIR be placed on hold, and FBI detailees did not have authority to disseminate CTC information without approval from the CIA. Eight days later, Dwight inquired about the disposition of the CIR through an e-mail to John asking whether anything needed to be changed on the cable. However, this e-mail failed to prompt further action on this CIR. The witnesses we interviewed had no recollection of the CIR and why it was not sent. We found no further record that anything was done with regard to the CIR.

In our view, the CIA should have sent the CIR to the FBI because of the important information it contained, and the FBI detailee should have followed up to ensure that it was sent. While we found evidence that Dwight inquired about its status at least once, there is no evidence that he took any other action to ensure that the information was sent to the FBI, including inquiring with other CTC supervisors about the need to send the cable to the FBI.

In reviewing the actions of the detailees, we found that the FBI lacked clear guidance on the role and responsibilities of FBI detailees to the CTC's Bin Laden Unit. This led to inconsistent expectations about what they were supposed to be doing at the CTC. Our review of the documents and interviews with the five FBI detailees to the CTC's Bin Laden Unit found that none of them had defined duties that were clearly understood, either by them or FBI managers. Nor were there any memoranda of understanding (MOU) between the FBI and the CIA setting out the job duties and responsibilities of any of the detailees.[257]

Moreover, we asked the FBI for the performance appraisals for all five of the detailees to the Bin Laden Unit during this period, and we received

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[257] We asked both the FBI and the CIA for any memoranda of understanding between the agencies specifying the job duties of any of the detailees. The only MOUs we received, which were provided by the CIA, related to the administrative nature of the details, such as time and attendance reports, travel and training expenses, security clearances, and medical coverage. The MOUs did not address their substantive duties or responsibilities.

appraisals for three of them. They revealed that the FBI detailees were evaluated based on the elements for their positions at the FBI, not based on whatever they were supposed to be doing while working at the CTC.[258] The FBI was unable to provide any other documents defining or outlining the roles or responsibilities of these detailees.

We also interviewed the detailees about their understanding of their roles and responsibilities at the CTC. They stated that they were not given any specific instructions about their job duties. They described their details at the CTC as ill-defined and with little direction. As a result, each detailee defined the job at the CIA as he or she determined it to be, and there was significant variation in their conceptions of the job.

For example, Dwight told the OIG that he focused on leads that were related to financial components of terrorism, which he developed from various sources, such as from reviewing cable traffic, from his supervisors at the CTC, and from referrals from CIA officers at the CTC. By contrast, Malcolm told the OIG that he thought he was the "eyes and ears" of the New York Field Office, and that his role was "to monitor" cases being worked jointly by the CIA and the New York Field Office, such as the East African embassy bombings investigation. He said that he also would follow up on requests for information from the FBI to the CIA. Moreover, Mary said she was not given any specific instructions about her role at the CIA, but she was eventually trained to be a CTC desk officer and that was how she operated – like other CTC desk officers with specific assignments or "accounts."

Eric, who was a Bin Laden Unit Deputy Chief, said that he was told "to fix" the relationship between the Bin Laden Unit and the FBI, but he was not given any specific instructions about how to go about accomplishing this objective. He said that he assisted in the running of the Bin Laden Unit by directly overseeing CTC operations and that he also functioned in a liaison role between the CIA and the FBI. He supervised the FBI detailees like he did other Bin Laden Unit employees. He was not given any other supervisory

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[258] For a fourth detailee, Mary, the FBI produced only a performance plan but no appraisal reports. The performance plan was related to her duties as an FBI IOS. Mary told the OIG that she was directed by CTC management based on her work as a CIA desk officer and was not evaluated by FBI personnel.

oversight particular to the detailees. He said that on his own initiative he tried to stay abreast of matters that might be of interest to the FBI by reading the CTC cable traffic. However, he explained that determining what might be of interest to the FBI was very subjective because there were no criteria defining what should be brought to the attention of the FBI.

We also interviewed the highest-ranking FBI employee detailed to the CTC, who was a Deputy Chief of the CTC from 1999 through 2002. We call him "Evan." Evan believed that one of the FBI detailees' functions would have been to review CIA cable traffic for information of potential relevance to the FBI. Yet, the detailees told the OIG that while reviewing CIA cable traffic was part of their jobs, it was not their function to review cable traffic for items of interest to the FBI, and they did not review all of the cable traffic on a daily basis. They said they did not think they were acting as backstops to ensure that anything that might be relevant to the FBI was brought to the FBI's attention.[259] The detailees asserted emphatically that their function did not entail scouring CIA cable traffic for the FBI, and their efficacy would be limited if they were perceived by CIA personnel merely as moles for the FBI.[260] They also explained that even if this had been their role, it would have been difficult to do because of the volume of cables, especially during the chaotic Millennium period.

The two FBI employees who held similar supervisory positions – one as a deputy chief in the Bin Laden Unit and the other as a deputy chief in another unit that later housed the Bin Laden Unit – also had differing views on their responsibility for reviewing cable traffic. Both agreed that their role was not merely to review cable traffic for items of interest to the FBI. Eric told the

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[259] We also interviewed the first FBI employee detailed in March 1996 to Bin Laden Unit soon after it was created. This detailee was an agent from the FBI's New York Field Office, and he remained at the CTC until August 1998. He said that he did not attempt to review all of the cable traffic. He indicated, however, that when he did locate information of interest to the FBI, he did not encounter problems obtaining the CIA's permission to share this information with the FBI.

[260] Some CIA employees we interviewed stated that they, by contrast, believed that this was the function of the New York Field Office detailee. We discuss this further in the next section.

OIG that while he tried to review the traffic in order to stay abreast of the information in the CTC, it was too much for one person to manage effectively. By contrast, Craig, who followed Eric as a manager detailed to the CTC, told the OIG that he did not even attempt to review the cable traffic but only focused on those cables that required action on his part.

In addition to failing to clearly define the roles and responsibilities of the detailees, the FBI did not provide oversight of the detailees. Eric acted as one of two deputy chiefs within the Bin Laden Unit. After Eric left the CTC, Craig was a deputy chief in a much larger unit that included the Bin Laden Unit. Both said that they performed day-to-day supervision of the detailees in the same manner in which they supervised the other CTC employees assigned to their groups.[261] According to Eric and Craig, they did not focus specifically on the role of FBI detailees.

Evan told the OIG that he did not supervise any of the detailees, and he had no authority to oversee their duties or direct their activities, except by virtue of his position as a senior manager within the FBI. He said that they were evaluated by their chain of command in the FBI office from which they had been assigned, which is supported by the limited documents we reviewed. We found that there was no oversight by the FBI of the detailees based on their function as detailees.

The FBI's failure to adequately oversee the detailees is illustrated by the role of Mary, the only FBI analyst detailed to the Bin Laden Unit. She has been detailed to the CIA since 1998. Mary had the opportunity to learn valuable analyst skills by working alongside CTC personnel and then use those skills at the FBI. Additionally, the detail provided an opportunity to learn about the CIA infrastructure and establish liaison contacts at the CIA.

Mary told us that she operated as a full-fledged CIA desk officer, and that she has worked with FBI personnel during her detail but from the position of a CIA employee, not an FBI employee. We believe there needs to be a review of the duration of these details to ensure the value of these details is maximized.

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[261] Eric left the CTC in mid-January 2000, and Craig did not arrive at the CTC until July 2000. Thus, between mid-January and July 2000 the FBI had no supervisory presence for the FBI employees detailed to work Bin Laden matters at the CTC.

At a time when the FBI is concerned about the shortage of qualified analysts to do the work it has, a 5-year detail of an FBI analyst working as a CTC employee warrants review by the FBI.[262]

The same lack of oversight and direction was evident regarding the work of Malcolm, the FBI New York Field office detailee to the CTC. He had been traveling to the CTC from New York on a weekly basis for four years, until January 2003. On Mondays he traveled from New York to the CTC, stopping by FBI Headquarters. On Fridays he stopped by FBI Headquarters on his way back to New York. After the bombing of the Cole, he spent at least half of his days in Washington, D.C. at FBI Headquarters. Thus, he was frequently away from the CTC and not in a position to maximize his potential for obtaining information at the CTC. This also left the perception with other CTC employees that he was not fully integrated into the CTC.

We found that that the FBI lacked a systematic approach to its use of detailees at CTC's Bin Laden Unit. The detailees could have functioned in one of three ways – as fully integrated members of the CTC working unilaterally on CTC matters, as backstops ensuring all pertinent CTC information was forwarded to the FBI, or in some combination thereof. While there are potential benefits to using the detailees in any of these functions, the potential benefits were not maximized because there was no clear understanding of the detailees' roles and no system to ensure that any objectives were met. The lack of oversight over FBI detailees to the CTC resulted in squandering critical opportunities for information sharing between the CIA and FBI.

We also found significant misunderstandings between employees of these two agencies regarding their respective responsibilities for information sharing. First, as noted above, we found that some CIA employees believed that FBI detailees had more responsibility for reviewing the CIA cable traffic than the FBI detailees believed that they had. One CIA Bin Laden Unit employee told the OIG that the CIA was not going to "spoon feed" information to the FBI and that the FBI personnel at the Bin Laden Unit had access to all of the CIA cable traffic. She stated that while the CTC provided to the FBI intelligence

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[262] The OIG is in the process of completing a comprehensive review of FBI's analyst program.

information that contained a domestic nexus, she did not believe it was the CIA's responsibility to provide all of the predicating material, since the FBI detailees also had access to the same cables. In addition, CIA personnel described FBI detailee Malcolm as a "mole" for the FBI's New York Office, suggesting they thought he was reading CIA cables for the express purpose of reporting back to the New York Field Office on what he found.

In addition, we found that a similar misunderstanding existed among FBI employees in New York with respect to the role of the CIA employee detailed to the FBI's New York Field Office. A CIA employee assigned to the JTTF in the New York Field Office had a desk in that office's sensitive compartmented information facility (SCIF).[263] FBI agents in the New York Field Office asserted to the OIG that this individual was knowledgeable regarding their investigations and that he was responsible for reviewing CIA traffic, finding items of interest to the FBI, and bringing this information to the attention of appropriate New York agents.

The CIA employee, however, denied that this was his role. He told the OIG that he had been sent to the New York Office to "improve the relationship between the CIA and the FBI" and that he provided the FBI with CIA intelligence that was designated for the FBI New York Field Office's review. He stated, however, his job was not to "spoon feed" information but only to make it accessible to the agents in New York. This meant that he would print information obtained from CIA databases that was of potential interest to the FBI New York Field Office and make that information available for review in the SCIF if FBI agents decided to come and review it. But, apparently unknown to many New York FBI agents, he believed the onus was on FBI personnel to come into the SCIF and see if any new, relevant information had arrived, rather than to alert them to that information. He also said that while he generally knows what the various FBI squads are investigating, the New York JTTF has over 300 members and he could not reasonably be expected to have knowledge of all their investigative interests. He said that if he spent his time

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[263] The FBI agents do not routinely work in a SCIF area. The computers on which they access ACS do not contain sensitive compartmented information or materials classified above Secret. Because a high percentage of CIA traffic contains this information, the CIA detailee must work in a separate area.

solely looking for information of interest to the FBI, he would never get any work done.

As a result, FBI agents in New York believed they were receiving from this CIA employee assigned to the JTTF all of the CIA information of interest to the FBI, when in fact they were not. Therefore, the New York agents could have received information on Hazmi and Mihdhar directly through their own CIA employee, but they misunderstood the process.

2. FBI employees' lack of understanding of CIA reporting process

These gaps in the information sharing process were exacerbated by FBI personnel's lack of understanding of the CIA's reporting process. This problem is clearly illustrated by the failure of the FBI to obtain the information on the identification in January 2001 of Khallad in the Kuala Lumpur photographs by the joint FBI/CIA joint source.

As detailed above, we concluded that the FBI's ALAT was not made aware of the source's identification of Khallad in the Malaysia meetings photographs. Although the ALAT attended the debriefing of the source, the ALAT did not immediately receive the information that the source had identified Khallad. We were unable to ascertain the reasons for this significant omission. However, our review found that there were later opportunities for the ALAT to have obtained information about the identification from CIA documents. In addition, we found that the New York FBI agents working the Cole attack investigation did not learn of this significant information, despite interviewing the source on several occasions. We believe this was due in part to the fact that the FBI personnel were not familiar with the CIA's process for reporting intelligence information.

As discussed previously, the CIA primarily relies on cable traffic to share intelligence among its personnel who are stationed around the world. None of these cables are available for FBI review, except by the limited number of FBI personnel with direct access to CIA computer systems, such as the detailees at the CTC.

The CIA uses a certain type of cable called a TD to disseminate CIA information outside of the CIA to other U.S. government agencies. These cables are created by CIA reports officers based on their review of the internal

CIA cable traffic. The reports officers were described to us as "editors" who remove references to sources and methods contained in the cables and determine what information should be further disseminated in the TDs. As a result, TDs did not necessarily include all the substantive information contained in the internal cable traffic.

Our review found the ALAT did not understand that the TDs did not necessarily contain all of the intelligence gathered by the CIA from a particular source or on a particular event. The ALAT had been keenly aware of the significance of Khallad to the FBI, and contemporaneous FBI documents outline his efforts in mid-January 2001 to try to ensure that all the information obtained from the joint source was provided to the UBL Unit at FBI Headquarters and the Bin Laden Squad in the New York Field Office. However, he relied on the TDs concerning the source's reporting to ensure the completeness of the information that he had provided to his FBI colleagues. The ALAT erroneously believed he had obtained all the source reporting through the TDs. This was not the case. The January 2001 Khallad identification was only reported in an internal CIA cable and was never included in a TD.

In addition to the ALAT, New York FBI agents working on the Cole investigation told us that when they read a TD regarding a particular subject (which they could access through CTLink), they mistakenly believed that it contained all relevant information from the source debriefings. The primary Cole case agent told us that he believed that the CIA operational cables dealt with techniques and methods, but he did not know that these cables also contained the details of debriefings. He said that he had "assumed" all the substantive reporting would be contained in the TDs, so he never asked the CIA to allow him to review the underlying cable traffic.

If these FBI employees had a more thorough knowledge of the information flow within the CIA, they could have ensured that they received all the relevant information from the joint source. This was especially significant in the case of Hazmi and Mihdhar because the CIA and FBI had decided the majority of the joint source's reporting would be handled through CIA channels, and the ALAT did not independently report in FBI documents most of the source's information. For example, in this case, the FBI could have requested to review the CIA's internal cables or asked the interviewing CIA officer to review the TDs and the FBI documentation to ensure all the

information had been captured. However, the lack of understanding by FBI personnel of the CIA reporting process and its procedures for sharing intelligence contributed to the FBI not learning of significant information in CIA cables about Khallad – which would have tied an al Qaeda operative to the Malaysia meetings attended by Mihdhar and potentially resulted in the FBI focusing on Mihdhar much earlier.

3. Inadequate procedures for documenting receipt of CIA information

We also found that the FBI lacked consistent policies or procedures for the receipt and documentation of intelligence information received from the CIA. In addition, structural impediments within the FBI undermined the appropriate documentation of information received from the CIA.

As we detailed above, the information concerning the surveillance of suspected al Qaeda operatives at the Malaysia meetings, including Mihdhar, was verbally conveyed in January 2000 by a CIA officer to two FBI employees who were working in the FBI's Strategic Information Operations Center (SIOC). But this important information was not documented in any retrievable form at the FBI.

The FBI was able to provide only three documents regarding the briefing on this information. First, one FBI e-mail message was recovered through a painstaking review of messages on an FBI server that the FBI searched in connection with a request from the JICI. Although this written record survived from that time, no analyst or agent would have had access to the information, learned of its existence, or been able to conduct the type of search that led to the discovery of this document. Second, information regarding the briefing was also located in one of the FBI Director's daily briefing documents prepared in response to the Millennium threats. These briefing documents, however, were not electronically archived in a searchable database that analysts or agents in the field could access. Third, a brief handwritten note about the information he received from the CIA was contained in the personal daily calendar of one of the FBI employees briefed by the CIA officer in the SIOC.

We found there were no clear procedures for documenting intelligence communicated by the CIA to the FBI in an informal manner, such as the verbal

briefings on Mihdhar in the SIOC. Although the SIOC had been activated during the Millennium for the express purpose of handling threat information from various sources, FBI personnel assigned to the SIOC during this period told us that there were no procedures for the receipt and handling of interagency information communicated informally unless it related to an ongoing FBI investigation. Although one witness suggested that some type of log might have existed to record incoming physical information, such as documents, the FBI found no such log. Moreover, FBI witnesses told us that the log would not have been used to document verbal briefings. Therefore, any documentation of information received informally would have been at the discretion of the recipient.

We are not suggesting that every informal communication from the CIA to the FBI should be documented. We also recognize it is difficult to know the significance of any individual piece of information when it is received. Yet, we believe that the FBI should attempt to establish criteria or guidance for determining what information from informal briefings should be documented, and how it should be documented. The information received in the SIOC on Mihdhar was recorded only in a briefing provided to the Director and executive staff, which is not available to others throughout the FBI. Clearly, the authors of the Director's daily briefing believed there was some import to this information. Because the Mihdhar information was never documented in an accessible format, only those individuals personally informed about the CIA's information on the Malaysia meetings or those present for the Director's briefings were made aware of the Mihdhar information. In effect, it was lost to everyone else because no analysts or field agents would be able to search for or locate this information. An effective analytical program requires that analysts have access to all available information, and that pertinent information is not contained solely in the personal memories of selected individuals.

This was particularly significant because the information on Mihdhar initially did not appear to be important. But it subsequently became very significant. In the summer of 2001, FBI personnel eventually recognized the significance of the Malaysia meetings. At this time, the e-mail and the information from the Director's briefing in January 2000 were not available to the FBI personnel. Without mechanisms to maintain information in which the significance is not immediately apparent, the FBI will not be able to fully connect and analyze disparate pieces of information for their significance.

In addition, even if the agents who received the information in the SIOC had wanted to document it in a form that was available throughout the FBI, the FBI lacks an information technology system capable of adequately handling this type of information. As discussed previously, the FBI's primary electronic information storage system is the Automated Case Support (ACS) System. ACS is a case management system designed to capture information related to specific investigations and not for this type of general intelligence information. There was no FBI system that would allow this type of information to have been maintained so that it would be available for directed searches or other subsequent data mining. It is also important to note that ACS is not approved for storage of information classified above the Secret level and is not approved for storage of any sensitive compartmented information. Thus, it is not available for storage of the majority of the relevant Intelligence Community information, including the information on Hazmi and Mihdhar.

In the absence of effective methods for recording and retrieving information obtained from other intelligence agencies, the benefits of increased information sharing among the agencies will remain of limited use. Based on the system in effect during this period, the value of the information was minimal, unless the information was relayed to an individual who could immediately use the information or the information related to an ongoing FBI investigation. When, as here, subsequent additional information increases the significance of the prior information, the absence of an effective information retrieval system effectively precludes any meaningful effort by the FBI to analyze the disparate pieces of information over time.

In sum, despite the fact that some personnel at the FBI were aware in January 2000 that Mihdhar was possibly linked to al Qaeda operations and traveled to Malaysia to meet with other suspected al Qaeda operatives, this information was unavailable for further analysis or use once the SIOC closed down in late January or early February 2000. Because no one was assigned to document, follow up, or track the information on Mihdhar, the FBI's opportunity to discover Mihdhar's valid U.S. visa during this period and therefore try to locate him was lost.

4. Lack of appropriate infrastructure in FBI field offices

Information sharing with the FBI also was impeded by the inadequate facilities for the handling of intelligence information in the two field offices

most directly involved in the Hazmi/Mihdhar matter. Intelligence information from the CIA is often classified at a high level. As a result, safeguards must be taken in handling the information, while still allowing appropriate FBI employees the ability to access and use the information. Unfortunately, the FBI's field offices generally lacked both the necessary physical infrastructure and information technology to readily use this type of information. Without the appropriate physical infrastructure, the FBI will not be able to handle sensitive information in an effective manner.

To handle SCI classified material, employees must store and review such information in a SCIF. Access to the SCIF is limited to individuals with the appropriate clearance level and the need to know the information in the SCIF. Adequate security measures must be implemented to prevent unauthorized individuals from gaining access to the spaces containing such materials. The type of equipment that may be brought into the space is also strictly limited. For example, cellular telephones, two-way pagers, and other unsecured communication devices are prohibited. Telephones in SCIFs must be designated for secure transmissions. Computer networks also must be secured for transmission of information.

During our review, we observed the workspaces in the FBI New York and San Diego Field Offices and found that they were not set up to adequately handle the type of information involved in the Hazmi and Mihdhar cases. These workspaces were not adequately secured to permit FBI personnel to handle CIA and NSA information at their own desks, even if they had been given the information. Nor were the SCIFs suitable to permit agents to regularly access or handle such information. In the New York Field Office, for example, the SCIF we were shown was extremely small. The CIA detailee to the JTTF worked in this SCIF, but there was little room for any other personnel to enter, let alone use it as a workspace. In the San Diego Field Office, a small SCIF was used as a secure communications center for the entire office. The San Diego office lacked a separate SCIF for the JTTF,[264] including the CIA

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[264] We were informed that a separate SCIF for the JTTF is under construction in the San Diego Field Office. However, this SCIF will only be large enough to accommodate three or four employees at any one time.

representative assigned to the task force. As a result, the San Diego agents were hampered in their ability to access CIA information.

We also found that New York and San Diego FBI agents did not have sufficient access to secure telephones, known as Secure Telephone Unit third generation or STU III telephones. The limited STU III phones available had to be shared among numerous agents. Again, this made communications involving classified material within the FBI or with other members of the Intelligence Community more difficult. An entire squad comprising as many as 25 individuals shared one or two STU III phones.

In addition, as noted above, the FBI agents did not have access to computer systems that could store much of the information received from the CIA. The computers at each agent's desk in the New York and San Diego Field Offices only provided access to ACS. This system does not permit storage or access to any information classified above the Secret level or any information deemed sensitive compartmented information. Therefore, even if the FBI recipients of the CIA information regarding Hazmi and Mihdhar had wanted to document and store such information in a retrievable fashion, they could not have stored it on the system that FBI agents use. The FBI had no internal system in New York and San Diego that allowed them to use the type of information involved in the Hazmi and Mihdhar case.

In addition, most FBI agents in the field did not have direct access to CTLink, the shared Intelligence Community database that did contain some of the information on Hazmi and Mihdhar, such as the NSA information. Field agents could not access, let alone conduct research, on this system. As a result, even if the New York and San Diego agents wanted to search for relevant information about Hazmi and Mihdhar, any sensitive or highly classified information obtained from the NSA and CIA could not be stored in the one system that they used.

In contrast, we observed that the CIA's workspaces permitted their employees to access highly classified information on computers in their personal workstations. Each CIA employee had their own secure computer on which they could receive and research highly classified material. They had several secure telephones that could be used to discuss Top Secret information with others. The difference in CIA and FBI workspaces was particularly stark in the FBI's San Diego Field Office where, due to the lack of access to an

appropriate SCIF, the CIA employee co-located with the FBI's San Diego Field Office could not access CIA systems. To access CIA systems, he had to travel to a domestic CIA station.

5. OIG conclusion on impediments to information sharing

In sum, significant and systemic problems that were evident in the FBI's handling of the Hazmi and Mihdhar case inhibited information sharing between the FBI and CIA. The FBI failed to define the roles and responsibilities of the FBI detailees to the CTC's Bin Laden Unit. The FBI failed to ensure effective oversight of the detailees at the CTC. The FBI and the CIA failed to develop a clear understanding of the function of detailees from each other's agencies. The FBI failed to understand the CIA's reporting process. The FBI lacked an adequate computer system and appropriate infrastructure for handling intelligence information not directly related to a specific investigation.

Although these systemic problems affected the flow of information between the FBI and CIA, we do not believe they fully explain the FBI's failure to obtain the critical information on Hazmi and Mihdhar. Employees at both the CIA and the FBI failed to provide or seek important information about Hazmi and Mihdhar, despite numerous interactions between them on issues related to Hazmi and Mihdhar from January 2000 through August 2001. We found these interactions were substantive and that much of the information about Mihdhar and Hazmi was exchanged through these ongoing efforts. Unfortunately, the critical pieces of information relating to Hazmi and Mihdhar did not become known to the FBI until shortly prior to September 11. As a former CTC Bin Laden Unit Deputy Chief aptly summarized it to us, "information that should have been shared was not, repeatedly."

B. The actions of the San Diego FBI

In addition to issues that affected information sharing between the FBI and the CIA, the FBI had other opportunities to find information about Hazmi and Mihdhar before the September 11 attacks. The time that Hazmi and Mihdhar spent in San Diego was an opportunity during which the FBI could have obtained information about them but did not. As discussed above, Hazmi and Mihdhar entered the United States in January 2000 and moved to San Diego in February 2000, where they resided unbeknownst to the FBI. While in San Diego, Hazmi and Mihdhar associated with Omar al-Bayoumi, a person

whom the FBI had previously investigated, and they also lived with an active, FBI informational asset. Yet, the FBI did not become aware of their presence in San Diego until after September 11, 2001.

Because Bayoumi spent a significant amount of time with Hazmi and Mihdhar in early 2000, it is possible that – had a full field investigation of Bayoumi been open at the time – the FBI could have discovered Mihdhar and Hazmi's presence in San Diego and also uncovered the CIA information about their attendance at the Malaysia meetings. Because Hazmi and Mihdhar lived with an FBI asset, it is also possible that if the FBI had documented their presence in San Diego, it would have provided additional investigative leads that could have aided the New York FBI in locating them in August 2001. We therefore evaluated the San Diego FBI's investigation of Bayoumi and the decision to close its preliminary inquiry on him in June 1999. We also examined the San Diego FBI control agent's decision not to obtain or document information from his information asset about Hazmi and Mihdhar, who were boarders in the asset's house.

In examining the San Diego Field Office's handling of the Bayoumi investigation and the informational asset, we also found that, despite the fact that FBI Headquarters had established counterterrorism as a top priority of the FBI in 1998, the San Diego Field Office was continuing to pursue drug trafficking as its top priority in 2001. While the FBI made counterterrorism its top priority on paper, the FBI took few steps to ensure that field offices complied with this directive. We discuss this issue at the end of this section.

1. The San Diego FBI's preliminary investigation of Bayoumi

As discussed above, Bayoumi is a Saudi national who in January 2000 had been living in the United States for approximately six years, was well-paid by a Saudi company that contracted with the Saudi government, and was involved in setting up mosques in the San Diego area. Hazmi and Mihdhar met Bayoumi in Los Angeles approximately two weeks after entering the United States in January 2000. A few days later they moved to San Diego, where Bayoumi assisted them in obtaining an apartment in the complex where he lived. They lived in this complex for four months.

Bayoumi's name had first surfaced at the FBI in 1995 in connection with other investigations. Bayoumi's name resurfaced at the FBI on August 31,

1998, when his apartment manager contacted the FBI to report her suspicions regarding Bayoumi's activities. The manager reported that she had been notified by the U.S. Postal Inspection Service in March 1998 that Bayoumi had been sent a "suspicious" package from the Middle East. According to the manager, the package had broken open and had a number of wires protruding from it. She reported further that the apartment complex maintenance man had noticed a number of wires protruding beneath the bathroom sink in Bayoumi's master bedroom. She reported that there had been large meetings of men, who based upon their dress appeared to be Middle Eastern, gathering in Bayoumi's apartment on weekend evenings. She also complained that several parking spots were being illegally used by the people gathering at Bayoumi's apartment.

On September 8, 1998, the San Diego FBI opened a preliminary inquiry on Bayoumi.[265] The assigned agent checked FBI indices for further information regarding Bayoumi and conducted other investigative steps.

The agent contacted the U.S. Postal Inspection Service in reference to the alleged "suspicious" package sent to Bayoumi. A postal inspector advised the FBI agent that "suspicious" did not necessarily mean "nefarious," and the vast majority of suspicious packages were benign. The postal inspector reviewed the report relating to the Bayoumi package and told the agent that the package had been deemed "suspicious" because it had no customs papers or appropriate postage and originated in Saudi Arabia. According to the report, there was no record of any wires protruding from the package, Bayoumi had retrieved the package, and it was no longer called a "suspect parcel."

According to the FBI agent, the apartment manager agreed to record the license plate numbers of the meeting participants. However, the manager later advised the agent that meetings had dwindled to a few participants and then stopped all together.

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[265] In accordance with the Attorney General's Foreign Counterintelligence Guidelines, a preliminary inquiry could be opened when there was information or allegations indicating that an individual is or may have been an international terrorist or a recruitment target of an international terrorist organization. Preliminary inquiries were permitted to remain open for 120 days and had to be closed unless the FBI obtained sufficient evidence to open a full field investigation.

The agent asked fellow FBI agents to ask their "logical sources" for information regarding Bayoumi. The sources related the following concerning Bayoumi:

- Bayoumi was married with small children and had recently completed a master's degree program and he was looking for a Ph. D. program, but his test scores were too low. He was approximately 30 years old and unemployed.
- Bayoumi was a Saudi who regularly attended the ICSD (Islamic Center of San Diego). He was married with children and was working on a master's or other advanced degree.
- Bayoumi reportedly delivered $400,000 to the Islamic Kurdish community in El Cajon, California in order to build a mosque. Source opined Bayoumi "must be an agent of a foreign power or an agent of Saudi Arabia."
- Bayoumi was in the U.S. on a student visa but was applying for a green card. Bayoumi claimed to have a master's degree and was working on a Ph. D. His father was sending him $3,000 a month for support while he was in school.

The FBI agent also contacted the INS in reference to Bayoumi's immigration status. An INS special agent advised that Bayoumi was in the U.S. on an F-1 student visa, but his work visa had expired. However, the INS reported that his visa could be renewed.

The FBI agent received no further substantive information in response to various information checks. According to the agent, the only remaining option was to conduct an interview of Bayoumi. After her supervisor consulted with fellow FBI agents who were working on a large, sensitive counterterrorism investigation involving an alleged terrorist organization, the supervisor instructed the agent not to conduct the subject interview of Bayoumi.[266] The agent told the OIG that she did not believe the decision was inappropriate

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[266] The file indicates that the decision not to conduct an interview was due to an investigation that included a proposed proactive element. The FBI believed that the benefits of interviewing Bayoumi did not justify the risk to the proposed operation.

based on the potential effect of such an interview on the other sensitive investigation.

On June 7, 1999, the FBI closed its preliminary inquiry on Bayoumi, and he was no longer actively under investigation by the FBI.

The FBI case agent told the OIG that she had no concrete information linking Bayoumi to any terrorist activities. She stated that the allegations that gave rise to the preliminary investigation were not substantiated. With respect to the source reporting that Bayoumi had received large sums of money from overseas, the case agent explained it was not unusual for foreign students, especially from Saudi Arabia, to regularly receive money, even large sums of money. Therefore, the case agent did not consider this to be inherently suspicious. The agent's squad supervisor at the time and other agents on the squad also told the OIG that it was not unusual or suspicious for Saudi students to have received large sums of money from Saudi Arabia.

As stated above, one source had provided unverified information that Bayoumi could potentially be a Saudi intelligence operative or source. According to the agent, Bayoumi was allegedly very involved and interested in Saudi affairs in San Diego, and this probably led to the suspicions about Bayoumi's connection to the Saudi government. However, the agent told the OIG that Saudi Arabia was not listed as a threat country and the Saudis were considered allies of the United States.[267] Therefore, Bayoumi's potential involvement with the Saudi Arabian government would not have affected the FBI's decision to close the preliminary inquiry.

The squad supervisor at the time of our investigation, who had been an agent on the squad for several years, told the OIG that before September 11, the Saudi Arabian government was considered an ally of the United States and that a report of an individual being an agent of the Saudi government would not have been considered a priority. Other agents on the squad also said that a source reporting that an individual was an agent of the Saudi government

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[267] Country threats are defined by the FBI as foreign governments or entities whose intelligence activities are so hostile, or of such concern, to the national security of the United States that counterintelligence or monitoring activities directed against such countries are warranted.

would not have been cause for concern because the Saudi government was considered an ally of the United States.

In addition, the case agent explained that more intrusive investigative techniques could not be conducted because of the restrictions of the Attorney General FCI Guidelines in effect at the time. No meaningful surveillance could be conducted, no bank records or other financial records could be sought, and very little investigative activity beyond fully identifying the individual could be done.

In sum, we do not believe that the FBI's actions with regard to Bayoumi and its decision to close the preliminary inquiry were inappropriate. The agent conducted logical investigative steps that were permitted under the Attorney General Guidelines in effect at the time, such as checking FBI records for information, asking other intelligence agencies for information about the subject, and asking agents to query their sources about the subject, but the agent did not uncover any information to support the allegations. The Guidelines did not permit the case agent to engage in more intrusive investigative techniques, such as a clandestine search of Bayoumi's property, obtaining his telephone or financial records, or secretly recording his conversations.

Although the Attorney General Guidelines would have permitted a subject interview of Bayoumi prior to closing the preliminary inquiry, the decision not to conduct an interview appeared warranted, given its possible effect on an ongoing significant investigation.

2. The FBI's handling of the informational asset

As described above, in May 2000 Hazmi and Mihdhar began renting a room in the home of an FBI informational asset. An FBI San Diego Special Agent who we call "Stan" was the asset's control agent since the asset was opened in 1994. The asset had provided the FBI with significant information over the years and was considered a reliable source. He was well known in the Muslim community. He often rented rooms in his house to Muslim men in the community who needed temporary housing. At the time that Hazmi and Mihdhar moved in with him, he had two other individuals renting rooms in his house. Mihdhar lived with the asset until June 10, 2000, when he left the

United States, and Hazmi remained as a boarder at the asset's home until December 2000.

According to Stan, the asset told Stan that two young Saudis who had recently come to the United States to visit and study had moved in as boarders. The asset described them as good Muslims who often went to the mosque and prayed. The asset provided Stan with their first names but little other identifying information. Stan did not obtain any additional information from the asset about the boarders, such as their last names, and he did not conduct any investigation of them.

Had Stan pursued information about Hazmi and Mihdhar, he might have uncovered the CIA information about them. In addition, he might have created a record in FBI computer systems about Hazmi and Mihdhar's presence in San Diego, which would have provided the FBI with additional information and avenues of investigation when it began to search for them in August 2001. For these reasons, we examined Stan's actions with regard to the asset.

In interviews with the JICI staff and in congressional testimony, Stan stated that the informational asset primarily provided information about the activities and identities of persons in the Muslim community in San Diego who were the subjects of FBI preliminary inquiries or full field investigations.[268] Stan said that the asset volunteered some information about other individuals as well. He said he thought that the asset had good judgment about which individuals might pose a threat and that his reporting had been "consistent" over the years. We reviewed the asset's file and noted the asset provided information on a regular basis on a variety of different individuals and topics. Although we could not evaluate the asset's judgment from the file, we consider Stan's description of the asset's reporting to be apt.

Stan also stated that he was aware that the asset had boarders in his house over the years, and the fact that two new boarders had moved in with the asset did not arouse suspicion. He noted that the asset volunteered that the two boarders were living with him soon after they moved in, but the asset provided the information about his boarders as part of a personal conversation and not

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[268] As noted above, Stan has retired from the FBI and declined to be interviewed by the OIG.

because the asset believed that it had any significance. Stan stated the information provided from the asset was that the two boarders were from Saudi Arabia, which, according to Stan, was not a country that the United States had placed on the list as a threat to national security. Stan said that the asset did not describe his boarders as suspicious or otherwise worthy of further scrutiny. He also asserted that he was prohibited from further pursuing the information about Hazmi and Mihdhar, including documenting the information that he had obtained, because of the Attorney General Guidelines in effect at the time.

In examining Stan's actions, we first considered whether the Attorney General's FCI Guidelines were applicable to the situation involving Hazmi and Mihdhar. As suggested by Stan, the Attorney General's FCI Guidelines were designed to ensure that the FBI opened preliminary inquiries and conducted investigations only if the required predicating information was present. Because there were no allegations or information provided to Stan that Hazmi and Mihdhar were terrorists or agents of a foreign power, we agree that Stan did not have sufficient information to open a preliminary inquiry and actively investigate Hazmi and Mihdhar.

We also considered whether, at a minimum, Stan could have attempted to obtain additional information about people who were living with his informational asset, such as their full names, and whether he was required to document the information on Hazmi and Mihdhar that he had received from his asset. First, we reviewed FBI policies and procedures for handling assets. Those policies did not require Stan to obtain information from an informational asset about people living in the asset's house or to conduct record checks to obtain this information. In addition, the policies do not appear to require Stan to have documented information received from the asset about anyone living with him, or to even document their full identities if he had obtained that information.

We also interviewed several FBI agents who were on Stan's counterterrorism squad and asked them whether it would have been their practice to seek additional information about boarders living with an informational asset and what, if anything, they would have done with this information. We found no consensus among them about whether information on boarders like Hazmi and Mihdhar who lived with an informational asset should have been obtained and documented. Some agents stated that they would have pursued more information about boarders living with an

informational asset, while others stated that they would not have. Some of the agents stated that they would have noted the fact of the informational asset having boarders in his file. Some agents stated that they would have documented the identities of the roommates in an EC that would have been uploaded to ACS. However, former San Diego Division Special Agent in Charge William Gore told the OIG that he "did not believe anything had been done wrong" in the handling of the informational asset and he did not fault Stan for not obtaining the information.

While we recognize that no FBI policy addressed this issue and there was a lack of consensus on what should have been done in a situation like this, we believe that it would have been a better practice for Stan to have questioned the informational asset about his boarders and obtained their full identities. Stan was aware that Hazmi and Mihdhar were relative strangers to the informational asset, and that they were not friends, family, or long-time associates of the asset. Stan also was aware that the asset had no direct knowledge of Hazmi and Mihdhar's backgrounds and could not vouch for their character. Moreover, the boarders in the asset's home were in a position to put the asset and the information he supplied to the FBI in jeopardy. Therefore, prudence and operational security would suggest that information about persons living with the asset should have been sought, at least to the extent of learning and documenting their names, and perhaps running a records check on them.

If Stan had asked more questions about the asset's boarders, he also may have acquired enough information to pursue further inquiry. For example, the asset has stated after the September 11 attacks that Hazmi and Mihdhar did not make telephone calls from his house, and that in retrospect he found this behavior to be suspicious. The asset also stated after September 11 that he had told Hazmi to stay away from Bayoumi because of his alleged association with the Saudi government. Therefore, if Stan had asked the asset a few more questions about Hazmi and Mihdhar and acquired this kind of information, it may have led Stan to conduct further inquiries, particularly since Bayoumi had been the subject of an FBI investigation.

Moreover, while no specific FBI policy required agents to obtain information about persons living in a house with an informational asset, FBI policies required control agents to continuously evaluate the credibility of their informational assets. Before informational assets are approved, they are required to undergo a background investigation to assess their suitability,

credibility, and "bona fides."[269] Certain minimum checks were required, such as a check of FBI indices, local criminal checks, and CIA traces. The policy provided that additional checks "may be deemed necessary," such as querying other assets and running indices checks on immediate family members. In addition, FBI policy provided that an asset's bona fides "should be continually addressed," even after the initial assessment was completed.

More specifically, the FBI field office is required to conduct a yearly evaluation of each informational asset and provide the evaluation report to FBI Headquarters. This report is required to contain, among other things, the FBI's number of contacts with the informational asset during the reporting period, a summary of the most significant information furnished by the informational asset, the number of preliminary inquiries and full investigations that were opened based on information provided by the informational asset, and "steps that have been taken to establish asset bona fides since last evaluation." Although Stan would not have been required to obtain additional information about his informational asset's boarders to complete this report, the FBI's policy of continually vetting the credibility of its assets permitted Stan to seek more information about Hazmi and Mihdhar and the other boarders from his asset and run indices checks on any persons living with his informational asset.

We reviewed the informational asset's file, Stan's yearly evaluation of the asset, and Stan's reporting on the bona fides checks conducted on the informational asset. Based on our review, we were concerned by the lack of information included in the file in support of the bona fides checks conducted by Stan each year. In each of the documents provided to FBI Headquarters about the informational asset that we reviewed, Stan wrote the following perfunctory paragraph: "Asset bona fides have been established through independently received reliable asset reporting, [redacted] and physical surveillance."

Stan maintained no predicating information in the file on these bona fides checks. The file did not disclose which checks or surveillance had been

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[269] The FBI defines "bona fides" to mean that the asset or informational asset "is who he/she says he/she is;" that the asset "has the position or access the asset claims to have;" and that the asset "is not working for or reporting to a foreign intelligence service or international terrorist organization without the knowledge of the FBI."

conducted, by whom, when, or the results. Without that material, the informational asset's bona fides were merely verified through the attestation of Stan. It is possible that Stan conducted numerous indices checks and conducted an exhaustive bona fides check on the informational asset each year. It also is possible that he conducted minimal or no checks and merely attested to the informational asset's credibility based on their personal history and relationship. Because we were unable to interview Stan, we could not determine which was more likely.

However, no FBI policy described the level of detail to be contained in an asset file. We believe the policy should require an asset file to contain at least minimal information to allow a reviewer to independently verify that an adequate background check has been conducted. This information is necessary to allow FBI managers to determine whether the control agent is continuing to assess each informational asset's credibility. This information would also help ensure that the control agent has not become too comfortable with the informational asset and thus vulnerable to being misled or failing to obtain adequate information about the asset.

We also were concerned by the lack of policy or practice specifying what information from the asset must be documented. The Hazmi and Mihdhar case clearly demonstrates that information must be documented to be useful. Even if Stan had obtained the full names of Hazmi and Mihdhar from the informational asset, he would not have been required to document it in any retrievable format. Without the requirement to document such information, the information would not have been accessible to other FBI personnel. For information to be useful, it must be documented in a retrievable form and it must be available for consideration and analysis.

In sum, we believe that Hazmi and Mihdhar's presence in San Diego should have drawn some scrutiny from the FBI. Although unknown at the time, documenting their presence in San Diego in a searchable and retrievable manner would have provided an opportunity for the FBI to connect information in the future. If Hazmi and Mihdhar's presence in San Diego in 2000 had been documented, an FBI indices record check in August 2001, when the FBI received information from the CIA that Hazmi and Mihdhar had entered the

United States, might have led the FBI to the San Diego information. This connection would have provided substantive leads for the New York FBI's effort to locate Mihdhar in August 2001.[270]

3. San Diego FBI's failure to prioritize counterterrorism investigations

As discussed in Chapter Two, in 1998 the FBI adopted a 5-year strategic plan that established the FBI investigative priorities in a 3-tier system. Tier I priorities were "foreign intelligence, terrorist, and criminal activities that directly threaten the National or Economic Security of the United States." Tier II priorities were "crimes that affect the public safety or undermine the integrity of American society: drugs, organized crime, civil rights, and public corruption." Tier III priorities were "crimes that affect individuals and property such as violent crime, car theft, and telemarketing scams..."

On March 15, 1999, shortly after Director of Central Intelligence George Tenet asserted the U.S. Intelligence Community was declaring war on Usama Bin Laden and al Qaeda, FBI Headquarters established national level priorities within its Counterterrorism Program. Bin Laden and al Qaeda, along with the Bin Laden-allied Egyptian Islamic Jihad (EIJ) and al Gama'at al Islamiyya (IG), were designated as "priority group one" for the FBI's counterterrorism efforts.

Our review of the Hazmi/Mihdhar chronology revealed no appreciable shift in resources by the FBI's San Diego Field Office in response to these changed priorities. We found that prior to September 11, 2001, the actual investigative priority for the San Diego Field Office was drug trafficking. According to former San Diego Special Agent in Charge William Gore, the highest concentration of FBI agents and resources in San Diego was directed at combating drug trafficking based on the FBI's process and procedures used each year to set priorities in its field offices. He said that white-collar crime was the office's second priority, and violent crime was its third priority.

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[270] As noted, Mihdhar and Hazmi used their own names to open bank accounts, conduct financial transactions, obtain state identification cards, purchase a vehicle, obtain telephone service, take flying lessons, and rent an apartment while residing in San Diego.

Counterterrorism was only the fourth priority for the San Diego FBI office. The counterterrorism efforts in San Diego were directed primarily at another terrorist organization and related groups not connected to Al Qaeda, and the majority of San Diego's counterterrorism investigations targeted activities related to the indirect support of terrorism conducted by those groups.

We found that the San Diego FBI focused little to no investigative activity on al Qaeda prior to September 11. San Diego FBI personnel stated to us that they had believed there was no significant al Qaeda activity in San Diego based on information from their sources and investigative activities. The former supervisor of the San Diego counterterrorism squad explained their job at the field office level was to "shake the tree and see what fell out" in relation to potential terrorism activities in their area. Although San Diego agents assigned to counterterrorism conceded they had received little to no specific training concerning Bin Laden or al Qaeda, they asserted that al Qaeda did not have a significant presence in San Diego prior to September 11.

Yet, al Qaeda was present in San Diego, unbeknownst to the FBI. Hazmi and Mihdhar resided in San Diego. Unfortunately, the San Diego agents were not focusing on al Qaeda. Even though FBI Headquarters had designated al Qaeda as the number one counterterrorism priority, the San Diego FBI was not attempting to identify individuals that were associated with al Qaeda.

Since September 11, many San Diego agents have been moved from other squads and assigned to counterterrorism. Significantly, the San Diego office opened a large number of intelligence investigations on potential al Qaeda subjects immediately after September 11. Obviously, the focus and priorities dramatically changed after September 11. But there is no reason to believe the al Qaeda presence in San Diego began only after September 11. If San Diego's focus on counterterrorism and al Qaeda had occurred earlier in San Diego, there would have been a greater possibility, though no guarantee, that Hazmi's and Mihdhar's presence in San Diego may have come to the attention of the FBI before September 11.

However, it is important to note that San Diego's allocation of resources before September 11 and the lower priority it gave to the Counterterrorism Program were not atypical of FBI field offices before September 11. In an OIG September 2002 audit report entitled "A Review of the Federal Bureau of Investigation's Counterterrorism Program: Threat Assessment, Strategic

Planning, and Resource Management," we found that "Although the FBI has developed an elaborate, multi-layered strategic planning system over the past decade, the system has not adequately established priorities or effectively allocated resources to the Counterterrorism Program."

Furthermore, the OIG report found that resources were not allocated consistent with the FBI's priorities – particularly at the field office level – because of the lack of "management controls" in the FBI's "complicated and paper-intensive strategic planning process." Instead of allocating resources based on FBI priorities, field offices allocated resources primarily based on previous caseloads in the field office. According to the report, prior to September 11, "the Bureau devoted significantly more special agent resources to traditional law enforcement activities such as white collar crime, organized crime, drug, and violent crime investigations than to domestic and international terrorism investigations." For example, in 2000 twice as many FBI agents were assigned to drug enforcement than to counterterrorism. Thus, the San Diego's office allocation of resources was not different from many other FBI field offices, despite the stated priorities of the FBI.

C. Events in the spring and summer of 2001

As described in the factual chronology, the FBI had several opportunities in the spring and summer of 2001 to obtain critical intelligence about Mihdhar and Hazmi. Although the FBI and the CIA were discussing Mihdhar, Khallad, and the Cole investigation throughout the spring and summer of 2001, the FBI did not become aware of the critical intelligence involving Mihdhar's U.S. visa and subsequent travel to the U.S. until late August 2001. As we discussed above, we believe that systemic problems regarding information sharing between the two agencies contributed to the FBI's failure to obtain this information earlier. But restrictions within the FBI also contributed to the FBI's failure to acquire critical information about Hazmi and Mihdhar before September 11. In this section, we discuss those problems.

1. Restrictions on the flow of information within the FBI

By the summer of 2001, the effect of the various restrictions within the FBI on information sharing – commonly referred to as "the wall" – had resulted in a nearly complete separation of intelligence and criminal investigations within the FBI. This separation greatly hampered the flow of

information between FBI personnel working criminal and intelligence investigations, including information concerning Hazmi and Mihdhar in the summer of 2001.

As discussed in Chapter Two, in late 1999 the FISA Court had become the "wall" for purposes of passing FISA information on targets of a particular terrorist organization from FBI intelligence investigations to criminal investigations. Any information that intelligence agents wanted to give to criminal agents had to be provided to the FBI's NSLU, which then provided it to OIPR, which then provided it to the FISA Court, which then had to approve the passage of the information to criminal agents. In addition, after the FISA Court was notified in the fall 2000 about errors in approximately 100 FISA applications, a significant portion of which related to the FBI's representations about the "wall" procedures in al Qaeda cases, the FISA Court imposed new restrictions on the FBI's handling of FISA information. The FISA Court required a certification from all individuals who received FISA information stating that they understood this requirement.

The FISA Court exempted CIA and NSA personnel, who often received FISA information from the FBI, from this certification requirement. But the FISA Court required that the CIA and NSA indicate on the information they provided to the FBI whether the information had been obtained based on FISA information previously provided to them by the FBI (called "FISA-derived information"). In response, the NSA decided that it was more efficient not to delay dissemination of intelligence while checking to see if it was derived from FISA, and it therefore placed a caveat on all NSA counterterrorism reports to the FBI stating that before information could be considered for dissemination to criminal personnel, the FBI had to check with the NSA General Counsel about whether the intelligence was FISA-derived. Once the NSA determined whether the information was FISA-derived, the FBI had to comply with the wall procedures for passing FISA-derived information to criminal agents or prosecutors. If the information was not FISA-derived, it could be passed directly.

FBI Headquarters personnel became wary that any involvement of criminal agents in intelligence investigations could present problems for the FBI with the FISA Court. A former ITOS unit chief described the FISA Court's certification requirement as a "contempt letter" and said that it "shut down" the flow of information in the FBI. He further stated that FBI

Headquarters employees became worried that any misstep in handling FISA information could result in harm to their careers because an FBI agent was banned from appearing before the FISA Court and OPR began an investigation on him. These three factors – the Court had become the screener in al Qaeda cases, the certification requirement imposed by the FISA Court, and concerns about violating the Court's rules – combined to stifle the flow of intelligence information within the FBI. FBI employees described this to the OIG as the walls within the FBI becoming "higher" over time. New York FBI agents told the OIG that the walls were viewed as a "maze" that no one really understood or could easily navigate.

As we discuss below, these walls affected the FBI personnel's discussions about the Mihdhar information at the June 11, 2001, meeting in New York and the FBI's decision to open an investigation to locate Mihdhar in August 2001.

2. Problems at the June 11 meeting

At the June 11, 2001, meeting, FBI Headquarters and CIA CTC personnel discussed with New York FBI investigators issues relating to the Cole investigation. At the time of this meeting, the FBI analyst who we call Donna had received information from the CIA concerning travel in January 2000 of an al Qaeda operative named Khalid al-Mihdhar to Malaysia through Dubai. Donna also had received surveillance photographs from the CIA showing Mihdhar meeting with other unidentified al Qaeda operatives in Malaysia.[271]

After receiving the information from the CIA, Donna had conducted her own record check on Mihdhar in CTLink and discovered the NSA information from late 1999 and early 2000 associating Mihdhar with a suspected terrorist facility in the Middle East linked to al Qaeda activities and his plans to travel to Malaysia in January 2000.

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[271] Although not shared with Donna or known to anyone else in the FBI, the CIA also knew in June 2001 that Mihdhar had a U.S. visa, that Mihdhar's associate -- Hazmi -- had traveled to the United States in January 2000, and that the Cole mastermind Khallad had been identified in one of the Kuala Lumpur surveillance photographs.

This NSA intelligence about Mihdhar would have been important to the FBI agents conducting a criminal investigation of the Cole attacks. However, Donna did not share this information with the criminal agents at the June 11 meeting because of concerns about the wall. By this time, the FBI was operating under the requirement that all NSA counterterrorism information had to be reviewed by the NSA's General Counsel's Office for a determination of whether it was FISA-derived before it could be considered for dissemination to criminal agents. Because she had not yet asked the NSA whether the information could be passed, Donna did not provide the New York agents with any of the NSA information. That information would have been important to the New York agents who were working the Cole investigation because they specialized in al Qaeda operations and at the June 11 meeting showed great interest in the Malaysia meetings and Mihdhar. That information may also have provided the criminal agents with additional leads and could have led to the information that Mihdhar and Hazmi had traveled to the United States in January 2000.

We recognize that the caveat on sharing any NSA counterterrorism information did not mean that the criminal agents were prohibited from ever obtaining access to the NSA information on Mihdhar. But if the information was FISA-derived, the caveat created a delay in the criminal agents receiving the information because of the lengthy procedures that had to be followed to share the information with them.

With respect to the information Donna had received from the CIA about the Malaysia meetings, Donna showed the photographs to New York agents and asked whether they could identify Cole participant Fahd al Quso in the photographs. After one of the agents made a tentative identification, the agents asked questions about Mihdhar and the photographs. The agents continued to ask Donna questions about Mihdhar, the Malaysia meetings, and the photographs on June 11 after the meeting. As we discussed above, it is unclear how much questioning occurred during the actual meeting and how much occurred after the meeting. Donna was unable to answer most of the agents' questions because she had not obtained the information from the CIA. This, in our view, was not because of the wall, but was because of Donna's failure to plan the meeting adequately or ask sufficient questions from the CIA in advance of the meeting.

First, we believe the planning for the June 11 meeting was flawed. Although Donna and other IOSs frequently traveled to New York to work on the Cole investigation, she told the OIG that this was the first time that she had arranged for a meeting involving CTC personnel in New York. Yet, according to what the meeting participants told the OIG, the purpose and the agenda of the meeting were not clear. The participants agreed that they knew there was going to be a discussion of the investigative results on the Cole attack. The New York agents believed that the CTC and FBI Headquarters had information to share with New York. Donna and the CTC participants, however, described the meeting as a "brainstorming" session to determine what new leads could be pursued and what FBI Headquarters could do to assist New York.

No agenda was prepared and no supervisors were consulted for their input about the meeting. Even though Donna said that she called the meeting to explore further leads or avenues of investigation in the Cole case, she apparently did not ask the CTC participants to be prepared to present information or answer questions. Mary and Peter told the OIG they were not in a position to discuss the Cole investigation. Mary said she was not up to speed about the Cole investigation or the Malaysia meetings. Peter told the OIG that as an analyst at the CIA, he did not have authority to discuss CIA information at the meeting and he was merely "tagging along."

Donna told the OIG that she considered Mary to be another FBI employee at the meeting, and for this reason did not provide her with any specific instructions in preparation for the meeting. Donna also said that she had not invited Peter and because she was not in his chain of command, she did not ask him to be prepared. However, the New York agents we interviewed told the OIG that they believed that CTC personnel were coming to the meeting in part to share information with them. The fact that all the participants we interviewed described the meeting as unproductive and a "waste of time" highlighted that a more useful exchange of information could have occurred.

With respect to the Kuala Lumpur photographs, Donna had obtained only limited information from CIA employee John about the photos when she received them. She did not ask general background questions such as whether anyone else in the photographs had been identified, or what else was known from the Malaysia meetings. Donna told the OIG that because she believed the CIA provided her with everything she was entitled to know, she did not have

an in-depth discussion about the photographs. John said he did not recall anything about his discussions with Donna regarding the Kuala Lumpur photographs.

Donna told the OIG that when the New York agents asked her questions about Mihdhar, the Malaysia meetings, and the photographs, she thought that they were reasonable questions, but she did not know the answers. She stated that at the time she obtained the Kuala Lumpur photographs from the CIA, she believed that they were only potentially related to Quso and their significance to the Cole would hinge on whether Quso was in the photographs.

We believe Donna should have asked the CIA additional questions about the photographs. She had reason to believe Quso, a key individual in the Cole investigation, may have attended the Malaysia meetings. Given her interest in whether Quso had attended the meetings, she should have wanted to ascertain, and asked the CIA, what, if anything, was known about the purpose of the Malaysia meetings, who were the other participants at the meetings, what was known about the participants, and any other available information.

Donna also did not ask the CIA whether there were additional photos or documentation. Donna told the OIG she was unaware that there could have been additional photographs or other relevant information available. We believe that someone in her position should have known or at least asked for additional information about the subject of the photographs in preparation for the meeting.

We also were troubled by Donna's inadequate efforts to obtain additional information after the June 11 meeting, particularly information about the Malaysia meetings, since it had been the subject of a dispute between Donna and Scott. Although Donna told the New York agents that she would check with the CIA about additional information regarding the photographs and the Malaysia meetings, Donna made little effort to obtain this information until two months later, in August 2001. Donna told the OIG that she believes that she made some unsuccessful follow-up phone calls to Peter and John about the photographs. It is not clear from the documentary evidence how much Donna did before August to obtain the information, but she did not provide additional information to the New York agents about the photographs for at least two months. We recognize that FBI analysts were overwhelmed with assignments and had to juggle many responsibilities, however, given the possible

connections of this information to the Cole investigation, we believe Donna should have made more aggressive and timely efforts to obtain this information soon after the June 11 meeting and to keep the New York agents informed about what her follow-up efforts were.

By the same token, Scott, the New York Cole case agent, did little to follow up after the June 11 meeting to obtain information he requested about the Malaysia meeting. Scott told the OIG he "often" asked Donna about the status of the information, but he was not provided any such information. Donna contended that Scott did not follow up on his June 11 requests. We found no evidence such as e-mails or other documents to support Scott's claim that he raised the issue often with Donna. We believe that neither Donna nor Scott made significant efforts after the meeting to obtain the information.

3. The FBI's investigation in August 2001 to find Mihdhar and Hazmi

As discussed above, on August 22, 2001, the FBI learned that Mihdhar and Hazmi had entered the United States in January 2000, that Mihdhar had again flown to New York on July 4, 2001, and that there was no record of either of them leaving the country. The FBI also learned that Khallad had been identified in the Kuala Lumpur photographs. Upon discovery of this information, the FBI opened an intelligence investigation in New York in an effort to locate Mihdhar.

Once again, however, the separation between intelligence and criminal information affected who could receive access to the information about Hazmi and Mihdhar. This interpretation of the wall also hampered the ability of the FBI New York agents working on the Cole investigation to participate in the search for Hazmi and Mihdhar. In addition, we found that the FBI's efforts to locate Hazmi and Mihdhar were not extensive. We do not fault the case agent assigned to locate them. He was new and not instructed to give the case any priority. Rather, we found that the FBI New York did not pursue this as an urgent matter or assign many resources to it.

a. The effect of the wall on the FBI's attempts to locate Mihdhar

As discussed above, Donna drafted an EC to the New York FBI requesting it open an investigation to locate Mihdhar. She also called Chad, the FBI New York agent who primarily handled intelligence investigations for the Bin Laden squad, to give him a "heads up" about the matter, and she subsequently sent the EC to him. She wrote in the e-mail that she wanted to get the intelligence investigation going and the EC could not be shared with any of the agents working the Cole criminal case. Chad forwarded the EC to his squad supervisor, Jason, who nevertheless disseminated the EC via e-mail within the Bin Laden squad, including to the criminal agents assigned to the Cole investigation.

Scott read the EC and contacted Donna regarding it. Donna informed Scott that he was not supposed to have read the EC because it contained NSA information that had not been cleared to be passed to criminal agents. Donna told Scott that he needed to destroy his copy. Scott responded that the effort to locate Mihdhar should be part of the Cole criminal investigation, and he argued with Donna regarding the designation of the investigation as an intelligence matter. Donna asserted that, because of the wall, criminal agents were not yet entitled to the underlying intelligence provided by the NSA, and without that predicating material, the FBI could not establish any connection between Mihdhar and the Cole criminal investigation.

Scott, Donna, and acting UBL Unit Chief Rob then spoke via conference call. Scott argued that the investigation should be opened as a criminal investigation and that more resources and agents could be assigned to a criminal investigation by New York. He also argued that criminal investigative tools, such as grand jury subpoenas, were far quicker in obtaining information than the tools available in intelligence investigations.

Donna consulted with an NSLU attorney, Susan. According to Donna, Susan concurred that the matter should be handled as an intelligence investigation and that because of the wall, a criminal agent could not

participate in the search for or any interview of Mihdhar.[272] When Donna advised Scott of Susan's opinion in an e-mail message, Scott responded by e-mail that he believed the wall was inapplicable. Scott ended his message by suggesting that because of the NSLU's position, people were going to die and that he hoped that NSLU would stand by its position then.

The way that FBI Headquarters handled the Mihdhar information reflected its interpretation of the requirements of the wall prior to September 11. First, because the predication for the search for Mihdhar originated from the NSA reports, this information could not be immediately shared with criminal agents. Instead, it first had to be cleared for dissemination by the NSA, which would determine whether the intelligence was based on FISA information. If so, the information had to be cleared for passage to the criminal agents – the information had to be provided to the NSLU, which then provided the information to OIPR, which then provided it to the FISA Court, which then had to approve the passage of this information to criminal agents. In fact, the limited INS information concerning Mihdhar's and Hazmi's entries into the United States was the only unrestricted information in the EC immediately available to the criminal investigators.

As in the Moussaoui case, the decision to open an intelligence investigation resulted in certain restrictions. FBI Headquarters employees understood that they needed to ensure that they avoided any activities that the FISA Court or OIPR could later deem "too criminal" and could use as a basis to deny a FISA application. This included preventing a criminal agent from participating in a subject interview in an intelligence investigation. While Scott was correct that the wall had been created to deal with the handling of only FISA information and that there was no legal barrier to a criminal agent being present for an interview with Mihdhar if it occurred in the intelligence investigation, FBI Headquarters and NSLU believed that the original wall had been extended by the FISA Court and OIPR to cover such an interview.

Scott's frustration over the wall was similar to Henry's in the Moussaoui investigation, when Henry was told by Don that seeking prosecutor

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[272] As discussed above, Susan told the OIG that she did not recall this discussion with Donna.

involvement prematurely could potentially harm any FISA request. Scott, like Henry, wanted to pursue a criminal investigation and became frustrated when he was advised by FBI Headquarters that he could not proceed in the manner he deemed appropriate. Scott's perception was that FBI Headquarters had misconstrued "the wall" and the wall had been inappropriately expanded. He told the OIG that he believed the wall should only relate to FISA or FISA-derived information. Like the Minneapolis FBI, Scott believed that he was being "handcuffed" in the performance of his job and that FBI Headquarters "erred on the side of caution" in its approach to intelligence information.

FBI Headquarters, on the other hand, acted in accordance with its experience with OIPR and the FISA Court. FBI Headquarters believed that OIPR and the FISA Court required strict adherence to the procedures for the passage of intelligence information to criminal investigations and required separating criminal and intelligence investigations. Donna explained that the FISA Court's mandates resulted in the need for the FBI to create a near complete separation between intelligence and criminal investigations in order to effectively use intelligence information. Rob also told the OIG that there were "land mines" in dealing with intelligence versus criminal information, and it was difficult to appropriately straddle the two sides.

Our review of this case showed that the wall had been expanded to create a system that was complex and had made it increasingly difficult to effectively use intelligence information within the FBI. The wall – or "maze of walls" as one witness described it – significantly slowed the flow of intelligence information to criminal investigations. The unintended consequence of the wall was to hamper the FBI's ability to conduct effective counterterrorism investigations because the FBI's efforts were sharply divided in two, and only one side had immediate and complete access to the available information.

The wall was not, however, the only impediment in the FBI's handling of the investigation to find Mihdhar and Hazmi. We found there were also other problems in how the search for Mihdhar and Hazmi was handled.

b. Allocation of investigative resources

We found that prior to the September 11 attacks, the New York Field Office focused its al Qaeda counterterrorism efforts on criminal investigations, but it did not expend a similar effort on intelligence investigations or the

development of intelligence information. New York agents told the OIG they believed that criminal prosecution was the most effective tool in combating terrorism. They asserted that criminal investigations are also a preventive activity and the FBI had always focused on preventing terrorism, even before September 11. They pointed to the TERRSTOP investigation in 1993, an investigation to uncover a terrorist plot to attack New York City landmarks, and the criminal investigation into the East African embassy bombings.

Prosecutors also argued that criminal investigations and prosecutions are an effective preventive measure against terrorism. Testifying before the Joint Intelligence Committee, Mary Jo White, the former U.S. Attorney for the Southern District of New York (SDNY), stated, "[W]e viewed the terrorist investigations and prosecutions we did from 1993-2002 as a prevention tool." Patrick Fitzgerald, currently the U.S. Attorney for the Northern District of Illinois and formerly an Assistant U.S. Attorney in the SDNY, told us that it is a misconception that there has to be a difference between prosecution and gathering intelligence. He added that the SDNY prosecutions produced a "treasure trove of [intelligence] information."

However, prosecutors also realized criminal investigation and prosecution were not the only means of countering terrorism. White stated, "the counterterrorism strategy of our country in the 1990s was not, as I have read in the media, criminal prosecutions." She further stated, "none of us considered prosecutions to be the country's counterterrorism strategy, or even a major part of it." As Fitzgerald told us, "in order to connect the dots, you need people to gather the dots."

Although we agree criminal investigations are a highly effective counterterrorism tool, intelligence investigations were not given nearly the same level of resources and attention in the FBI's New York Field Office before September 11, 2001. This criminal focus was clear in the assignment of personnel on the New York Bin Laden squad. From October 2000 to June 2001, only one agent on the Bin Laden squad was designated as the "intelligence" agent – the agent we call "Chad." The remainder were designated as "criminal" agents.[273] Chad told us that he was inundated with

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[273] One criminal agent worked on intelligence matters on a part-time basis.

intelligence investigations and information, and he rarely had enough time even to review all the incoming Bin Laden intelligence information, let alone to digest, analyze, or initiate the procedures to pass the information to the criminal agents where applicable. Chad also told us that the "intelligence" agent designation was "not a desirable position" within the Bin Laden squad. He described himself as the "leper" on the squad due to "the wall." Furthermore, Chad stated that the intelligence side of the squad received far less and lower quality resources.

The handling of the investigation to locate Mihdhar provides a clear indication of the primacy of the criminal over intelligence investigations in the New York office. On August 28, 2001, the New York Field Office opened an intelligence investigation to locate Mihdhar based upon Donna's EC. Donna told the OIG that she believed there was some urgency to the Mihdhar investigation, not because of any evidence that he was operational, but because he could leave the United States at any time and the opportunity to find out as much as possible about him would be lost. She said she therefore called Chad about the EC in advance, which she did not normally do.

However, when she sent the EC to New York, she assigned the matter "routine" precedence, the lowest precedence level. When asked about this discrepancy, Donna told the OIG that the Mihdhar investigation was "no bigger" than any other intelligence investigation that the FBI was pursuing at the time.

The New York Bin Laden squad relief supervisors, who we call "Jay" and "David," told the OIG that they recognized that there was some urgency to the Mihdhar investigation. Yet, the FBI in New York did not treat it like an urgent matter. The investigation was given to an inexperienced agent – "Richard" – who had only recently been assigned to the Bin Laden squad. This was his first intelligence investigation. As one of the largest field offices in the FBI, with over 300 agents assigned to the JTTF, the New York Field Office could have assigned additional or more experienced agents who were not involved in the Cole criminal investigation to assist Richard. However, the New York Field Office Bin Laden Squad was focused on criminal investigations. As a result, the designation of the Mihdhar matter as an intelligence investigation, as opposed to a criminal investigation, undermined the priority of any effort to locate Mihdhar.

Finally, we also noted that there was a clear predicate for a criminal investigation that no one appeared to notice at the time. In her EC, Donna noted that Mihdhar had previously traveled to the United States, according to information she had obtained from the INS. After the FBI's intelligence investigation was opened, she obtained and forwarded to Richard a copy of Mihdhar's June 2001 visa application on which he stated that he had not previously been issued a visa and had never traveled to the United States. Thus, there was a clear basis to charge Mihdhar criminally with false statements or visa fraud. Significantly, this information had been provided to the FBI without the restrictive caveats placed on NSA reports and other intelligence information. As a result, if Mihdhar had been found, he could have been arrested and charged with a criminal violation based on the false statements on his visa application. However, the FBI did not seem to notice this when deciding whether to use criminal or intelligence resources to locate Mihdhar.

D. Individual performance

This section summarizes the performance of individual FBI employees in the Hazmi and Mihdhar matter. While none of them committed misconduct, we believe that several FBI employees did not perform their duties as well as they could have and should have. We address in turn the FBI employees involved in each of the five lost opportunities.

In this section, we do not discuss the performance of individual CIA employees. However, we believe that a significant cause of the failures in the sharing of information regarding the Hazmi and Mihdhar case is attributable to the actions of the CIA employees. It is the responsibility of the CIA OIG to assess the accountability of the actions of CIA employees.

1. Dwight

In January 2000, intelligence information was developed about Hazmi, Mihdhar, and other al Qaeda operatives meeting in Malaysia. Dwight, an FBI detailee to the CTC's Bin Laden Unit, read the CIA cables about the Malaysia meeting. The cables indicated that Mihdhar had a U.S. visa and that he listed New York on the visa application as his intended destination. Dwight recognized the significance of this information to the FBI and drafted a CIR to pass this information to the FBI.

Unfortunately, his draft CIR was never sent. A notation added to the CIR suggested that it was held at the request of the CIA's Deputy Chief of the Bin Laden Unit. Several FBI detailees accessed the CIR, and Dwight inquired about it again five days later, asking the Deputy Chief in an e-mail whether it was going to be sent or whether he needed to "remake" it in some way. We found no response to his e-mail, and none of the participants, including Dwight and the Deputy Chief, said they remembered this CIR at all.

We believe the primary responsibility for the failure to pass this information rests with the CIA. The evidence indicates that the CIA did not provide permission for the CIR to be sent.[274] However, we also believe that Dwight should have followed up as much as necessary to ensure that the information was sent to the FBI. Although we found evidence that he inquired once about the disposition of the CIR, we found no additional evidence that he continued to follow up to ensure that the information was sent. If Dwight was stymied in his attempt to learn about the disposition of the cable, or if the CIA gave no reasonable explanation for why the information was not being sent, he could have brought this issue to the attention of another supervisor in the CTC. In our view, Dwight took the commendable initiative to draft the CIR to share the information with the FBI, but did not follow through adequately to ensure that it was sent, and the information in the CIR was not provided to the FBI until shortly before the September 11 attacks.

2. Malcolm

Malcolm was a New York FBI agent detailed for several years to the CTC. He told the OIG that he understood his role at the CTC was, among other things, to be the "eyes and ears" of the New York Field Office. We do not believe that he performed this role sufficiently. He acknowledged to the OIG that one of his duties was "to monitor" New York Field Office cases, but he said he read only the cables that he thought were "interesting," generally

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[274] The CIA has asserted that the information in the CIR was sent to the FBI through another cable, which may be why the CIR was not sent. A CIA cable stated that Mihdhar's travel documents, including a multiple entry U.S. visa, had been copied and passed "to the FBI for further investigation." As discussed above, however, we found no evidence that this cable was correct and that this information had actually been provided to the FBI.

based solely on his review of the cable subject line. In addition, while he said his role was to "facilitate inquiries of mutual interest," the only example he could provide was his acting as a liaison for FBI offices around the country by following up on tracing requests and reporting on their status. This was not very onerous or substantive. We believe that FBI management is primarily responsible for failing to provide the FBI detailees to the CTC, including Malcolm, with clear duties, direction, and supervision. But we believe Malcolm should have done more and taken more initiative in performing his duties at the CTC.

3. Stan

For several months in 2000, Hazmi and Mihdhar lived as boarders in the house of an FBI informational asset. The asset briefly mentioned the two boarders to his FBI control agent, who we call "Stan." Stan did not document this information, seek to learn the boarders' full identities, or conduct any checks on them.

No FBI policy required Stan to seek or document this type of information from the asset, and we found differences among the other FBI agents who we interviewed about whether they would have sought such information from an asset. While Stan did not violate any specific FBI policy, we believe it would have been a better and more prudent practice for him to have sought at least minimal information from his asset about the boarders living with him. The asset knew little about the boarders, and the boarders could have compromised information provided by the asset to the FBI.

Moreover, FBI policy required Stan to continually evaluate the asset's credibility and provide a yearly evaluation report on the asset. Stan's yearly report on this asset was minimal, with a bare attestation of the asset's bona fides. It contained no indication of what evidence Stan had used to make these attestations. While we do not suggest that Stan had to conduct extensive reviews of everyone living with the asset, Stan's actions in following up on this information were not particularly thorough or aggressive.

4. Max

In January 2001, a joint FBI/CIA source identified Khallad in photographs of the Malaysia meetings. Because the FBI ALAT who was

involved in the handling of the source, Max, was unable to speak any of the joint source's languages, a CIA employee conducted the debriefings of the source, including the debriefing in which the source identified Khallad. We concluded that Max was not informed of the source's identification of Khallad from the Kuala Lumpur surveillance photograph, either at the time of the identification or afterwards. Although CIA cables covering the debriefing described the identification of Khallad, these were not shared with Max. Instead, he saw CIA TDs that did not contain the information about the identification.

CIA documents do not indicate that the ALAT was informed of the identification, and no other evidence indicates that the ALAT knew. We found that the ALAT included detailed descriptions in his reports of other information from the source, which indicates he was not provided the information about the identification of Khallad. We also found that the New York FBI agents who interviewed the source in February 2001 were not informed of the identification of Khallad. In sum, we believe the ALAT did not learn about the source's identification, not that he knew about identification but failed to share this information with others.

We believe that, as the ALAT, Max should have been more familiar with the CIA's reporting process. He was not aware that the CIA's TDs contained only a part of the information obtained during the source debriefings. Although our review revealed that many FBI employees operated with misunderstandings about the ways the CIA recorded and reported intelligence information, a significant function of the ALAT position is to interact with the CIA. Had he recognized that he could not rely on TDs for full reporting about the source's information, he could have asked his CIA counterpart directly for any additional information from the source, and the ALAT may have learned about the identification of Khallad. In addition, given Max's concern that he provide FBI Headquarters with all of the information reported by the source, it would have been prudent for him to consult with the CIA case officer and ask sufficient questions to ensure that he had received all of the information. We found no indication that he did so.

5. Donna

Donna, the FBI analyst who worked on the investigation of the Cole attacks, planned a June 11, 2001, meeting with the Cole investigators and CIA

employees to discuss information relating to the Cole investigation. She deserves credit for organizing this meeting and seeking to share intelligence information with the Cole investigators. However, we fault her performance in two respects. First, we found that the meeting was poorly planned, and Donna did not clearly communicate the purpose of the meeting to the participants. Donna also failed to obtain significant information prior to the meeting that could have been shared with the investigators about the Malaysia meetings. After the meeting, although Donna devoted a significant amount of time to the Cole investigations, she did little specific follow-up to provide answers to the investigators about their logical questions regarding the Malaysia meetings. We believe she did not do all she could have to acquire that information for the New York agents, even though she had said that she would as a result of their discussion at the June 11 meeting. As a result, the FBI missed another opportunity to focus on Mihdhar and Hazmi earlier than it did.

When Donna finally learned from Mary on August 22, 2001, that Hazmi and Mihdhar were in the United States, Donna quickly and appropriately took steps to have the FBI open an investigation to locate them. She personally called the New York Bin Laden intelligence agent and told him about the matter. This was an unusual step to call the agent directly, and it suggested that the investigation should be given some priority. However, when she sent the EC to New York, she designated the EC as having a routine precedence. Donna's actions indicated some urgency in the need for the investigation yet the subsequent EC did not convey any urgency. The New York Field Office assigned the case immediately, and the agent began working on the case within two business days of the assignment. If the EC had conveyed urgency, the FBI New York Field Office might have assigned additional or more experienced agents to locate Mihdhar and Hazmi and initiated the search sooner.

6. Rob

We believe that Rob, as Donna's supervisor, is also responsible for Donna's failures. While the FBI at the time permitted IOSs to make significant decisions, often with little supervisory input, we believe that as a supervisor, he should have ensured that she was handling the June 11 meeting appropriately and, if necessary, become involved with the planning or execution of the meeting. Although Donna often traveled to New York to work on the Cole investigation, the June 11 meeting involved the CIA and an AUSA, which

should have led to more supervisory involvement in the purpose, agenda, and outcome of the meeting. But Rob had little supervisory involvement with it, either before or after the meeting. In addition, although Donna drafted the EC requesting the investigation of Mihdhar, the EC was ultimately approved and sent by Rob. Therefore, we believe he also bears some responsibility for failing to ensure that the appropriate precedence level was used on the EC.

7. Richard

We do not fault Richard for his limited investigation, which was still in the nascent stages by the time of the September 11 attacks. As we described above, Richard took logical steps to try to locate Mihdhar and Hazmi, such as completing a lookout for Mihdhar with the INS, requesting local criminal history checks, checking with New York hotels about Hazmi and Mihdhar, and conducting commercial database checks on them. However, there were many more investigative steps that could have been pursued, in New York and elsewhere, had the investigation been assigned greater priority and had the FBI provided more resources to this investigation. The FBI was not close to locating Hazmi and Mihdhar when they participated in the September 11 attacks. We believe that the FBI in New York should have assigned the matter more priority than it did.

8. Mary

Mary was assigned by her CIA managers in May 2001 with finding and reviewing the CIA cables relating to the Malaysia meetings and their potential connection to the Cole attack. Mary did not find the relevant CIA cable traffic until late July and mid-August 2001. She told the OIG that she did not have time to focus on this assignment until then. Upon discovering on August 21 that Hazmi and Mihdhar had traveled to the United States, she immediately passed this information to the FBI.

We recognize that the disparate pieces of information about the Malaysia meetings were not easy to connect and that the task of developing patterns from seemingly unrelated information was complex. Yet we question the amount of time that elapsed between Mary's assignment and her discovery of the important information. As we discussed previously, however, Mary's assignments were directed and controlled by her managers in the CTC. We, therefore, leave this issue to the CIA OIG for its consideration.

V. OIG conclusions

In sum, we found individual and systemic failings in the FBI's handling of information regarding the Hazmi and Mihdhar matter. The FBI had at least five opportunities to learn about their presence in the United States and to seek to find them before September 11, 2001. Much of the cause for these lost opportunities involved systemic problems. We found information sharing problems between the CIA and the FBI and systemic problems within the FBI related to counterterrorism investigations. The systemic problems included inadequate oversight and guidance provided to FBI detailees at the CIA, the FBI employees' lack of understanding of CIA procedures, the inconsistent documentation of intelligence information received informally by the FBI, the lack of priority given to counterterrorism investigations by the FBI before September 11, and the effect of the wall on FBI criminal investigations.

Our review also found that the CIA did not provide information to the FBI about Hazmi and Mihdhar when it should have and we believe the CIA shares significant responsibility for the breakdown in the Hazmi and Mihdhar case. However, the FBI also failed to fully exploit the information that was made available to them. In addition, the FBI did not assign sufficient priority to the investigation when it learned in August 2001 that Hazmi and Mihdhar were in the in the United States. While we do not know what would have happened had the FBI learned sooner or pursued its investigation more aggressively, the FBI lost several important opportunities to find Hazmi and Mihdhar before the September 11 attacks.

CHAPTER SIX
RECOMMENDATIONS AND CONCLUSIONS

Our review found many deficiencies in the FBI's handling of intelligence information related to the September 11 attacks. In addition to individual failures, which we detail at the end of each chapter, we found significant systemic problems that undermined the FBI's Counterterrorism Program. For example, before the September 11 attacks the FBI lacked an effective analytical program, failed to use the FISA statute fully, and was inadequately organized to disseminate timely and sufficient information within the Intelligence Community. As we detailed in this report, these systemic problems significantly affected the FBI's handling of the Phoenix Electronic Communication (EC), the Moussaoui investigation, and the pursuit of intelligence information relating to Hazmi and Mihdhar, two of the September 11 terrorists.

Since September 11, 2001, the FBI has taken numerous steps to reorganize and strengthen its Counterterrorism Program. In this report, we have not analyzed each of these changes, many of which are substantial, ongoing, and evolving. The National Commission on Terrorist Attacks Upon the United States (9/11 Commission), as well as other OIG and GAO reviews, is assessing the impact of the changes in the FBI since September 11, 2001.

In this chapter, we make broad systemic recommendations to address the specific problems examined in our review that we believe the FBI must address as it continues to change its Counterterrorism Program. Our recommendations flow from the analysis of the deficiencies that we found in the way the FBI handled information related to the September 11 attacks.[275]

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[275] Attached in the Appendix is the FBI's response to this report and our recommendations.

I. Recommendations

A. Recommendations related to the FBI's analytical program

Recommendation No. 1: Improve the hiring, training, and retention of intelligence analysts.

As discussed in Chapter Two, the FBI acknowledged shortly after the September 11 attacks that its analytical program was inadequate and in need of improvement. Since then the FBI has made important changes to attempt to address this deficiency. For example, the FBI has established the Office of Intelligence with separate management and career tracks for analysts. In addition, the FBI has created an analytical branch in the Counterterrorism Division and has established the College of Analytical Studies at the FBI Academy in Quantico, Virginia, with a 6-week training program for all analysts.

In addition to these important changes, the FBI must ensure that it hires, trains, and retains a sufficient number of skilled analysts. Hiring sufficient numbers of qualified analysts is a challenging task. As part of this effort, training for analysts must be improved. For example, we found that training for analysts prior to September 11 was infrequent and often did not occur until months after they began working in their analyst positions. While training for analysts has improved since September 11, the FBI needs to ensure that it provides comprehensive and timely training for all its analysts.[276]

To retain analysts, the FBI must ensure that it creates an attractive career path for analysts, with sufficient benefits and stature within the FBI. Analysts should have the opportunity to receive promotions to senior positions, such as assistant directors or deputy assistant directors, rather than being supervised solely by special agents who have risen to management positions within the FBI. Prior to September 11, 2001, the FBI did not sufficiently value or support the critical work of its analysts. The FBI must ensure that it elevates the importance of analysts and their work within the FBI.

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[276] The OIG is currently conducting an audit examining the FBI's efforts to hire and train intelligence analysts.

<u>Recommendation No. 2</u>: Ensure effective management of analysts.

Our review revealed problems in the management of analysts within the FBI, particularly the Intelligence Operations Specialists (IOSs) in the International Terrorism Operations Section (ITOS) at FBI Headquarters. Our review revealed that supervisory special agents in FBI Headquarters failed to provide consistent oversight and supervision of these analysts. Part of the problem was that the analysts were long-time FBI Headquarters employees with substantive expertise in terrorism matters, while their supervisors were agents who often lacked analytical expertise and rotated through FBI Headquarters on short assignments.

Moreover, prior to September 11, 2001, ITOS worked in crisis mode, with insufficient resources to respond its many tasks. Consequently, overwhelmed analysts had to respond to the emergency of the moment. They did not have sufficient time to conduct comprehensive, proactive analysis to assess the significance or the relationship of disparate pieces of intelligence information. Supervisors also allowed the analysts to make critical decisions independently, without requiring any supervisory consultation even on significant matters.

The FBI must ensure effective management of analysts. It must identify the priorities for analysts and ensure that their workload is reasonable enough for them to adequately perform the tasks assigned to them. The FBI should more clearly define supervisors' responsibilities in managing its analytical programs. On important decisions, including determination of the priority to assign analytical requests, analysts should be required to consult their supervisors. In addition, analysts should not be able to close leads by simply reassigning them, which also occurred with regard to the Phoenix EC.

We also believe that the analysts' supervisors must have greater experience and broader knowledge of the activities under their area of supervision. Moving supervisors rapidly through critical units dealing with counterterrorism undermines the management of the program and the FBI's critical need for continuity and expertise in these important units. Supervisory positions that oversee analysts should be filled by experienced and permanent personnel, not analysts in acting capacities or agents who rotate through the units for short periods of time.

Recommendation No. 3: Require greater coordination and consultation between the operational and analytical units.

Various FBI analysts and managers told us that, in the past, operational managers in the FBI frequently overruled the conclusions of analytical work products. Before information could be disseminated to the field, ECs containing the analytical information had to be approved by the operational unit with responsibility for the area. The witnesses stated that the job of operational personnel is to verify that the facts cited by analysts are correct, but that the expertise and judgment of analysts normally should be relied upon in deciding the conclusions to be drawn from those facts.

We agree that operational personnel generally should not alter or veto the conclusions of an analyst in an analytical product. At the same time, analytical products need the input and expertise of operational personnel. The FBI therefore should take steps to institutionalize the operational components' involvement in developing and reviewing analytical products and set up a process for ensuring that these products reflect the consensus of the FBI's analytical and operational components.

Because the FBI combines intelligence and law enforcement components, disputes inevitably will arise between the operational unit and the analytical unit over, among other things, whether certain information should be distributed to the field or should appear in a briefing document because of concerns that it could jeopardize a pending investigation or prosecution. We believe that the FBI should establish a more defined and efficient process for handling these types of conflicts. The process should involve discussions between the disagreeing components and the input of the FBI's Office of General Counsel in appropriate circumstances, with a decision resting with upper-level FBI management.

B. Recommendations related to the FISA process

Recommendation No. 4: Ensure adequate training of FBI employees involved in the FISA process and counterterrorism matters.

We found that many FBI employees who were assigned to counterterrorism work – whether analysts, special agents in field offices, or FBI Headquarters supervisory special agents – received little formal training

about counterterrorism matters in general or FISA in particular. Even in complicated matters, such as the intricacies of terrorist organizations such as al Qaeda, these FBI employees primarily received on-the-job training.

We found, in particular, that FBI employees' knowledge about FISA was limited and uneven. FBI Headquarters employees we interviewed generally were not even familiar with the 1995 Procedures. Although they were knowledgeable about basic steps required for obtaining a FISA warrant, they were not well versed in the requirements of the FISA statute, particularly when the facts of the case did not fit within a standard pattern. We also found that special agents in FBI field offices were not well informed about the FISA process, such as the steps needed to finalize a FISA request, or the types of information needed to meet the requirements for a FISA warrant.

After the September 11 attacks, the 1995 Procedures and other restrictions regarding FISA and the dissemination of intelligence information have dramatically changed. By many accounts, the FBI and the Office of Intelligence and Policy Review (OIPR) are now much more aggressive in their approach to obtaining FISA warrants than before September 11. In addition, we were informed that in the spring and summer of 2003, many FISA training sessions were provided for FBI and OIPR employees, as well as employees from other Department of Justice components and intelligence agencies working on counterterrorism matters. This type of training, in our view, should be expanded and provided regularly.

In addition, the FBI must ensure that its employees understand the requirements for opening intelligence and criminal investigations that relate to counterterrorism and the tools available to them to conduct these investigations. This training should include detailed information on FISA and how it can be used, even when the case does not fit a standard fact pattern.

FBI agents also should receive training about the restrictions on the use of information acquired in intelligence investigations. Formal training should be provided at all levels in FBI Headquarters and for all field office employees who are involved with counterterrorism investigations, including the Chief Division Counsels (CDC) in the field. Widespread and continual training on FISA and other counterterrorism issues is especially important given the increase in the number of FBI employees who, since September 11, 2001, have been reassigned to counterterrorism matters from other programs.

<u>Recommendation No. 5</u>: FBI attorneys should be better integrated into counterterrorism investigations.

Our review found that the FBI lacked an effective system for ensuring that FBI lawyers were sufficiently integrated into the FISA process or other legal issues arising in counterterrorism investigations. For example, the FBI Headquarters supervisor most involved with the Moussaoui case had to consult with four different National Security Law Unit (NSLU) attorneys about the Moussaoui FISA request because FISA requests were not assigned to a single NSLU attorney who was responsible for seeing it through the process. In addition, none of the NSLU attorneys consulted with anyone from OIPR about the Moussaoui FISA request, despite its unusual nature, partly because one NSLU attorney never was completely responsible for the matter.

We believe that one NSLU attorney normally should be assigned to handle a particular FISA request or other legal matter arising in a counterterrorism investigation. This would ensure that an NSLU attorney is familiar with the facts and legal issues from beginning to end of the case, and it would give the attorney greater responsibility for a particular matter. In addition, we believe that NSLU attorneys should have more contact with field agents in important cases. None of the NSLU attorneys in the Moussaoui case spoke with the field agents, or even were provided the underlying documents drafted by the field agents.

On the other hand, we found that the Minneapolis field agents in the Moussaoui case did not consult fully with their CDC about what was needed to support their FISA request, despite their frustration and disagreement with the advice they received from FBI Headquarters. Field agents should be encouraged to consult with CDCs about FISA requests or other legal issues that arise out of counterterrorism investigations. CDCs also should be more involved in the FISA process and better trained to be in a position to provide useful guidance to field agents and represent the field office on a particular FISA request.

<u>Recommendation No. 6</u>: Ensure closer consultation between the FBI and OIPR, particularly on important or unusual cases.

In the Moussaoui case, the FBI never consulted OIPR about the possibility of obtaining a FISA warrant, despite the strong disagreements about

the case between FBI Headquarters and the field office. The chief of the NSLU told us that he had never seen a supervisory special agent in Headquarters so adamant that a FISA warrant could not be obtained and at the same time a field office so adamant that it could. We believe that in unusual cases, like in the Moussaoui case where the evidence did not fit a standard fact pattern for FISA and strong disagreement existed within the FBI about the strength of the evidence, FBI lawyers should consult with OIPR about the issues involved in the case. OIPR is responsible for implementing FISA and is the Department's expert on the requirements of the statute, and the FBI should discuss with it the important and contentious issues involved in such a FISA request.

Since the September 11 attacks, much has changed about the requirements and use of FISA, including the legal framework and the way the Department uses the statute. We also understand that OIPR and the FBI now consult more closely on the use of FISAs in particular cases, as well as on the requirements of the statute. We recommend that this closer consultation be enhanced and promoted, and that the FBI be encouraged to seek assistance and advice from OIPR at early stages of investigations involving the use of FISA.

C. Recommendations related to the FBI's interactions with the Intelligence Community

Recommendation No. 7: Ensure effective management of FBI detailees.

Our review found that the FBI detailees to the CIA's Counterterrorist Center (CTC) lacked defined responsibilities. The detailees told us they were not given specific instructions about their responsibilities and each detailee defined the job individually. As a result, they, as well as the FBI and the CIA, had significant misperceptions and inconsistent expectations about their roles. For example, the detailees did not believe they were to act as "backstops" to ensure that CIA information was passed to the FBI, and they did not scour CIA cable traffic for this purpose. Yet CIA employees believed that at least one of the FBI detailees had been assigned to the CTC specifically for this purpose.

The FBI and the CIA did not have any memoranda of understanding describing the detailees' functions. Moreover, the detailees were not even evaluated based upon what they did at the CTC. Instead, their performance

appraisals were based on what they did as FBI employees, not as detailees to the CTC.

The FBI needs to formally describe the roles and responsibilities of detailees and communicate this to the detailees and to the CIA. To avoid misunderstandings and ensure continuity in the program, the FBI should document these responsibilities in a formal memorandum of understanding with the CIA. In addition, the performance work plan of each detailee should be revised to reflect the critical elements of the job being performed by the detailee at the CIA, and someone who oversees their daily work should evaluate them.

Recommendation No. 8: Ensure FBI employees who interact with other intelligence agencies better understand their reporting processes.

As we discussed in Chapter Five of this report on the Hazmi and Mihdhar matter, FBI employees we interviewed did not fully understand the CIA's system for reporting intelligence information. For example, the FBI's Assistant Legal Attaché (ALAT) who dealt with the source mistakenly believed that the CIA's TDs he received contained all source reporting that was available from the CIA. In fact, other operational cables contained significant CIA information about the source, including that the source had identified Mihdhar in the Malaysian meeting photographs. We found that other experienced FBI agents who interacted frequently with the CIA also were unaware of CIA procedures and important ways to obtain additional intelligence information from the CIA.

We believe that FBI employees who interact with the CIA should be more familiar with CIA and other intelligence agencies' processes for reporting intelligence information. Even if FBI employees do not have full access to the reports of other intelligence agencies or the systems from which these intelligence reports are produced, the FBI employees should be aware of the processes and reporting by other intelligence agencies to avoid the misunderstandings that occurred in the Mihdhar matter.

Recommendation No. 9: Provide guidance for how and when to document intelligence information received from informal briefings by other intelligence agencies.

The FBI lacked clear policies and procedures for how and when to document intelligence information received from the CIA, particularly intelligence communicated in an informal manner. For example, FBI employees received verbal briefings on Mihdhar from CIA employees in the FBI's Strategic Information Operations Center (SIOC) around the time of the Millennium threat. One of the reasons the SIOC was activated during this period was to obtain and coordinate the response to threat information from various sources. Yet, the information the FBI received about Mihdhar in the SIOC was never documented in a way that was accessible to other FBI employees.

We are not suggesting that every informal communication from the CIA to the FBI must be documented. However, the FBI should establish better guidance for its employees as to how and when such information from such informal briefings should be documented.

Recommendation No. 10: Ensure that the FBI's information technology systems allow FBI employees to more readily receive, use, and disseminate highly classified information.

The FBI has acknowledged for several years that its information technology systems are not adequate. The FBI is in the process of implementing widespread changes to its systems, and the upgrading of its information technology systems is one of the highest priorities of the FBI. The OIG and others have monitored and reported extensively on the progress of the upgrade to the FBI's systems, particularly the FBI's Trilogy project.[277]

In this review, we found many examples of how the FBI's poor information technology systems hindered the handling and use of intelligence information. For example, most of the persons listed on the attention line of the Phoenix EC never saw it. Unless a lead is "set" for a specific person in the

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[277] The Trilogy project is the largest FBI information technology project, and has been recognized as essential to upgrading the FBI's archaic and inadequate computer systems. Trilogy's three main components involve upgrading the FBI's hardware and software; upgrading the FBI's communications networks; and upgrading the FBI's most important investigative applications, including its Automated Case Support (ACS) system and the introduction of the Virtual Case File system.

FBI's ACS system, the system does not notify the person that a document is addressed to them. While it was possible for the addressees to access the document in ACS by searching for documents containing their names, the system was so cumbersome that FBI employees usually did not do this.

As the FBI moves forward in upgrading its information technology systems, it must ensure that it is able to disseminate electronically throughout the FBI intelligence information, regardless of the classification level. Agents and analysts at FBI Headquarters and in the field should be able to access intelligence information readily to enable them to adequately perform their jobs. They should also be able to communicate electronically with their counterparts at other intelligence agencies. The FBI's upgrade of information technology must take into account the needs for access and use of highly classified information.

Recommendation No. 11: Ensure appropriate physical infrastructure in FBI field offices to handle highly classified information.

In our review, we found that the FBI's field offices generally lacked the necessary physical infrastructure to readily use highly classified intelligence information from the CIA and NSA. For example, the workspaces in the FBI's New York and San Diego Field Offices did not permit FBI personnel to handle SCI information at their desks. In addition, the FBI's sensitive compartmented information facilities (SCIFs) in those offices were not large enough or adequate enough to permit agents to regularly access or handle highly classified information. In addition, many field agents did not have sufficient access to secure telephones. For example, in the New York Field Office, the office most responsible for counterterrorism investigations before the September 11 attacks, an entire squad with as many as 25 individuals shared one secure phone. In order to successfully carry out its counterterrorism functions, the FBI must provide its personnel with adequate infrastructure to handle highly classified information.

Recommendation No. 12: Improve dissemination of threat information.

Prior to September 11, 2001, the FBI provided little guidance to its employees about what information constituted a "threat" and what threat information should be disseminated in the FBI, to the Intelligence Community,

or more widely. FBI employees told us that it was left to the judgment of the supervisory special agent or analyst in FBI Headquarters to decide what constituted threat information and what should be disseminated. For example, in the Moussaoui case the Minneapolis special agent drafted a detailed memorandum providing the facts of the Moussaoui case and an assessment of the threat the agent believed Moussaoui posed, including that his actions were "consistent with facilitating the violent takeover of a commercial aircraft." One of the purposes of the memorandum was to ensure that other agencies, such as the Federal Aviation Administration, were made aware of concerns about Moussaoui. However, the FBI Headquarters supervisory special agent who prepared a teletype to the Intelligence Community about Moussaoui did not include any assessment of whether he posed a threat, and the teletype omitted significant facts about the Moussaoui case. The teletype was not distributed to all FBI field offices or even to all Intelligence Community agencies.

We recognize that threat assessments require judgments, and not every piece of information suggesting some kind of harm should be disseminated throughout the FBI and the Intelligence Community. By necessity, FBI employees must exercise discretion in evaluating potential threat information. However, we believe the FBI should issue clear guidance for evaluating what type of threat information should be disseminated, within and outside the FBI, and how it should be disseminated.

D. Other recommendations

Recommendation No. 13: Evaluate the effectiveness of the rapid rotation of supervisory special agents through the FBI Headquarters' Counterterrorism Program.

Many FBI supervisory special agents rotate through important FBI Headquarters supervisory positions for a short time, often two years or less. Because of the rapid turnover, the supervisory positions can remain unfilled for months at a time. We believe this turnover of managers in the FBI Counterterrorism Program can harm the operation and management of the program. For example, we found that analysts, often long-time FBI Headquarters employees, were more knowledgeable than their supervisors about the operation of the unit and the substantive subject matter. Brief stints at FBI Headquarters can make it difficult for managers to become fully

conversant with the subject matter and procedures in the Counterterrorism Program at FBI Headquarters before they are sent to a new assignment.

Part of the job of a manager is to understand the context with respect to a particular terrorist organization or part of the world, and to use this knowledge when advising field offices about their various investigations. The rotation of special agents through supervisory positions in FBI Headquarters is so frequent and rapid that managers often do not have the time, ability, or incentive to acquire the expert knowledge related to their functions. As a result, we believe the FBI should evaluate the effectiveness of rotating supervisory special agents and unit chiefs so rapidly through FBI Headquarters.

Recommendation No. 14: Provide guidance on the type of information that agents should obtain for evaluating assets and for documenting the yearly check on assets.

In assessing the FBI's handling of an asset in San Diego with whom Hazmi and Mihdhar lived in 2000, we determined that the FBI control agent who handled the asset did not inquire about the individuals who the asset said was living with him. The asset told the control agent that two young men who recently came to the United States had moved in with him as boarders but the FBI agent did not obtain any additional information about the boarders, other than their first names. Had the control agent pursued information about the asset's boarders, he might have learned about the CIA information regarding Hazmi and Mihdhar and documented their presence in the United States.

We found little FBI guidance about what information the control agent should have obtained from an asset in circumstances such as this. We also found no consensus among the FBI agents we interviewed as to whether they would have requested additional information from an asset in these circumstances.

The FBI's policy at the time was that the FBI agent was required to "continually address" the asset's "bona fides" and provide a yearly evaluation report to FBI Headquarters. However, the policy did not specify how to assess the bona fides of the asset or what information should be contained in the yearly evaluation. The control agent's report on the San Diego asset used the same boilerplate language each year, with no substantive information provided about the asset or the checks done on the asset.

We believe the FBI should evaluate its policies regarding evaluation of assets and determine if agents are collecting and documenting sufficient information about its assets. For example, the FBI should consider the circumstances when FBI employees should seek information about persons living with or otherwise closely associating with an FBI asset. In addition, the FBI should consider detailing the minimum information an asset file must contain to verify that an adequate background check has been conducted. This information is necessary to allow the FBI to determine whether the control agent is continuing to assess each informational asset's credibility, as required. Moreover, information from an asset is only accessible and useful if documented. The FBI should evaluate its asset policies and consider what information it should require control agents to obtain and document about assets.

Recommendation No. 15: Improve the flow of intelligence information within the FBI and the dissemination of intelligence information to other intelligence agencies.

Prior to the September 11 attacks, sharing of intelligence information within and outside the FBI was piecemeal and ad hoc rather than systematic. The FBI's normal process for disseminating intelligence information was to route it primarily to analysts, who then used their judgment and experience to decide what needed to be disseminated further, and to whom. However, the analysts were overwhelmed and had to address crises and emergencies as they arose, with little time to conduct systemic evaluations or carefully consider what information should be provided throughout the FBI. As a result, information that did not demand immediate attention, such as the Phoenix EC, was not addressed thoroughly or timely.

Moreover, the FBI lacked clear priorities or requirements for the dissemination of information once it was collected. There was little guidance regarding the types of information that had to be disseminated or included in reports to other intelligence agencies. In addition, FBI procedures for disseminating intelligence information were cumbersome, requiring many levels of review just to distribute information, even within the FBI.

Since September 11, the FBI has made significant changes as to how intelligence is routed and shared, both within and outside the FBI, and we have not examined in detail each of these changes.[278] But the FBI's evolution is a difficult and ongoing process. We believe that, as part of this process, the FBI should continue to examine its policies to ensure that it has clear guidance for its employees to identify what kind of intelligence information must be shared and how it must be shared, both within and outside the FBI.

Recommendation No. 16: Ensure that field offices allocate resources consistent with FBI priorities.

In 1998, the FBI elevated counterterrorism to a top agency priority. However, the FBI failed to ensure that resources in field offices were redirected to counterterrorism to reflect this change in priority. For example, in our review of the Hazmi and Mihdhar matter, we found that the San Diego Field Office did not shift its resources in response to changed priorities. As a result, the San Diego Field Office focused little attention on counterterrorism in general and al Qaeda in particular. The relatively low priority the San Diego FBI gave to the Counterterrorism Program was not atypical of FBI field offices before September 11.

After September 11, the FBI refocused its traditional crime-fighting orientation and placed its highest priority on terrorism prevention, dramatically shifting resources to the Counterterrorism Program. We believe the FBI must ensure that it systematically evaluates the allocation of resources by field offices to ensure that each field office directs its resources in accord with the FBI's priorities.[279]

II. Conclusions

Our review found significant deficiencies in the FBI's handling of intelligence information relating to the September 11 attacks. Shortly after the

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[278] For example, see the OIG report entitled "The Federal Bureau of Investigation's Efforts to Improve the Sharing of Intelligence and Other Information" (December 2003).

[279] For an evaluation of the changes that the FBI has made in the allocation of its investigation resources, see the OIG report entitled "Federal Bureau of Investigation Casework and Human Resource Allocation" (September 2003).

attacks, the FBI indicated that it did not have any information warning of the attacks. However, information was soon discovered that had been in the possession of the FBI and the Intelligence Community before September 11 that related to the hijacking of airplanes by extremists or that involved the terrorists who committed the September 11 attacks.

At the request of the FBI Director, we examined what the FBI knew before September 11 that was potentially related to the terrorist attacks. We focused on the FBI's handling of the Phoenix EC, the Moussaoui case, and the information about Hazmi and Mihdhar, two of the September 11 terrorists.

Our review found that the FBI had failed to fully evaluate, investigate, exploit, and disseminate information related to the Phoenix EC, the Moussaoui case, and the Hazmi and Mihdhar matter. The causes for these failures were widespread and varied, ranging from poor individual performance to more substantial systemic deficiencies that undermined the FBI's efforts to detect and prevent terrorism.

By describing the action and inaction of individual FBI employees in this report, particularly the lower-level employees whose conduct we discuss in detail, we do not suggest that they committed intentional misconduct. Nor do we think that they are responsible individually for the FBI's deficiencies in handling the information related to the September 11 attacks. We believe it would be unfair to blame these individuals, who often worked with insufficient resources and with overwhelming impediments. Many pursued their duties in good faith, making difficult judgments about where to focus their efforts. Some performed aggressively and well. Others did not do all they could have and should have to respond to the information they received. While the FBI should examine the performance of the individuals who we describe in this report, we do not believe they are personally responsible for not preventing the attacks or should be blamed for the tragedy that occurred.

Rather, we believe that widespread and long-standing deficiencies in the FBI's operations and Counterterrorism Program caused the problems we described in this report. For example, the FBI did not handle the Phoenix EC appropriately or give it the attention it deserved. The FBI did little with the Phoenix EC before the September 11 attacks because of the FBI's inadequate analytical program, insufficient supervision of analysts in the program, the focus on operational priorities at the expense of strategic analysis, the failure to

adequately share intelligence information, and the lack of adequate tools to facilitate information sharing within and outside the FBI.

With regard to the Moussaoui case, the Minneapolis FBI agents deserve credit for their tenacity and instincts regarding Moussaoui's suspicious actions. These agents did not receive adequate support, either from field office managers or from FBI Headquarters. Although it is not clear that even if the FBI had pursued the case more aggressively it would have succeeded in obtaining a warrant to search Moussaoui's possessions before the September 11 attacks, the handling of this case illustrated systemic deficiencies in how the FBI handled intelligence cases. These deficiencies included a narrow and conservative interpretation of FISA, inadequate analysis of whether to proceed as a criminal or intelligence investigation, adversarial relations between the field and FBI Headquarters, and a disjointed and inadequate review of potential FISA requests by FBI attorneys.

With regard to Hazmi and Mihdhar, the FBI had at least five opportunities to uncover information that could have informed the FBI about these two terrorists' presence in the United States and led the FBI to seek to find them before September 11, 2001. But the FBI did not uncover this information until shortly before the September 11 attacks. The FBI's investigation then was conducted without much urgency or priority, and the FBI failed to locate Hazmi and Mihdhar before they participated in the attacks. Our examination of the five lost opportunities found significant systemic problems with information sharing between the CIA and the FBI, and systemic problems within the FBI related to its Counterterrorism Program. These problems included inadequate oversight and guidance provided to FBI detailees at the CIA, FBI employees' lack of understanding of CIA procedures, inconsistent documentation of intelligence information received informally by the FBI, the lack of priority given to counterterrorism investigations by the FBI before September 11, and the impact of the "wall" between criminal and intelligence investigations.

In evaluating the FBI's actions in the three matters examined in this report, we cannot say whether the FBI would have prevented the attacks had they handled these matters differently. Such a judgment would be speculative and beyond the scope of our inquiry. But while we cannot say what would have happened had the FBI handled the information differently or if the FBI had pursued these investigations more aggressively, the way the FBI handled

these matters was a significant failure that hindered the FBI's chances of being able to detect and prevent the September 11 attacks.

In this chapter, we make 16 recommendations to the FBI to address the problems we found in our review. In providing these recommendations, we recognize that the FBI has made significant changes since the September 11 attacks, and it is already addressing many of the matters that we describe in this report. But we believe that the FBI should know exactly what happened with regard to the Phoenix EC, the Moussaoui case, and the Hazmi and Mihdhar matter to ensure that it fully addresses the systemic failures we found in these matters. We believe that our detailed descriptions of the FBI's actions, together with our recommendations, can help the FBI improve its counterterrorism operations as it transforms itself to better address the threat of terrorism.

Glenn A. Fine
Inspector General

APPENDICES

LIST OF ACRONYMS

ACS – Automated Case Support System
ADIC – Assistant Director in Charge
AG Guidelines – Attorney General Guidelines
AGRT – Attorney General's Review Team
ALAT – Assistant Legal Attache
ASAC – Assistant Special Agent in Charge
AUSA – Assistant United States Attorney

CDC – Chief Division Counsel
CIA – Central Intelligence Agency
CIR – Central Intelligence Report (CIA)
CIRG – Critical Incidents Response Group
CTC – Counter Terrorist Center (CIA)
CTD – Counterterrorism Division (FBI)

DCI – Director of Central Intelligence
DEA – Drug Enforcement Administration
DTOS – Domestic Terrorism Operations Section

EC – Electronic Communication

FAA – Federal Aviation Administration
FBI – Federal Bureau of Investigation
FCI – Foreign Counterintelligence
FFI – Full Field Investigation
FISA – Foreign Intelligence Surveillance Act
FISC – Foreign Intelligence Surveillance Court
FTO – Foreign Terrorist Organization

GAO – General Accounting Office

IIIA – Integrated Intelligence Information Application
INS – Immigration and Naturalization Service
IOS – Intelligence Operations Specialist
IRS – Intelligence Research Specialist
ISD – Investigative Services Division

ITOS – International Terrorism Operations Section

JICI –Joint Intelligence Committee Inquiry
JTTF – Joint Terrorism Task Force

LEGAT – Legal Attache
LHM – Letterhead Memorandum

MAOP – Manual of Administrative Operations and Procedures
MIOG – Manual of Investigative Operations and Guidelines

NSA – National Security Agency
NDPO - National Domestic Preparedness Office
NIPC – National Infrastructure Protection Program
NFIP – National Foreign Intelligence Program
NSD – National Security Division
NSL – National Security Letter
NSLU – National Security Law Unit

OGC – Office of General Counsel
OIG – Office of the Inspector General
OIPR – Office of Intelligence Policy and Review
OLC – Office of Legal Counsel
OPR – Office of Professional Responsibility
ORCON – Originator controlled

PI – Preliminary Inquiry

RFU – Radical Fundamentalist Unit

SAC – Special Agent in Charge
SCI – Sensitive compartmented information
SCIF – Sensitive Compartmented Information Facility
SDNY – Southern District of New York
SIOC – Strategic Information & Operations Center
SSA – Supervisory Special Agent
STU III – Secure Telephone Unit third generation

TAOG – Threat Assessment Operations Group
TD – Telegraphic Dissemination (CIA)

TECS – Treasury Enforcement Communication System

UBL – Usama Bin Laden
UBLU – Usama Bin Laden Unit
USAO – United States Attorney's Office
USIC – U.S. Intelligence Community

WTC – World Trade Center

[redacted]

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/10/2001

To: Counterterrorism

Attn: RFU
SSA [redacted]
IRS [redacted]
UBL Unit
SSA [redacted]
IRS [redacted]
IRS [redacted]
IRS [redacted]
I-46
SSA [redacted]
SA [redacted]

PENTBOMB
INFORMATION CONCERNING

New York

From: Phoenix
Squad16
Contact: SA Kenneth J. Williams [redacted]

Approved By: [redacted]

Drafted By: Williams Kenneth J

Case ID #: [redacted] (Pending)

Title: [redacted]
IT-OTHER (ISLAMIC ARMY OF THE CAUCASUS)

Synopsis: [redacted] UBL and AL-MUHAJIROUN supporters attending civil aviation universities/colleges in the State of Arizona.

[redacted]

Derived From : G-3
Declassify On: X1

[redacted] Full Field Investigation Instituted: 04/17/2000 (NONUSPER)

Details: [redacted] The purpose of this communication is to advise the Bureau and New York of the possibility of a coordinated effort by USAMA BIN LADEN (UBL) to send students to the United States to attend civil aviation universities and colleges. Phoenix has observed an inordinate number of individuals of investigative interest who are attending or who have attended civil aviation universities and colleges in the State of Arizona. The inordinate number of these individuals attending these type of schools and fatwas issued by AL-

[redacted]

 [redacted]

MUHJIROUN spiritual leader SHEIKH OMAR BAKRI MOHAMMED FOSTOK, an ardent supporter of UBL, gives reason to believe that a coordinated effort is underway to establish a cadre of individuals who will one day be working in the civil aviation community around the world. These individuals will be in a position in the future to conduct terror activity against civil aviation targets.

[redacted] Phoenix believes that the FBI should accumulate a listing of civil aviation universities/colleges around the country. FBI field offices with these types of schools in their area should establish appropriate liaison. FBIHQ should discuss this matter with other elements of the U.S. intelligence community and task the community for any information that supports Phoenix's suspicions. FBIHQ should consider seeking the necessary authority to obtain visa information from the USDOS on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility.

[redacted] Phoenix has drawn the above conclusion from several Phoenix investigations to include captioned investigation and the following investigations: [redacted] ([redacted]), a Saudi Arabian national and [redacted]) and [redacted] ([redacted]).

[redacted] Investigation of [redacted] was initiated as the result of information provided by [redacted] a source who has provided reliable information in the past. The source reported during April 2000 that [redacted] was a supporter of UBL and [redacted] the AL-MUHJIROUN. [redacted]

[redacted] Phoenix has identified several associates of [redacted] at [redacted] who arrived at the university around the same time that he did. These individuals are Sunni Muslims who have the same radical fundamentalists views as [redacted] They come from [redacted]

[redacted]

associates are:

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The above individuals are involved with and regularly participate in meetings with him in Arizona.

FBIHQ, IRS RFU, wrote an analytical paper on the AL-MUHAJIROUN, dated 11/09/1999, in support of FBINY investigation captioned: can be found in IRS s research paper was gleaned from IRS s research paper. The following information

The AL-MUHAJIROUN, which in English means THE EMIGRANTS, is a Sunni Muslim fundamentalist organization based in the United Kingdom. The organization's spiritual leader is SHEIKH OMAR BAKRI MOHAMMED FOSTOK. The organization is dedicated to the overthrow

of Western society. British officials have reported that FOSTOK first came to their attention during the Gulf War after calling for the assassination of British Prime Minister John Major. FOSTOK has connections to UBL, JAMMAT AL-MUSLIMIAN (JM), HAMAS, HIZBALLAH and the ALGERIAN SALVATION FRONT.

[redacted] FOSTOK has made several controversial statements to the press. For example, he stated in public interviews that the bombings of the United States Embassies in Africa were "legitimate targets."

[redacted] FOSTOK, while representing the AL-MUHAJIROUN, signed a fatwa (religious decree) during February 1998 which stated the following:

[redacted] " The Fatwa is jihad against the U.S. and British government, armies, interests, airports (emphasis added by FBI Phoenix), and instructions and it has been given because of the U.S. and British aggression against Muslims and the Muslim land of Iraq...we...confirm that the only Islamic Fatwa against this explicit aggression is Jihad. Therefore the message for the British governments or any other government of non-Muslim countries is to stay away from Iraq, Palestine, Pakistan, Arabia, etc...or face full scale war of Jihad which it is the responsibility and the duty of every Muslim around the world to participate in...We...call upon...Muslims around the world including Muslims in the USA and in Britian to confront by all means whether verbally, financially, politically or militarily the U.S. and British aggression and do their Islamic duty in relieving the Iraqi people from the unjust sanctions."

[redacted] was interviewed by FBI Phoenix on [redacted]/2000 and [redacted]/2000 [redacted]. On [redacted]/2000, interviewing Agents observed photocopied photographs of UBL, IBN KHATTAB and wounded Chechnyan Mujahadin tacked to his livingroom wall. [redacted]

[redacted]

[redacted] Phoenix investigation of [redacted] ([redacted]) was predicated upon information received during [redacted].

[redacted] According to [redacted], a [redacted] and [redacted]

[redacted]

[redacted] On 06/[redacted]2001, the [redacted] arrested two individuals who admitted under interrogation to being members of UBL's AL-QA'IDA organization. Evidence was developed demonstrating that these individuals were planning an operation to bomb the U.S. Embassy and U.S. Military forces in Saudi Arabia. A [redacted] passport ([redacted]) in the name of [redacted]

[redacted] within their possession. [redacted]'s [redacted] address and could be a relative.

[redacted] Phoenix has not been able to show a direct association between [redacted] and [redacted] had departed the U.S. prior to [redacted]'s arrival. However, both [redacted] and [redacted] have associated with the [redacted] Arizona and it is highly probable that they know people in common.

[redacted] Investigations of [redacted] and [redacted] were predicated on information received from [redacted] demonstrating that both subjects were involved with [redacted] activity. Both individuals also have association(s) with individuals associated with [redacted] who lived in Phoenix from the mid 1990s - 1997 left the United States after graduating from [redacted] has been identified as a friend of both [redacted] and [redacted]. [redacted] a known supporter of the [redacted]. Phoenix has not developed any information linking these [redacted] with the other subjects referenced in this communication.

[redacted] Phoenix believes that it is more than a coincidence that subjects who are supporters of UBL are attending civil aviation universities/colleges in the State of Arizona. As receiving offices are aware, Phoenix has had significant UBL associates/operatives living in the State of Arizona and conducting activity in support of UBL. WADIH EL-HAGE, a UBL lieutenant recently convicted for his role in the 1998 bombings of U.S. Embassies in Africa, lived in Tucson, Arizona for several years during the 1980s. ESSAM AL-RIDI, a personal pilot for UBL, traveled to Tucson, Arizona during 1993 at the direction of AL-HAGE to procure a T-39 jet aircraft for UBL's personal use. [redacted] Phoenix believes that it is highly probable that UBL has an established support network in place in Arizona. This network was most likely established during the time period that EL-HAGE lived in Arizona.

[redacted]

To: Counterterrorism From: Phoenix
Re: [redacted] 07/10/2001

[redacted] This information is being provided to receiving offices for information , analysis and comments.

[redacted]

LEAD(s):

Set Lead 1:

COUNTERTERRORISM

AT WASHINGTON, DC

[redacted] The RFU/UBLU is requested to consider implementing the suggested actions put forth by Phoenix at the beginning of this communication.

Set Lead 2:

NEW YORK

AT NEW YORK, NEW YORK

[redacted] Read and Clear

♦♦

June 18, 2004

The Honorable Glenn A. Fine
Office of the Inspector General
United States Department of Justice
Room 4322
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Fine:

Re: OIG DRAFT AUDIT REPORT - A REVIEW OF THE FBI'S HANDLING OF INTELLIGENCE INFORMATION RELATED TO THE SEPTEMBER 11 ATTACKS

Reference is made to your memorandums, dated May 24, 2004 and June 10, 2004, requesting the FBI review the first five chapters and the recommendations of the subject draft audit report for factual accuracy and for whether anything in the recommendations is classified or too sensitive for public release. In addition the memorandums sought our comments as to whether or not the FBI believed the recommendations and conclusions were either inaccurate or unwarranted. This document is the FBI's formal response to the factual inaccuracies which is attached and the report's recommendations. The classification and sensitivity review was provided under separate cover. (U)

On behalf of the Director, I want to thank you and your staff for this report and for the countless hours of hard work that it required. As you know, the FBI values the Office of the Inspector General's input as a comprehensive independent assessment of our operations and as a means of identifying weaknesses that require corrective action to strengthen our operations. That is why the Director requested your office to conduct this review shortly after the 9/11 tragedy Based upon our review, your findings and recommendations are consistent with the FBI's internal reviews and with those of other oversight entities. I am pleased to inform you that the FBI has made significant progress not only on the recommendations proffered in your report but on all the issues discovered by our own internal assessments. (U)

Before responding to the individual recommendations, the OIG and the American public need to be made aware of the progress made by the Federal Bureau of Investigation (FBI) since the horrific attacks of September 11, 2001. If we only responded to the recommendations in the report, readers would have an incomplete picture of the progress we have made and perhaps have a difficult time piecing together

the information under sixteen different recommendations. Director Mueller has implemented a comprehensive plan that fundamentally transforms the FBI to enhance our ability to predict and prevent future acts of terrorism. We have overhauled our counterterrorism operations, expanded our intelligence capabilities, modernized our business practices and technology, and improved coordination with our partners. (U)

Director Mueller replaced a priority system which allowed supervisors a great deal of flexibility with a set of 10 priorities that strictly govern the allocation of personnel and resources in every FBI program and field office. Counterterrorism is now the overriding priority, and every terrorism lead is addressed, even if it requires a diversion of resources from other priority areas. (U)

To implement these new priorities, we increased the number of Special Agents assigned to terrorism matters and hired additional intelligence analysts and translators. We also established a number of operational units and entities that provide new or improved capabilities to address the terrorist threat. These include the 24/7 Counterterrorism Watch (CT Watch) and the National Joint Terrorism Task Force (NJTTF) to manage and share threat information; the Terrorism Financing Operation Section (TFOS) to centralize efforts to stop terrorist financing; document/media exploitation squads to exploit material found both domestically and overseas for its intelligence value; deployable "Fly Teams" to lend counterterrorism expertise wherever it is needed; the Terrorist Screening Center (TSC) and Foreign Terrorist Tracking Task Force (FTTTF) to help identify terrorists and keep them out of the United States; the Terrorism Reports and Requirements Section to disseminate FBI terrorism-related intelligence to the Intelligence Community; and the Counterterrorism Analysis Section to "connect the dots" and assess the indicators of terrorist activity against the U.S. from a strategic perspective. (U)

We centralized management of our Counterterrorism Program at Headquarters to limit "stove-piping" of information, to ensure consistency of counterterrorism priorities and strategy across the organization, to integrate counterterrorism operations here and overseas, to improve coordination with other agencies and governments, and to make senior managers accountable for the overall development and success of our counterterrorism efforts. (U)

The FBI is building an enterprise-wide intelligence program that has substantially improved our ability to strategically direct our intelligence collection and to fuse, analyze, and disseminate our terrorism-related intelligence. After passage of the USA PATRIOT Act, related Attorney General Guidelines, and the ensuing opinion by the Foreign Intelligence Surveillance Court of Review removed the barrier to sharing information between intelligence and criminal investigations, we quickly implemented a plan to integrate all our capabilities to better prevent terrorist attacks. Director Mueller elevated intelligence to program-level status, putting in place a formal structure and concepts of operations to govern FBI-wide intelligence functions, and establishing Field Intelligence Groups (FIGs) in every field office. (U)

Understanding that we cannot defeat terrorism without strong partnerships, we have enhanced the level of coordination and information sharing with state and municipal law enforcement personnel. We expanded the number of Joint Terrorism Task Forces (JTTFs), increased technological connectivity with our partners, and implemented new ways of sharing information through vehicles such as the FBI Intelligence Bulletin, the Alert System, and the Terrorist Screening Center. To improve coordination with other federal agencies and members of the Intelligence Community, we joined with our federal partners to establish the Terrorist Threat Integration Center, exchanged personnel, instituted joint briefings, and started using secure networks to share information. We also improved our relationships with foreign governments by building on the overseas expansion begun under Director Louis Freeh; by offering investigative and forensic support and training, and by working together on task forces and joint operations. Finally, the FBI has expanded outreach to minority communities, and improved coordination with private businesses involved in critical infrastructure and finance. (U)

The FBI is making substantial progress in upgrading our information technology to streamline our business processes and to improve our ability to search for and analyze information, draw connections, and share it both inside the Bureau and out. We have deployed a secure high-speed network, put new or upgraded computers on desktops, and consolidated terrorist information in a searchable central database. We developed, and are preparing to launch, the Virtual Case File management system that will revolutionize how the FBI does business. (U)

Re-engineering efforts are making our bureaucracy more efficient and more responsive to operational needs. We revised our approach to strategic planning, and we refocused our recruiting and hiring to attract individuals with skills critical to our counterterrorism and intelligence missions. We have developed a more comprehensive training program and instituted new leadership initiatives to keep our workforce flexible. We are modernizing the storage and management of FBI records. We also built, and continue to improve, an extensive security program with centralized leadership, professional security personnel, more rigorous security measures, and improved security education and training. (U)

These improvements have produced tangible and measurable results. We significantly increased the number of human sources and the amount of surveillance coverage to support our counterterrorism efforts. We developed and refined a process for briefing daily threat information, and considerably increased the number of FBI intelligence reports produced and disseminated. Perhaps most important, since September 11, 2001, we have participated in disrupting dozens of terrorist operations by developing actionable intelligence and better coordinating our counterterrorism efforts. (U)

Prior to September 11, 2001, the Bureau had no centralized structure for the national management of its Counterterrorism Program, and terrorism cases were routinely managed out of individual field offices. An al-Qa'ida case, for example, might have been run out of the New York Field Office; a HAMAS case might have been managed by the Washington Field Office. This arrangement functioned for years, and produced a number of impressive prosecutions. Once counterterrorism became our overriding priority,

however, it became clear that this arrangement had a number of failings in that it 1) "stove-piped" investigative intelligence information among field offices; 2) diffused responsibility and accountability between counterterrorism officials at FBI Headquarters and the SACs who had primary responsibility for the individual terrorism investigations; 3) allowed field offices to assign varying priorities and resource levels to terrorist groups and threats; 4) impeded oversight by FBI leadership, and 5) complicated coordination with other federal agencies and entities involved in the war against terrorism. For all these reasons, it became apparent that the Counterterrorism Program needed centralized leadership. (U)

In December 2001, the Director reorganized and expanded the Counterterrorism Division (CTD) and created the position of Executive Assistant Director (EAD) for Counterterrorism and Counterintelligence. (The Assistant Director of CTD reports to the EAD.) We now have the centralized management to run a truly national program – to coordinate counterterrorism operations and intelligence production domestically and overseas; to conduct liaison with other agencies and governments; and to establish clear lines of accountability for the overall development and success of our Counterterrorism Program. With this management structure in place, we are driving the fundamental changes that are necessary to accomplish our counterterrorism mission. (U)

We divided the operations of the Counterterrorism Division into branches, sections, and units, each of which focuses on a different aspect of the current terrorism threat facing the U.S. These components are staffed with intelligence analysts and subject matter experts who work closely with investigators in the field and integrate intelligence across component lines. This integration allows for real-time responses to threat information and quick communication with decision-makers and investigators in the field. (U)

The Bureau is designed, and has always operated, as a law enforcement and an intelligence agency. It has the dual mission: 1) to investigate and arrest perpetrators of completed crimes (the law enforcement mission) and 2) to collect intelligence that will help prevent future crimes and assist policy makers in their decision making (the intelligence mission). History has shown that we are most effective in protecting the U.S. when we perform these two missions in tandem. (U)

The FBI recognized that investigations could produce intelligence benefits beyond arrest and prosecution. Starting with the Ku Klux Klan cases in the 1960's and the Mafia cases of the 1970's, our agents began to view criminal investigations not only as a means of arresting and prosecuting someone for a completed crime, but also as a means of obtaining information to prevent future crime. The goal was not simply to arrest individual members of the Klan or the Mafia, but to penetrate and dismantle the whole criminal organization. (U)

As this approach was adopted, the FBI further developed the intelligence tools – such as electronic surveillance and the cultivation of human sources – that are critical to predicting and preventing criminal activity. We also learned to think strategically before

making arrests, sometimes opting to delay a suspect's arrest to allow more opportunity for surveillance that might disclose other conspirators or other criminal plans. We have used this approach to great effect in organized crime cases and espionage investigations, and members of our Safe Streets Task Forces use it in their fight against street gangs. (U)

This is the approach that is needed to prevent terrorism. Prior to September 11th, however, we were handicapped in our ability to implement this approach in the counterterrorism arena for two primary reasons. (U)

First, judicial rules and DOJ internal procedures prohibited our counterterrorism agents working intelligence cases from coordinating and sharing information with criminal agents who often were working investigations against the same targets. Second, we had not developed the institutional structure and processes necessary for a fully functioning intelligence operation. We started to address each of these problems immediately after the September 11, 2001 attacks. (U)

By definition, investigations of international terrorism are both "intelligence" and "criminal" investigations. They are intelligence investigations because their objective, pursuant to Executive Order 12333, is "the detection and countering of international terrorist activities," and because they employ the authorities and investigative tools – such as Foreign Intelligence Surveillance Act warrants – that are designed for the intelligence mission of protecting the U.S. against attack or other harm by foreign entities. They are criminal investigations since international terrorism against the U.S. constitutes a violation of the federal criminal code. (U)

Over the past two decades, a regime of court rules and internal DOJ procedures developed surrounding the use of FISA warrants that barred FBI agents and other Intelligence Community personnel working intelligence cases that employed the FISA tool from coordinating and swapping leads with agents working criminal cases. As a result of this legal "wall," "intelligence" agents and "criminal" agents working on a terrorist target had to proceed without knowing what the other may have been doing about that same target. In short, we were fighting international terrorism with one arm tied behind our back. (U)

The USA PATRIOT Act, enacted on October 26, 2001 eliminated this "wall" and authorized coordination among agents working criminal matters and those working intelligence investigations. On March 6, 2002 the Attorney General issued new Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI (Intelligence Sharing Procedures) to capitalize on this legislative change. The new procedures specifically authorized agents working intelligence cases to disseminate to criminal prosecutors and investigators all relevant foreign intelligence information, including information obtained from FISA, in accordance with applicable minimization standards and other specific restrictions (originator controls). Likewise, the procedures authorized prosecutors and criminal agents to advise FBI agents working intelligence cases on all aspects of foreign intelligence investigations, including the use of FISA. (U)

On November 18, 2002 the Foreign Intelligence Surveillance Court of Review issued an opinion approving the Intelligence Sharing Procedures, thereby authorizing the FBI to share information, including FISA-derived information, between our criminal and intelligence investigations. With this opinion, we were finally able to conduct our terrorism investigations with the full use and coordination of our criminal and intelligence tools and personnel. (U)

To formalize this merger of intelligence and criminal operations, we have abandoned the separate case classifications for "criminal" international terrorism investigations (with the classification number 265) and "intelligence" international terrorism investigations (classification number 199), and have consolidated them into a single classification for "international terrorism" (new classification number 315). This reclassification officially designates an international terrorism investigation as one that can employ intelligence tools as well as criminal processes and procedures. In July 2003, we formalized this approach in our Model Counterterrorism Investigative Strategy (MCIS), which was issued to all field offices and has been the subject of extensive field training. (U)

With the dismantling of the legal "wall" and the integration of our criminal and intelligence personnel and operations, we now have the latitude to coordinate our intelligence and criminal investigations and to use the full range of investigative tools against a suspected terrorist. On the intelligence side, we can conduct surveillance on the suspected terrorist to learn about his movements and identify possible confederates; we can obtain FISA authority to monitor his conversations; and/or we can approach and attempt to cultivate him as a source or an operational asset. On the criminal side, we have the option of incapacitating him through arrest, detention, and prosecution. We decide among these options by continuously balancing the opportunity to develop intelligence against the need to apprehend the suspect and prevent him from carrying out his terrorist plans. This integrated approach has guided our operations and we have successfully foiled terrorist-related operations and disrupted cells from Seattle, Washington, to Detroit, Michigan, to Lackawanna, New York. (U)

Although we are now able to coordinate our intelligence collection and criminal law enforcement operations, we can only realize our full potential as a terrorism prevention agency by developing the intelligence structure, capabilities, and processes to direct those operations. Without an effective intelligence capacity, we cannot expect to defeat a sophisticated and opportunistic adversary like al-Qa'ida. (U)

For a variety of historical reasons, the Bureau had not developed this intelligence capacity prior to September 11. While the FBI has always been one of the world's best collector of information, we never established the infrastructure to exploit that information fully for its intelligence value. Individual FBI agents have always analyzed the evidence in their particular cases, and then used that analysis to guide their investigations. The FBI as an institution, however, had not elevated that analytical process above the individual case or investigation to an overall effort to analyze

intelligence and strategically direct intelligence collection against threats across all programs. (U)

The attacks of September 11, 2001 highlighted the need to develop an intelligence process for the Counterterrorism Program and the rest of the Bureau. Since then, we have undertaken to build the capacity to fuse, analyze, and disseminate our terrorism-related intelligence, and to direct investigative activities based on our analysis of gaps in our collection against national intelligence requirements. That effort has proceeded in four stages. (U)

Our first step was to increase the number of analysts working on counterterrorism. Immediately after September 11, we temporarily reassigned analysts from the Criminal Investigative Division and Counterintelligence Division to various units in the Counterterrorism Division. In July 2002, 25 analysts were detailed from the CIA to assist our counterterrorism efforts. Many of these analysts provided tactical intelligence analysis; others provided strategic "big picture" analysis. All of them worked exceptionally hard and helped us analyze the mass of data generated in the aftermath of the terrorist attacks. These deployments were a temporary measure, but the progress made, the confidence gained, and the lessons learned during this period started us down the road toward a functioning intelligence analysis operation. We also established the College of Analytical Studies to help train and develop our own cadre of analysts. (U)

On December 3, 2001, the Director established the Office of Intelligence (OI) within the Counterterrorism Division. The OI was responsible for establishing and executing standards for recruiting, hiring, training, and developing the intelligence analytic workforce, and ensuring that analysts are assigned to operational and field divisions based on intelligence priorities. Recognizing that intelligence and analysis are integral to all of the Bureau's programs, in February 2003, Director Mueller moved the OI out of the Counterterrorism Division and created a stand-alone OI, headed by an Executive Assistant Director (EAD-I), to provide centralized support and guidance for the Bureau's intelligence functions. (U)

The next step in our intelligence integration was to elevate intelligence functions to program-level status, instituting centralized management and implementing a detailed blueprint for the Intelligence Program. (U)

The Director articulated a clear mission for the Intelligence Program – to position the FBI to meet current and emerging national security and criminal threats by: 1) aiming investigative work proactively against threats; 2) building and sustaining enterprise-wide intelligence policies and capabilities; and 3) providing useful, appropriate, and timely information and analysis to the national security, homeland security, and law enforcement communities. We then set out to embed intelligence processes into the day-to-day work of the FBI, from the initiation of a preliminary investigation to the development of FBI-wide strategies. (U)

Now that the Intelligence Program is established and developing, the FBI is moving on to the next stage of transforming the Bureau into an intelligence agency – reformulating personnel and administrative procedures to instill within our workforce an expertise in the processes and objectives of intelligence work. (U)

A major element of the Bureau's transformation is our increasing integration and coordination with our partners in the U.S. and international law enforcement and intelligence communities. More than any other type of enforcement mission, counterterrorism requires the participation of every level of local, state, national, and international government. A good example is the case of the Lackawanna terrorist cell outside Buffalo, New York. From the police officers who helped to identify and conduct surveillance on the cell members; to the CIA officers who provided information from their sources overseas; to the diplomatic personnel who coordinated our efforts with foreign governments; to the FBI agents and federal prosecutors who conducted the investigation leading to the arrests and indictment, everyone played a significant role. (U)

We recognize that a prerequisite for any operational coordination is the full and free exchange of information. Without procedures and mechanisms that allow information sharing on a regular and timely basis, we and our partners cannot expect to align our operational efforts to best accomplish our shared mission. Accordingly, we have taken steps to establish unified FBI-wide policies for sharing information and intelligence. (U)

To ensure a coordinated, enterprise-wide approach, the Director recently designated the EAD-I to serve as the principal FBI official for information and intelligence sharing policy. In this capacity, the EAD-I functions as an advisor to the Director and provides policy direction on information and intelligence sharing within and outside the FBI with the law enforcement and intelligence communities, as well as foreign governments. (U)

On February 20, 2004 we formed an information sharing policy group, comprised of Executive Assistant Directors, Assistant Directors and other senior executive managers. Under the Direction of the EAD-I, this group is establishing FBI information and intelligence sharing policies. (U)

On February 11, 2004 the Attorney General announced the creation of the DOJ Intelligence Coordinating Council. The Council is comprised of the heads of DOJ agencies with intelligence responsibilities, and is currently chaired by the FBI's EAD-I. The Council will work to improve information sharing within DOJ and to ensure that DOJ meets the intelligence needs of outside customers and acts in accordance with intelligence priorities. It will also identify common challenges (such as electronic connectivity, collaborative analytic tools, and intelligence skills training) and establish policies and programs to address them. (U)

Beyond these information sharing initiatives, we are increasing our operational coordination with our state, federal, and international partners on a number of fronts. (U)

We have established much stronger working relationships with the CIA and other members of the Intelligence Community. From the Director's daily meetings with the Director of Central Intelligence and CIA briefers, to our regular exchange of personnel among agencies, to our joint efforts in specific investigations and in the Terrorist Threat Integration Center, the Terrorist Screening Center, and other multiagency entities, the FBI and its partners in the Intelligence Community are now integrated at virtually every level of our operations. (U)

The Terrorist Threat Integration Center is a good example of our collaborative relationship with the CIA and other federal partners. Established on May 1, 2003 at the direction of President Bush, TTIC coordinates strategic analysis of threats based on intelligence from the FBI, CIA, DHS, and DOD. Analysts from each agency work side-by-side in one location to piece together the big picture of threats to the U.S. and our interests. TTIC analysts synthesize government-wide information regarding current terrorist threats and produce the Presidential Terrorism Threat Report for the President. The FBI personnel at TTIC are part of the Office of Intelligence and work closely with analysts at FBI Headquarters in combining domestic and international terrorism developments in to a comprehensive analysis of terrorist threats. In addition to the analysis developed by FBI analysts detailed to TTIC, FBI analysts at Headquarters regularly contribute articles to the President's Terrorist Threat Report. (U)

The FBI currently has Agents and Analysts detailed to CIA entities, including the CIA's Counter Terrorism Center (CTC). We also have FBI agents and intelligence analysts detailed to the NSA, the National Security Council, DIA, the Defense Logistics Agency, DOD's Regional Commands, the Department of Energy, and other federal and state agencies. (U)

CIA personnel are also working in key positions throughout the Bureau. The Associate Deputy Assistant Director for Operations in the Counterterrorism Division is a CIA detailee. CIA officers are detailed to the Security Division, including the Assistant Director, the Chief of the Personnel Security Section, and managers working with the Secret Compartmental Information (SCI) program and the FBI Police. An experienced manager from the CIA's Directorate of Science and Technology now heads the Investigative Technologies Division and a Section Chief in that division is on rotation from CIA. (U)

This exchange of personnel is taking place in our field offices as well. In 33 field locations, the CIA has officers co-located with FBI agents at JTTF sites, and there are plans to add CIA officers to several additional sites. The NSA has analysts detailed to FBI Headquarters, the Washington Field Office, the New York Field Office, and the Baltimore Field Office. (U)

Each morning, in addition to FBI Briefs, the Director is briefed by a CIA briefer. The Director of Central Intelligence and the FBI Director then jointly brief the President

on current terrorism threats. In addition, CIA and DHS personnel attend the Director's internal terrorism briefings every weekday morning and afternoon. (U)

The FBI is now using secure systems to disseminate classified intelligence reports and analytical products to the Intelligence Community and other federal agencies. The FBI hosts a web site on the Top-Secret Intelink/Joint World-Wide Intelligence Community System (JWICS), a fully-encrypted system that connects more than 100 Department of Defense, CIA, and other Intelligence Community sites. We also host a web site on SIPRNET, a similar system used by DOD for sharing information classified at the Secret level. In addition, a new TS/SCI network known as "SCION" is being piloted in several field offices. SCION will connect FBI Headquarters and field offices to the CIA and other members of the Intelligence Community, and will increase opportunities for inter-agency collaboration. (U)

Improving the compatibility of information technology systems throughout the Intelligence Community will increase the speed and ease of information sharing and collaboration. Accordingly, the FBI's information technology team has worked closely with the Chief Information Officers (CIOs) of DHS and other Intelligence Community agencies, to develop our recent and ongoing technology upgrades. This coordination has affected our decisions on several key technology upgrades. (U)

To facilitate further coordination, the FBI CIO sits on the Intelligence Community CIO Executive Council. The Council develops and recommends technical requirements, policies and procedures, and coordinates initiatives to improve the interoperability of information technology systems within the Intelligence Community. It was established by Director of Central Intelligence directive and is chaired by the CIA's CIO. (U)

DHS plays a critical role in assessing and protecting vulnerabilities in our national infrastructure and at our borders, and in overseeing our response capabilities. We have worked closely with DHS to ensure that we have the integration and comprehensive information sharing between our agencies that are vital to the success of our missions. The FBI and DHS share database access at TTIC, in the National JTTF at FBI Headquarters, in the FTTTF and the TSC, and in local JTTFs in our field offices around the country. We worked closely together to get the new Terrorist Screening Center up and running. We hold weekly briefings in which our CTD analysts brief their DHS counterparts on current terrorism developments. We coordinate all FBI warnings with DHS, and we now coordinate joint warnings through the Homeland Security Advisory System to address our customers' concerns about multiple and duplicative warnings. We designated an experienced executive from the Transportation Security Administration to run the TSC and detailed a senior DHS executive to the FBI's Office of Intelligence to ensure coordination and transparency between the agencies. (U)

On March 4, 2003, the Attorney General, the Secretary of Homeland Security, and the Director of Central Intelligence signed a comprehensive Memorandum of Understanding (MOU) establishing policies and procedures for information sharing, handling, and use. Pursuant to that MOU, information related to terrorist threats and

vulnerabilities is provided to DHS automatically without DHS having to request it. Consistent with the protection of sensitive sources and methods and the protection of privacy rights, we now share as a rule, and withhold by exception. (U)

With terrorists traveling, communicating, and planning attacks all around the world, coordination with our foreign partners has become more critical than ever before. We have steadily increased our overseas presence and now routinely deploy agents and crime scene experts to assist in the investigation of overseas attacks, such as the May 2003 bombings in Saudi Arabia and Morocco. As of January 7, 2004, 413 FBI personnel were assigned overseas, over 200 of whom are permanently assigned. Their efforts, and the relationships that grow from them, have played a critical role in the successful international operations we have conducted over the past 31 months. (U)

Bureau personnel have participated in numerous investigations of terrorist attacks in foreign countries over the past 33 months. Our approach to those investigations differs from the approach we traditionally have taken. Prior to September 11th, our overseas investigations primarily were focused on building cases for prosecution in the U.S. Today, our focus has broadened to provide our foreign partners with investigative, forensic, and other types of support which enhance our joint efforts to prevent and disrupt terrorist attacks. Our partners have embraced this approach, and it is paying dividends with greater reciprocal cooperation and more effective joint investigations. (U)

The foundation of a centralized and effective counterterrorism operation is the capability to assemble, assimilate, and disseminate investigative and operational information both internally and with fellow intelligence and law enforcement agencies. This capability requires information technology (IT) that makes information easily accessible and usable by all personnel while protecting the security of that information. (U)

Prior to September 11th, the Bureau's information technology was inadequate to support its counterterrorism mission. In previous years, substantial investments were made to upgrade technologies that directly supported investigations, such as surveillance equipment and forensic services like the Integrated Automated Fingerprint Identification System. Insufficient attention was paid, however, to technology related to the more fundamental tasks of records creation, maintenance, dissemination, and retrieval. In 2001, many employees still used vintage 1987 386 desktop computers. Some resident agencies could only access data in their field office via a slow dial-up connection. Many Bureau programs were using computer systems that operated independently and did not interoperate with systems in other programs or other parts of the Bureau. (U)

The FBI also had a deficient information management system. The FBI's legacy investigative information system, the Automated Case Support (ACS), was not very effective in identifying information or supporting investigations. Users navigated with the function keys instead of the "point and click" method common to web-based applications. Simple tasks, such as storing an electronic version of a document, required a user to perform 12 separate functions in a "green screen" environment. Also, the system lacked

multimedia functionality to allow for the storage of information in its original form. Agents could not store many forms of digital evidence in an electronic format, instead having to describe the evidence and indicate where the evidence was stored in a control room. (U)

Thanks to the character and resolve of its personnel, the FBI was able to achieve numerous investigative successes, in spite of these obstacles. It was clear as of September 11, however, that we needed an integrated IT infrastructure to manage our information. We brought on-board a highly skilled team of experts and set out to create an IT infrastructure that is fast and secure, and that ties together the applications and databases used throughout the Bureau. We also designed user-friendly, web-based software applications to reduce reliance on paper records and to streamline investigative workflow. These improvements are enhancing our ability to collect, store, search, analyze, and share information. (U)

The first step in the FBI's modernization effort is the Trilogy Program, a multi-year effort to enhance our effectiveness through technologies that allow us to better access, organize, and analyze information. The Trilogy Program is aimed at providing all FBI offices, including overseas Legal Attaché offices, with improved network communications, a common and current set of office automation tools, and user-friendly web-based applications. Trilogy upgrades also incorporate controls to provide an enhanced level of security for FBI information. (U)

Following September 11, we saw the need to provide counterterrorism investigators and analysts with quick, easy access to the full breadth of information relating to terrorism. We developed a three-step plan that would provide immediate support to counterterrorism and then incrementally increase the range and effectiveness of that support for other criminal investigations. This plan transitions us away from separate systems containing separate data, towards an Investigative Database Warehouse (IDW) that contains all data that can legally be stored together. The IDW provides the Bureau with a single access point to several data sources that were previously available only through separate, stove-piped systems. By providing consolidated access to the data, for the first time analytical tools can be used across data sources to provide a more complete view of the information possessed by the Bureau. (U)

The initial step toward the IDW was the implementation of the Secure Counterterrorist Operational Prototype Environment (SCOPE) program. Under the SCOPE program we quickly consolidated counterterrorism information from various data sources, providing analysts at Headquarters with substantially greater access to more information in far less time than with other FBI investigative systems. The SCOPE database also gave us an opportunity to test new capabilities in a controlled environment. This prototype environment has now been replaced by the IDW. (U)

The IDW, delivered in its first phase to the Office of Intelligence in January 2004, now provides analysts with full access to investigative information within FBI files, including ACS and VGTOF data, open source news feeds, and the files of other federal

agencies such as DHS. The IDW provides physical storage for data and allows users to access that data without needing to know its physical location or format. The data in the IDW is at the Secret level, and the addition of TS/SCI level data is in the planning stages. (U)

Later this year, we plan to enhance the IDW by adding additional data sources, such as Suspicious Activity Reports, and by making it easier to search. When the IDW is complete, agents and analysts using new analytical tools will be able to search rapidly for pictures of known terrorists and match or compare the pictures with other individuals in minutes rather than days. They will be able to extract subjects' addresses, phone numbers, and other data in seconds, rather than searching for it manually. They will have the ability to identify relationships across cases. They will be able to search up to 100 million pages of international terrorism-related documents in seconds. (U)

Ultimately, we plan to turn the IDW into a Master Data Warehouse (MDW) that will include the administrative data required by the FBI to manage its internal business processes in addition to the investigative data. MDW will grow to eventually provide physical data storage for, and become the system of record for, all FBI electronic files. (U)

We are introducing advanced analytical tools to help us make the most of the data stored in the IDW. These tools allow FBI agents and analysts to look across multiple cases and multiple data sources to identify relationships and other pieces of information that were not readily available using older FBI systems. These tools 1) make database searches simple and effective; 2) give analysts new visualization, geo-mapping, link-chart capabilities and reporting capabilities; and 3) allow analysts to request automatic updates to their query results whenever new, relevant data is downloaded into the database. (U)

As the first part of our IT modernization efforts near completion, FBI agents, analysts, and support personnel are already enjoying new capabilities and applying those capabilities to their counterterrorism mission. They have up-to-date desktops, fast and secure connectivity, a user-friendly interface to the ACS case management system, the ability to access and search consolidated terrorism-related data, and new capabilities for sharing information inside and outside the Bureau. (U)

While there is still much to be done, these efforts are starting to deliver the technology we need to stay ahead of evolving threats. Upgrading our technology will remain an FBI priority for the foreseeable future, and our new IT management will ensure that we continue to improve our systems. (U)

With the recent directives implementing the intelligence agent career track and the administrative reforms related to building an intelligence workforce, we have in place the essential structural elements of an intelligence-driven counterterrorism operation. The challenge now is to refine and continue to develop that operation – an effort that will require additional resources, continued attention by FBI leadership, and constant training of FBI personnel in intelligence processes and objectives. (U)

While we have clearly made substantial progress over the past 33 months, it is difficult to come up with an exact measurement of the current effectiveness of our counterterrorism efforts. Besides citing the absence of successful attacks on the homeland since September 11th, there is no single measure that completely captures the progress we have made. There are several yardsticks, however, that demonstrate the effectiveness of the core functions of a Counterterrorism Program. These yardsticks include the following:

- Development of human assets
- Number of FISAs
- Number of intelligence reports generated
- Quality of daily briefings
- Effectiveness of counterterrorism operations
- Continued protection of civil liberties

An application of these yardsticks demonstrates the progress we have achieved since September 11, 2001. (U)

The FBI has long recognized that human source information is one of the most important ways to investigate criminal activity. We have long-standing expertise in recruiting and using human sources, and we have used those skills to great effect across a wide range of investigative programs, including organized crime, drugs, public corruption, and white collar crime. (U)

While we also have developed sources over the years in the Counterterrorism Program, September 11th highlighted the shortage of human intelligence reporting about al-Qa'ida both in the U.S. and abroad. With the U.S. government having relatively few assets who were able to penetrate and report on al-Qa'ida's plans, we were vulnerable to surprise attack. (U)

The Bureau has placed a priority on developing human intelligence sources reporting on international terrorists. We have revised our training program, our personnel evaluation criteria, and our operational priorities to focus on source development. While we continue to grow this capacity, we have already seen a marked increase in the number of human intelligence sources in the Counterterrorism Program. Between August 30, 2001, and September 30, 2003, the number of sources related to international terrorism increased by more than 60 percent, and the number of sources related to domestic terrorism increased by more than 39 percent. (U)

FISA coverage has also increased significantly, reflecting both our increased focus on counterterrorism and counterintelligence investigations and improvement in the operation of the FISA process. From 2001 to 2003, the number of FISA applications filed annually with the Foreign Intelligence Surveillance Court increased by 85 percent. We have seen a similar increase in the use of the emergency FISA process that permits us to obtain immediate coverage in emergency situations. In 2002, for example, the Department of Justice obtained a total of 170 emergency FISA authorizations, which is more than three times the number of emergency FISAs we obtained in the 23 years between the 1978 enactment of FISA and September 11, 2001. (U)

In the past year, the FBI produced more than 3,000 intelligence products, including "raw" reports, intelligence memoranda, in-depth strategic analysis assessments, special event threat assessments, and focused Presidential briefings. We also conducted numerous intelligence briefings to members of Congress, other government agencies, and the law enforcement and intelligence communities. These efforts mark a new beginning for the FBI's intelligence operation. (U)

Prior to September 11, 2001, the FBI produced very few raw intelligence reports. In FY 2003, we produced and disseminated 2,425 Intelligence Information Reports (IIRs) containing raw intelligence derived from FBI investigations and intelligence collection. The majority contained intelligence related to international terrorism; the next greatest number contained foreign intelligence and counterintelligence information; and the remainder concerned criminal activities and cyber crime. These IIRs were disseminated to a wide customer set in FBI field offices, the Intelligence Community, Defense Community, other federal law enforcement agencies, and U.S. policy entities. (U)

In addition to these raw intelligence reports, the FBI has begun producing analytic assessments on a par with those of the Intelligence Community. The FBI developed and issued, in January 2003, a classified comprehensive assessment of the terrorist threat to the U.S. This assessment focuses on the threats that the FBI sees developing over the next two years, based on an analysis of information regarding the motivations, objectives, methods, and capabilities of existing terrorist groups and the potential for the emergence of new terrorist groups and threats throughout the world. This threat assessment is used as a guide in the allocation of investigative resources, as a useful compilation of threat information for investigators and intelligence personnel within and without the FBI, and as a resource for decision-makers elsewhere in the government. The 2004 threat assessment was released in April 2004. FBI analysts have produced over 100 in-depth analyses and several hundred current intelligence articles in addition to the work they do assisting FBI investigations. (U)

We are preparing to produce, in the near future, the *FBI Daily Report* and the *FBI National Report* to provide daily intelligence briefings to personnel in the field and external customers. One will be produced at the classified level and limited in distribution to upper-level field managers. The other will be unclassified and widely distributed to field office personnel and our partners in the law enforcement community. (U)

A good example of our ability to exploit evidence for its intelligence value and share that intelligence is our use of the al-Qa'ida terrorism handbook. A terrorism handbook seized from an al-Qa'ida location overseas in the mid-1990's was declassified and released by DOJ shortly after the events of September 11, 2001. We determined that intelligence gleaned from the handbook could provide useful guidance about al-Qa'ida's interests and capabilities. Accordingly, we produced and disseminated a series of intelligence products to share this intelligence with our personnel in the field and with our law enforcement partners. Nine Intelligence Bulletins were based in whole or in part on this intelligence. In addition, we used information derived from the al-Qa'ida Handbook

to update our counterterrorism training, including the Intelligence Analyst Basic Course at the College of Analytical Studies, the Introduction to Counterterrorism Course at the National Academy, and sessions on Terrorism Indicators and Officer Safety in our SLATT training. The unclassified version of the handbook is now maintained as a reference in the FBI Library and is accessible to all the students at the Academy. It also is included in the reference manual CD-Rom distributed as part of SLATT training. (U)

One telling measure of our improved counterterrorism operations is the development of our capability to brief the daily terrorist threat information. The development of this capability reflects the maturing of our centralized Counterterrorism Program. (U)

Prior to September 11th, the FBI lacked the capacity to provide a comprehensive daily terrorism briefing – to assemble the current threat information, to determine what steps were being taken to address each threat, and to present a clear picture of each threat and the Bureau's response to that threat to the Director, senior managers, the Attorney General, and others in the Administration who make operational and policy decisions. With a decentralized program in which investigations were run by individual field offices, the Bureau never had to develop this specialized skill. With the need for centralized management, however, it became an imperative. (U)

In the aftermath of the terrorist attacks, we were asked to begin sending to the White House each morning daily reports on counterterrorism-related events. We had no mechanism in place for collecting that information, so preparation of the reports was initially haphazard. During the past 33 months, with the assistance of veterans from the Intelligence Community, we have established the infrastructure and the cadre of professionals to produce effective daily briefings and to share briefing materials more widely within the Bureau and with our partners. (U)

In 2002 we established the Presidential Support Group within the Counterterrorism Division to prepare daily briefing materials. In the summer of 2003, this group was renamed the Strategic Analysis Unit and moved to the Office of Intelligence. Beginning in August 2003, the Strategic Analysis Unit began producing the Director's Daily Report (DDR), a daily intelligence briefing that includes information on counterterrorism operations, terrorism threats, and information related to all areas of FBI investigative activity. (U)

To produce the DDR, the Strategic Analysis Unit consolidates and refines information provided in a standardized format by intelligence personnel in each division. Each morning, information about new threats is added, and information about threats that have been thoroughly vetted during the night is removed. The DDR is distributed to executives in all FBI operational divisions. The Director uses the DDR to brief the President nearly every weekday morning. The FBI also produces the *Presidential Intelligence Assessment*, a finished FBI intelligence product covering topics of particular interest to the President, and as noted earlier, our personnel at TTIC and at FBI

Headquarters contribute to the formulation of the daily *President's Terrorist Threat Report*. (U)

Director Mueller holds threat briefings twice a day: an intelligence briefing in the morning and a case-oriented briefing in the evening. At these briefings, a briefer and the operational executive managers provide a summary of the current threats and our operations. With CIA and DHS representatives in attendance, these meetings also serve to ensure that all threat information is appropriately passed to those agencies. (U)

The development of this daily briefing operation is a tangible measure of the progress we have made since the day when terrorism investigations were run by individual field offices and little effort was made to centrally direct or coordinate them throughout the Bureau and with the other agencies involved in protecting the U.S. against terrorism. (U)

The Bureau historically measured its performance, to a large extent, by the number of criminals it arrested. While useful for traditional law enforcement, where the primary objective is arrest and prosecution, this standard is under-inclusive as applied to counterterrorism, where the primary objective is to neutralize terrorist threats. It only captures that subset of terrorist threats that are neutralized by arresting terrorists and prosecuting them with charges of criminal terrorism. It fails to capture the terrorist threats we neutralize through means other than formal terrorism prosecutions – such as deportation, detention, arrest on non-terrorism charges, seizure of financial assets, and the sharing of information with foreign governments for their use in taking action against terrorists within their borders. (U)

A more useful measure is one we have used in organized crime cases – the number of disruptions and dismantlements. This measure counts every time we – either by ourselves or with our partners in the law enforcement and intelligence communities – conduct an operation which disables, prevents, or interrupts terrorist fundraising, recruiting, training, or operational planning. Since September 11, 2001, the FBI has participated in dozens of such operations, disrupting a wide variety of domestic and international terrorist undertakings. (U)

While the number of disruptions is significant, the most telling measure of our progress is the manner in which we have conducted individual operations consistent with our prevention mission. The extent of our transformation is most clearly seen in the approach we take when confronting specific terrorist threats. Our approach to these operations demonstrates the extent to which coordination and prevention through the development of actionable intelligence have become our guiding operational principles. (U)

The September 11, 2001, terrorist attacks awakened all of us to the deadly threat of modern terrorism and to the need for bold action. We in the FBI have undertaken that bold action over the past 33 months. While there is still much work to be done, we have made significant progress. With these efforts, and with the unwavering support of the American people, we are confident that we will prevail in our war against terrorism. (U)

SPECIFIC RESPONSES TO OIG RECOMMENDATIONS:

A. Recommendations related to the FBI's analytical program: (U)

Recommendation No. 1: Improve the hiring, training and retention of intelligence analysts. (U)

Response: The FBI has taken a number of measurable steps to improve the hiring, training, and retention of analysts since the September 11 attacks. (U)

- The FBI's Office of Intelligence (OI), led by an Executive Assistant Director who is a career intelligence analyst in the U.S. Intelligence Community, has developed a recruiting plan to ensure that the FBI actively recruits candidates with the critical skills necessary to provide world-class intelligence analysis for the FBI's mission. In September 2003, the Director approved the FBI's Human Talent for Intelligence Production Concept of Operations (CONOPS), which focuses on the recruitment, hiring, development, and training of intelligence analysts. (U)

- Recruitment/Hiring: Prior to the approval of the Human Talent CONOPS the FBI did not have a recruitment effort specific to the intelligence analyst position. As such, intelligence analysts were not routinely part of recruitment teams. In an effort to ensure the FBI is prepared to meet emerging recruitment and hiring priorities for intelligence analysts, the OI selected intelligence analysts (FBIHQ and field) to serve as intelligence analyst recruiters. The intelligence analyst recruiters attend events at colleges and universities, as well as designated conferences and career fairs throughout the country. From October 2003 - April 2004, the FBI participated in more than 10 recruitment events and plans to participate in at least five additional events through September 2004. (U)

- A marketing plan was also implemented to supplement the Intelligence Analyst recruiting efforts. On February 8, 2004, an advertisement specific to the intelligence analyst position at the FBI was placed in the Washington Post, Washington Times, and the New York Times, and has since been re-advertised several times. On February 9, 2004, the first press release addressing intelligence analyst recruitment at the FBI was released by the FBI National Press Office kicking off an aggressive intelligence analyst hiring campaign. And, on February 17, 2004, the second press release was released featuring an interview with EAD for Intelligence Maureen A. Baginski and two FBI Intelligence Analysts. (U)

- In 2004, the FBI revised its hiring procedures for Intelligence Analysts to more effectively recruit and hire candidates with necessary critical skills. The new system is a resume and weighted question-based system. The weighted questions were developed by a group of senior intelligence analysts and intelligence analyst managers under the direction of the EAD for Intelligence, and were designed to identify the most highly-qualified candidates at all entry grade levels. Aside from direct recruitment into the intelligence analyst position, the OI is establishing

education cooperative programs wherein college students would have an arrangement to work at the FBI and earn a four-year degree. Students may alternate semesters of work with full-time study or may work in the summers in exchange for tuition assistance. The program targets students who intend to complete a four-year degree in disciplines needed for FBI Intelligence Analyst work to include: International Studies; Foreign Languages; Studies pertinent to specific geographic areas and cultures; History; Economics; Business; Political Science; Public Administration; Physical Sciences; and Journalism. In addition to financial assistance, students would benefit by obtaining significant work experience, and the FBI would benefit through an agreement by the student to continue working for the FBI for a period of time upon completion of their education. (U)

- College of Analytic Studies: Since Fiscal Year 2002, the College of Analytic Studies (CAS) has delivered 13 iterations of the Basic Intelligence Analysis Course for newly hired analysts. In addition, through intelligence community partnerships and private vendors, the CAS has coordinated specialized training for novice and experienced FBI Intelligence Analysts. (U)

- 264 FBI Analysts have graduated from the College's six-week Basic Intelligence Analyst Course since its establishment. (U)

- 655 FBI field and headquarters Analysts have attended specialty courses on a variety of topics such as analytical methods, tools, and databases. (U)

  1,389 FBI field and headquarters personnel (Analysts and Agents) have attended specialized counterterrorism courses offered in conjunction with CIA University. (U)

- ACES I: The Basic Intelligence Analyst Course currently offered by the CAS is being revised/updated. Upon completion of this effort the course will be re-titled: Analytical Cadre Education Strategy I (ACES I) as outlined in the Human Talent Conops. The ACES I course will incorporate seven core elements for intelligence training for new agents and new analysts. Additionally the new course curriculum teaches advanced analytic trade craft and practice, thinking and writing skills, resources, and field skills. An intermediate course entitled ACES II is anticipated in the future that would target more experienced analysts. (U)

- Mentoring Program: The OI is creating a career mentoring program to provide guidance and advice to Intelligence Analysts on the analytical career in the FBI. Once implemented, all new Intelligence Analysts (new to the position or new to the FBI) will have a mentor to assist them. This program will be implemented in calendar year 2004. (U)

Recommendation No. 2: Ensure effective management of analysts. (U)

Response: The FBI agrees that it must do all that it can to ensure that its dedicated Intelligence Analysts receive effective management support and direction. Since September 11, 2001, a number of changes have taken place to improve the management of Intelligence Analysts. The EAD-I and the OI have immediate program management responsibility for the FBI's analytical functions and produced, for the first time, a comprehensive strategy for the entire analytical arena. The Intelligence Analysts at the FBI are key players in achieving the FBI's comprehensive intelligence strategy. (U)

- The OI issued supplemental performance expectation guidance for all Intelligence Analysts, specifying expectations for the reports officer, operations specialist, and all-source analyst work roles. This communication was intended not only to inform analysts as to the expectations, but also to keep supervisors informed as to the proper utilization of the Intelligence Analyst position. The OI has instructed all FBI field offices that Intelligence Analysts must report through the Field Intelligence Group chain-of-command. (U)

- The OI assumed administrative control for all Intelligence Analysts on February 1, 2004. The OI is responsible for establishing and executing standards for recruiting, hiring, training, and developing the FBI's intelligence analytic workforce, as well as for ensuring that they are assigned to operational and field divisions based on intelligence priorities. Operational and field divisions are responsible for day-to-day supervision of Intelligence Analysts and for adhering to standards for analyst development established by the OI. (U)

- This new management model was implemented by placing the section chiefs at Headquarters currently performing intelligence functions under the operational control of the OI. Those section chiefs are rated by the appropriate official in OI and reviewed by the Headquarters investigative division into which they are integrated. (U)

Recommendation No. 3: Require greater coordination and consultation between the operational and analytical units. (U)

Response: The FBI agrees that an examination of the events surrounding the September 11 attacks showed a need for improvement in the coordination between operations and analytic units. We believe coordination and consultation has dramatically improved. Consistent with the Director's May 2002 announcement of the FBI Strategic Focus, the Counterterrorism Division was reorganized to implement a threat-team approach to better align the FBI's efforts to prevent terrorism. The revised approach moves away from a traditional hierarchical structure and separation between analytic and operational functions and employs matrix-management concepts used in successful businesses and private organizations and in government agencies. (U)

The goal of the reorganization was the implementation of an organizational structure and concept of operations that empowers and enables the FBI to achieve the priority of protecting the United States from terrorist attack by facilitating the flow of

information between operational units and their analytic counterparts. The FBI categorizes the current threat as follows: Radical Fundamentalists, Global Extremists, and Domestic Terrorists. Additionally, a cross-cutting threat in each of these areas is the terrorist acquisition of weapons of mass destruction (WMD) and the misuse of U.S. and international monetary rules and procedures. (U)

Using this threat-based framework, the FBI structured the operations of the CTD along a threat-team concept that organized the bulk of its investigative, financing, reports and requirements, and analytical resources into three threat teams. The components of each threat team are co-located to facilitate day-to-day interactions and create synergy between the investigative and intelligence disciplines. The CTD Assistant Director and Deputy Assistant Directors (DADs) jointly identify the investigative and analytic priorities, establish integrated operational and analytical objectives, and allocate CTD resources for each team based on those priorities and objectives. The operational strategies agreed upon for each threat team have been disseminated to all FBI field offices where they will guide field operational activities. The components of each threat team are co-located to facilitate day-to-day interactions and create synergy between the investigative and intelligence disciplines. (U)

The Office of Intelligence, meanwhile, has established principles within the Bureau that information belongs to the Bureau rather than a single field office or headquarter component and will be shared with all those with a legitimate need-to-know. The Office of Intelligence is also working with the Information Resources Division to develop the systems that will facilitate information sharing. (U)

Since the September 11 attacks, the FBI's Office of Intelligence has published a Concept of Operations for Intelligence Production and Use. This publication guides the FBI in the coordination of intelligence production. In general, the role of the operations components center on commenting on the accuracy of facts and the protection to be afforded for sources and methods. The Executive Assistant Director for Intelligence is the final arbiter in disagreements between operations and intelligence components in the production and dissemination of intelligence products. (U)

The FBI has put into place a number of other mechanisms that have vastly improved coordination between operations and analytic components. These include: (U)

- Twice daily intelligence and operations briefings chaired by the Director and attended by executives, lower-level managers, and line analysts from both the operations and intelligence components of the investigative divisions, as well as the Executive Assistant Director for Intelligence (EAD-I) and other OI managers. Coordination issues are discussed and directions are given for both operations and intelligence issues in connection with the priority threats and important investigations. (U)

- A daily Intelligence Production Board (IPB) was established in August 2003. The IPB meets daily and is chaired by the EAD-I. Representatives include senior

managers, unit-level managers, and line analysts from the intelligence components of all investigative divisions. Coordination issues and processes are discussed and resolved in these meetings in accordance with direction provided by the EAD-I. (U)

- The Director has designated the EAD-I as the FBI's chief policy official for Intelligence and Information Sharing. In this capacity, the EAD-I has policy authority to ensure the coordination recommended does indeed take place, and she has instituted a number of processes that have significantly improved coordination and consultation between operations and analytic units. (U)

B. Recommendations related to the FISA process: (U)

Recommendation No. 4: Ensure adequate training of FBI employees involved in the FISA process and counterterrorism matters. (U)

Response: The FBI is in agreement with the OIG's recommendation to ensure adequate training to employees involved in the FISA process and counterterrorism matters and has developed a program to address these issues. The Counterterrorism Division (CTD) has made tremendous progress in developing a training program that enhances the FBI's ability to conduct counterterrorism investigations that result in the prosecution of terrorists, disruption of terrorist organizations and support networks, and has led to an increase in the overall contribution of intelligence to the U.S. Intelligence Community and to senior policy makers in government. Training focuses on all aspects of the FBI's response to the threat of terrorism, both domestically and abroad, which includes international terrorist groups and/or countries of interest, domestic terrorism, weapons of mass destruction, terrorist financing operations, Foreign Intelligence Surveillance Act, National Security Guidelines, Patriot Act, source development, interview and interrogation techniques, rapid deployment, and digital and electronic exploitation. The CTD has developed this training through the identification of subject matter experts from within the FBI, other Government Agencies and private contractors. CTD has offered this training to FBI Special Agents and Analysts from both the field and headquarters as well as to law enforcement personnel assigned to the Joint Terrorism Task Forces (JTTF) throughout the country. CTD has contributed significantly to the courses developed by the College of Analytical Studies and the Central Intelligence Agency University for FBI Analysts. These courses aim to improve and enhance analytical capability to quickly ascertain the reliability, implications, and details of terrorist threats, and how threat-related information is disseminated to local, state, and federal agencies. (U)

CTD's primary focus is to address the most immediate training needs of the FBI's workforce. CTD has been working with the Training Division, Office of Training Development, to create curricula which addresses the needs of Agents, Analysts and Task Force Officers assigned to counterterrorism related matters. This curriculum based approach begins with a basic understanding of the foundation of both domestic and international terrorism and expands to a specific approach to counterterrorism investigations and implementation of the CT investigative strategy. In-service training

being conducted on a regular basis include: International Terrorism Basic Operations, International Terrorism Source Development, and Interview and Interrogation of Islamic Extremists. These training curricula are being developed to meet the needs of the FBI's ever changing counterterrorism mission. (U)

CTD has developed the course, "Counterterrorism: A Strategic and Tactical Approach", to address the overwhelming demand for training of state and local law enforcement officers engaged in counterterrorism related investigations through the JTTF. The core content of this training emphasizes an understanding of administrative and operational requirements in conducting terrorism investigations and operations. Course participants are briefed on a variety of international terrorist organizations; Middle East culture and mind set; and are exposed to concepts involving assessment; recruitment and handling of sources; surveillance methodology; interview/interrogation problems; techniques inherent in international terrorism matters; and case management. This course is presented regionally and provides the law enforcement officers, assigned to work on the JTTF, a better understanding of their vital role in the FBI's counterterrorism mission. Twenty five iterations of this course are planned for this year. (U)

Throughout FY03, CTD participated in designing a new approach to teaching New Agents during their four months of New Agent Training (NAT) at the FBI Academy. In late December 2002, a plan was designed to incorporate a counterterrorism (CT) and counterintelligence (CI) instructional block into the NAT to include 110 hours of CT and CI investigative curriculum. The new instructional block is an approach to investigative training which uses a Middle Eastern Criminal Enterprise (MECE) as a "thread" through the entire session of New Agent Training. The new CT and CI instructional block begins with "basic investigative techniques" and culminates in "advance investigative techniques." Each basic and advanced instructional block incorporates informant/cooperative witness/asset development as well as financial investigative techniques. (U)

Conferences that have been coordinated by CTD have targeted SACs, ASACs, SSAs, SAs, Analysts and JTTF Officers and have included Suicide Bomber Awareness, Working Together in Counterterrorism (FBI/CIA coordination), Terrorist Financing, Domestic Terrorism, Weapons of Mass Destruction, JTTF Annual Conference, and Special Event Management. Individual course content is specifically designed to address and meet the needs of a group's activities. Additional conferences are being scheduled to address recurring issues on animal rights, eco-terrorism, black separatists, domestic terrorism fugitives and international terrorist groups of interest such as Hamas and Al Qa'ida. CTD continues to support counterterrorism international training through the International Law Enforcement Academies (ILEA) and provides instruction by the Terrorist Financing Operations Section to the FBI's law enforcement partners world wide. (U)

The FBI's Office of Training and Development, in coordination with the Counterintelligence Division, Counterterrorism Division, and the National Security Law Branch (NSLB), Office of the General Counsel (OGC), has prepared and disseminated

Bureau-wide a FISA/Foreign Intelligence/Counterintelligence/Counterterrorism interactive "Distance Learning Program" for New Agents and all other FBI personnel assigned FCI/IT responsibilities. The course is entitled "FISA and Information Sharing: Their Impact on Investigations" and covers the following topics: Handling Classified Information; Sharing Investigative Information with the Intelligence Community; FISA Requirements and Process; and Sharing Intelligence with Prosecutors as per the March 6, 2002 Procedures. The course provides the user with a foundation on information sharing and its impact on investigations, the handling and safeguarding of classified material, and the FISA administrative process. All agents and analysts working on counterterrorism or counterintelligence investigations are required to take this distance learning course. It is accessible to all employees through the Virtual Academy, the FBI's Learning Management System. The CTD and the Office of Training and Development have also worked with the FBI's Virtual Academy program to develop an online content addressing the Patriot Act. (U)

In addition to the distance learning course, each of the 56 field divisions have conducted 2-days of "hands-on" FISA training. Instructional teams are appointed by the cognizant Assistant Special Agent in Charge (ASAC) and consist of an Assistant United States Attorney (AUSA), the Chief Division Counsel (CDC), a squad supervisor, and a Central Intelligence Agency (CIA) representative. Where possible, Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ) and FBI Headquarters personnel supplemented the instructional teams. The two-day curriculum covered the entire FISA process, including the initiation of FISA requests, minimization procedures, and the renewal process. These training sessions began in July, 2003, and continued through November 2003. (U)

Additionally, NSLB assigned two lawyers to support the Counterterrorism Division's National Security Programs Operational Training Unit (OTU) at the FBI Academy. OTU has expanded all New Agent training to include Foreign Counterintelligence and Counterterrorism instruction. That training is provided by OTU and NSLB personnel. (U)

NSLB also conducts joint-training with OIPR, DOJ, in selected field divisions at least once a month. In addition to six-hours of classroom instruction, several days are spent reviewing current and closed FISA cases with the assigned case agents and their supervisors. (U)

NSLB further provides FISA instruction for all Foreign Counterintelligence(FCI)/ Counterintelligence (CI)/International Terrorism (IT) In-Service classes conducted at the FBI Academy. This training is conducted for more experienced FBI personnel (including ASACs, Chief Division Counsel, Special Agents, Intelligence Operations Specialists, Intelligence Research Specialists and other support personnel) who are now assigned FCI/CI/IT matters, and for personnel who are transitioning to those assignments. (U)

NSLB also provides FISA instruction to all FBIHQ operational units as additional FCI/CI/IT resources are assigned. NSLB has a newly-created National Security Policy

and Training Law Unit which, when fully-staffed, will assume broad training responsibilities for both FBIHQ and field division training in FISA and related matters. (U)

The CTD and the FBI's Office of General Counsel, National Security Law Branch, have worked to provide national security training to field Supervisors and ASAC s at Department of Justice National Security Training Conferences held at the Department of Justice's National Advocacy Center. The NSLB assigned several attorneys as instructors to support the conferences which were conducted at the National Advocacy Center (NAC), DOJ, in Columbia, SC. The conferences were four days in length. This conference was developed to address the overwhelming concern regarding revisions to the National Security Investigative Guidelines and implementation of the Foreign Intelligence Surveillance Act (FISA). The first conference was held beginning on May 6, 2003. A total of six such conferences were conducted at the NAC during the summer months, and two conferences were held at Fort Belvoir, Virginia in September 2003. The attendees were SACs, Chief Division Counsel, Special Agents, Assistant United States Attorneys, and the attorneys assigned to the Office of Intelligence Policy and Review, DOJ, who were also providing instruction. The curriculum included instruction on the mission and organization of the Intelligence Community, an overview of the Foreign Intelligence Surveillance Act, information sharing, coordination between intelligence and law enforcement components, foreign intelligence and counterintelligence collection tools, the use of FISA information in support of criminal litigation, and practical and tactical decision-making. The conferences also included a day-long, problem-solving exercise, conducted in individual "breakout" sections, to reinforce the teaching objectives of the conference. (U)

The CTD also held a national security conference with the DOJ to train both Agents and Analysts on information sharing and coordination between the Intelligence Community and law enforcement; FISA; foreign intelligence and foreign counterintelligence investigations and collection tools; and the Patriot Act. Based on the success of both conferences, CTD implemented and developed a regional training course to guide all 56 Field Divisions on the Attorney General Guidelines for National Security Investigations and the FISA process. (U)

The Counterintelligence Law Unit in NSLB routinely participates in country-specific conferences that Counterintelligence Division units sponsor (usually on a yearly basis). The topics taught by NSLB include the National Security Guidelines and the FISA process. (U)

Before 09/11, NSLB (then the National Security Law Unit) provided extensive training at FBI conferences held annually for Chief Division Counsel (FBI Agent attorneys in the field divisions), including one such session which was funded by the Counterterrorism Section and devoted entirely to intelligence law issues. Additionally, NSLU provided intelligence law training for Chief Division Counsel at three regional training conferences in 1996 and 1997 which focused entirely on intelligence law issues.

NSLU also routinely provided intelligence law training at conferences sponsored by the Counterterrorism Section. (U)

NSLB also provides FISA training and guidance via periodic communications disseminated to all divisions: e.g., NSLB guidance entitled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI" which was disseminated to all field divisions in November 2002. (U)

NSLB also maintains the OGC Intranet (available to HQ and all field divisions). Recent instruction included specific guidance on information sharing. The NSLB website also features an on-line, downloadable "brochure" entitled "How Do I Get a FISA?" (U)

With regard to FY04 training, CTD will continue to develop and implement training and conferences for Agents, Analysts, JTTF members, and state and local law enforcement. Furthermore, we are in the developmental stages of introducing, with the Office of Intelligence, an Analyst Handbook to further the mission of CTD and introducing new curriculum to train Reports Officers (RO). The Reports Tradecraft course provides the foundation for new ROs assigned to counterterrorism matters in which they will be trained on various intelligence collection management topics to include the FBI Intelligence Collection Cycle; identifying intelligence; dissemination of intelligence while protecting sources, methods and investigations; and writing intelligence information reports. (U)

CTD has developed a Counterterrorism Training Track to address the most immediate educational needs of Agents, Analysts, and JTTF Officers assigned to counterterrorism related matters, starting with a basic understanding of terrorist operations and moving on to intermediate and more advanced levels. (U)

Specific courses designed for the Basic level of training for Agents, Analysts, and JTTF Officers include: (U)

- International Terrorism Basic Operations – approximately 850 trained. (U)
- International Terrorism Source Development – approximately 300 trained. (U)
- Counterterrorism: A Strategic and Tactical Approach- approximately 210 plus 50 instructors trained. (U)
- Domestic Terrorism – approximately 39 trained. (U)
- Middle Eastern Culture/ISLAM 101 – online course (U)
- CT Training for State and Local Law Enforcement – 130 Agents trained as instructors for 26,880 law enforcement officers.(U)
- The College of Analytical Studies offers a series of courses for analysts that support the CT mission - approximately 250 trained. (U)

Courses designed for the intermediate level include: (U)

- IT Interview and Interrogation – new intermediate course for summer 2004 for 40 agents.(U)

- Specialty topics including courses on the Arabian Peninsula and Hamas – approximately 100 trained. (U)
- CTD works in collaboration with the CIA University offering specialty courses mainly focused on WMD issues – approximately 22 trained. (U)
- Digital and Electronic Evidence Exploitation – approximately 80 trained. (U)
- Internet and Email Communications Investigation – approximately 40 trained. (U)
- Suicide Bomber Awareness Training – approximately 320 trained. (U)

Courses designed for the advanced level include: (U)

- Interview and Interrogation Techniques- 19 agents trained at the advanced level in Israel. (U)
- Development and Handling of Islamic Extremist Sources – 39 agents trained at the advanced level. (U)

The FBI's Senior Executive Service personnel are going through an executive development program that was created in partnership with the Kellogg School of Management, one of the country's leading business schools. In an intensive one-week course, FBI executives receive guidance on managing change, with a particular focus on the FBI's transition to new intelligence, investigative, and case management processes. As of February 13, 2004, 260 FBI executive managers have completed the training, including 12 Assistant Directors and 54 SACs. (U)

The following chart depicts the Counterterrorism Division projected training for FY2005:

COUNTERTERRORISM TRAINING STATUS FOR FY2005

CORE COURSES	TARGET AUDIENCE	LEVEL	DURATION	PROJECTED NEEDS
ME Culture Online	All Agents, Analysts, JTTF Members	BASIC	3-4 Hours	Imminent Launch Eventually add Intermediate level Use as model for Online
IT Basic Operations	50 Agents Analysts JTTF Members	BASIC	Every other Month for 5 days	Revise Goals/Objectives/Curricula Align with Competencies
JTTF Regional CT: A Strategic & Tactical Approach	35 Agents Analysts JTTF Members	BASIC	Once/Month for 5 days	Curriculum Update Ramp up to Intermediate Level Instructor Development Ongoing Evaluation/ Align with Competencies
IT Source Development Seminar	35 Agents Analysts JTTF Members	BASIC / Intermediate	Once/month for 3 days	Modify once Interview/Interrogation begins. Align with Competencies
Interview & Interrogation	20 Agents	Intermediate	Once/quarter For 5days	Two Pilots offered in July and August 2004 Evaluation/Modify Align with Competencies
Interview & Interrogation	10 Agents (highly selective)	Advanced (including Israeli)	Twice per Year For 10days	First Pilot offered FY 2005 Align with Competencies Status of Israeli training Ongoing Course Develop.
Specialty Groups Seminars: Hamas Al Qaeda Hizballah	35 Agents Analysts JTTF Members	Intermediate To Advanced	As Needed Basis for 2.5 days	Align with Competencies

Future Courses in Development:

- Overseas Deployment – Survival Training for Overseas Deployments in hostile environments (U)
- Analysts Training – Support Reports Officer Training at least once per quarter/2.5 days (U)
- ASAC/SSA Training – FBI/CIA Partnership, Specific Topics, Operations and Management, Guest Speakers for HQs once/month. (U)

- Online Courses – Identify which course information adapts easily to online Virtual Academy sponsored by the Training Division. (U)
- WMD and other specific International Terrorist Group Counterterrorism Training (U)

Recommendation No. 5: FBI Attorneys should be better integrated into counterterrorism investigations. (U)

FBI Response: After 9/11, the National Security Law Branch (NSLB) was restructured so as to mirror the operational structure of FBI Headquarters. Reflecting the operational division between the Counterterrorism Division (CTD), the Counterintelligence Division (CD), and the Cyber Division, three units were established within NSLB – two to handle counterterrorism matters (Counterterrorism Law Units (CTLU) I and II), and one unit to handle counterintelligence and cyber matters (Counterintelligence Law Unit (CILU)). (A fourth unit has recently been established to focus upon policy and training issues.) Within each of the three operationally-focused NSLB units, the attorneys are assigned to particular units or sections within CTD, CD or Cyber. Further, with regard to International Terrorism Sections I and II of CTD, NSLB has assigned two attorneys to be co-located in client space.(U)

Thus, with the assignment of an attorney to each of the operational units or sections, there is routine contact between agent, analyst and attorney on legal issues that arise. With regard to review of FISAs, NSLB attorneys have specific and focused knowledge of the targets for which their unit or section is seeking to initiate or renew coverage. At the point of initiation, the attorney is responsible for reviewing and approving the initiation submitted to him by his client, the operational unit. Any subsequent issues concerning that FISA which come to the attention of the operational unit with responsibility for the package is then routed to the attorney assigned that unit. The long-term result of this arrangement is an increased familiarity between client and counsel, and an improved working relationship. A sense of trust and purpose develops between the parties which greatly increases the likelihood that legal assistance will in fact be sought when it is necessary, and it increases the effectiveness of the attorney in responding to requests for legal assistance. Furthermore, the historic knowledge that the attorney gains by being assigned to a particular unit also increases his effectiveness, inasmuch as he has both present and past familiarity not only with the particular investigation that is the subject of the legal request, but with related investigations and the subject matter in general. (U)

The creation of new units within NSLB which have specific responsibilities for CTD, CD and Cyber units and sections has also increased contact with the field. NSLB attorneys have the opportunity for increased interaction with the field agents who are handling the investigations that are being supervised by the substantive units to which the attorneys are assigned. Recognizing that it is often the field office that will have questions requiring an immediate response or information needed by the NSLB attorney, particularly if the issue is the sufficiency or completeness of a request for FISA initiation, the NSLB attorney and the field agents have refined their working relationship, whereby

the NSLB attorney knows whom to turn to get answers to his questions, and the field agents know whom to seek out in order to resolve legal issues. (U)

Additionally, in the near future, NSLB will be further integrated with the Counterterrorism Division operational units due to the planned move to new office space in Tysons Corner, Virginia. The FBI, CIA, DOJ, and other agencies of the U.S. Intelligence Community will be co-located for the first time in large numbers in a single facility. At present, a total of 20 NSLB attorneys are expected to move to the new facility in Virginia. We expect that this move will result in the total integration of NSLB attorneys into counterterrorism investigations. (U)

Recommendation No. 6: Ensure closer consultation between the FBI and OIPR, particularly on important or unusual cases. (U)

Response: The FBI is in agreement with OIG's recommendation to coordinate closer with OIPR, and has taken steps to ensure that this is accomplished. In mid 2003, the CTD's International Terrorism Operations Section I (ITOS I) initiated bi-weekly operational meetings with representatives from DOJ OIPR and DOJ CTS to ensure that all operational and administrative facets of (1) ongoing criminal prosecutions in the field and (2) ongoing intelligence operations coordinated through OIPR, were in sync. Attendees at the weekly meeting include the ITOS I Section Chief or Assistant Section Chief, each of the four ITOS I Unit Chiefs or their representatives, and representatives from CTS and OIPR. During the meeting all entities field and ask questions, resolving most issues in the room. Typical issues include the status of high-visibility investigations in the field, the status of pending requests with OIPR, and the status of DOJ requests of FBI Field Divisions on those issues under the program management of ITOS I. (U)

ITOS I representatives were also heavily involved in the writing of the FISA Tiering system which provides a vehicle for FBI/OIPR prioritization of FISA applications awaiting presentation to the FISC. In light of ITOS I's large percentage of overall USIC FISA applications, Section members hold a wealth of experience in FISA matters and were able to contribute significantly. (U)

In May, 2004 CTD ITOS I recommended and initiated hosting of a weekly meeting with OIPR strictly for discussion on the status of pending and active FISA applications. This meeting does not discuss operational issues and is held separate and distinct from the weekly operational meeting. As of June 2004, all FBI entities involved with presenting FISA applications to the FISC were in routine attendance and the ITOS I tracking system used internally for the section was modified and adopted for overall FBI use. At this meeting OIPR and the FBI balance the list of pending FISC applications through discussion of the last week's docket, any emergency FISAs taken to court but not yet included in any database, and FISA withdrawals. This combination of weekly meetings, the FISA Tier System, and the FISA Tracking System have resulted in closer coordination between the FBI and OIPR. (U)

In addition, there is regular and significant consultation between the FBI and the OIPR concerning issues that arise with regard to the initiation and renewal of Foreign

Intelligence Surveillance Court (FISC)-authorized electronic surveillance and physical search packages, Standard Minimization Procedures, interpretation of the FISA statute, and myriad other matters. More specifically, there are biweekly meetings between OIPR supervisors and National Security Law Branch (NSLB) supervisors, including the General Counsel, and the CIA. There are also biweekly meetings on FISA issues between OIPR, NSLB, and the Office of the Deputy Attorney General. Moreover, impromptu meetings between supervisors of OIPR and NSLB, as well as meetings between line attorneys, are held almost daily. At present, there is regular and routine dialogue between the FBI and OIPR, at all levels, on important and unusual cases. (U)

On April 5, 2004, the Attorney General directed OIPR and the FBI to implement certain changes in the FISA process. This included the assignment of five NSLB attorneys to begin full-time one-year assignments to the "International Terrorism Operations Section I FISA Task Force" at FBIHQ to address pending requests for FISA coverage. Additionally, a total of 10 more NSLB attorneys will be assigned (some have already begun the assignment) to work full-time on the FISA process within OIPR's chain of command and under OIPR supervision for a period of one year. This assignment of attorneys has been beneficial in further integrating FBI attorneys into counterterrorism operations (addressed in recommendation #5). Overall, NSLB believes that the assignment of FBI attorneys will not only alleviate immediate OIPR staffing shortages, but will also serve to strengthen closer working relations between the FBI and OIPR. (U)

C. Recommendations related to the FBI's interactions with the Intelligence Community: (U)

Recommendation No. 7: Ensure effective management of FBI detailees. (U)

The FBI is in agreement that the OIG's recommendation to provide effective management to the employees detailed to the CIA's Counter-Terrorism Center (CTC). The FBI's Counterterrorism Division currently has one SES level manager, three GS-15 Supervisors, six GS-14 Supervisors and three Intelligence Analysts detailed to five CIA departments, including the Current Action Staff. All the CTD detailees are supervised through both the FBI and CIA chain of command for the specific department they are detailed, with the SES manager being their ultimate rating official. Each detailee has been made aware of their duties and responsibilities within their specified area of operation and this has been documented accordingly. In addition, all CTD detailees assigned to the CTC meet daily with the SES manager, and the GS-15 Supervisors meet again in the afternoon with the SES manager to prepare for the DCI's evening briefing

The FBI has determined that the current performance plans for the GS-15 Supervisor, GS-14 Supervisor and the Intelligence Analysts are sufficiently inclusive to adequately reflect the critical elements of the job being performed by the individual detailee. As stated above, the FBI SES manager detailed to CTC serves as the rating or reviewing official as appropriate. CIA manager input is also solicited for the annual Performance Appraisal and semi-annual Performance Update. It should be noted that the SES manager at CTC does not have direct report authority to those FBI employees

detailed to CIA-FINO. These detailees are supervised by the Terrorism Financing Operations Section (TFOS) within CTD. The SES manager does ensure, however, that these employees are included in all meetings and provides necessary guidance and support while they are detailed to FINO.

Recommendation No. 8: Ensure FBI employees who interact with other intelligence agencies better understand their reporting processes. (U)

Response: The FBI agrees that FBI employees need a better understanding of the reporting processes and capabilities of other U.S. Intelligence Communities, and it has taken, and will continue to take, steps to achieve this understanding across the FBI. The FBI does believe, however, that U.S. Intelligence Community agencies interacting with the FBI have an obligation to independently ensure that the FBI is fully informed about their reporting streams and all of the available information that they possess about pressing threat issues and investigations. (U)

Since September 11, 2001, the FBI has established a number of procedures and guidance directives to instill a better understanding of U.S. Intelligence Community reporting processes. These include: (U)

- The EAD-I has informed the heads of all Field Offices that U.S. Intelligence Community personnel who operate jointly with FBI Agents and analysts in the field must operate under the chain of command of the Field Intelligence Group in each Field Office. In this way, FBI personnel who have developed an expertise in intelligence matters can most effectively interact with U.S. Intelligence Community personnel. The respective agencies will be intimately familiar with each other's reporting processes and other capabilities. (U)

- In addition, the training curriculums for both New Agents and Intelligence Analysts is being revised to improve the knowledge that FBI employees have about U.S. Intelligence Community agencies, their roles, capabilities, and basic processes. (U)

- The Office of Intelligence has posted a glossary of the various types of intelligence reports produced by the U.S. Intelligence Community on its FBI intranet website. (U)

- A senior CIA official has been detailed to the FBI's Counterterrorism Division to enhance the FBI's knowledge of CIA counterterrorism operations and improve coordination. This official attends the daily briefings described earlier, where he discusses key CIA reporting streams and coordinates reporting exchange between the two agencies. (U)

Recommendation No. 9: Provide guidance for how and when to document intelligence information received from informal briefings by other intelligence agencies. (U)

Response: The FBI has taken this recommendation under advisement in its continuing development of intelligence policies and procedures. We note, however, that at the time of the verbal briefings by the CIA on Mihdhar around the time of the millennium threat, FBI policies to record this information did exist. They permitted the recording of this information by the FBI employee(s) in an Electronic Communication (EC), classified appropriately, and directed to the relevant file(s). (U)

Recommendation No. 10: Ensure that the FBI's information technology systems allow FBI employees to more readily receive, use, and disseminate highly classified information. (U)

The FBI has a responsibility to the nation, IC, Federal, State and Local law enforcement to disseminate information and to do so is an inherent part of its mission. Sharing FBI information will be the rule; filtering the information will be the exception, where sharing is legally or procedurally unacceptable. The FBI will deliver its information through the systems the FBI and its customers and partners use. (U)

The FBI is connected to the rest of the U.S. Intelligence Community at the Top Secret (TS) Sensitive Compartmented Information (SCI) level via the new SCI Operational Network (SCION). The SCION project was initiated in September, 2001, and has met all schedule, budget and performance requirements. SCION connects to the Intelligence Community (Intelink) [redacted] SCION is the business tool for the FBI's Office of Intelligence, Counterterrorism (CT), and Counter Intelligence (CI) Divisions. It has enabled FBIHQ CT and CI personnel to perform their duties more efficiently and effectively. [redacted]

SCION is currently available to over 1000 users at FBI Headquarters, and the FBI has initiated a pilot deployment project to the following Field Offices: New York, Boston, and Kansas City. The plan is to deliver SCION to all FBI Field Offices, as funding becomes available. Limited access to Intelink from other Field Offices is available through the old FBI Intelligence Information System Network (IISNET). Most of the Field Offices have two workstations which have a connection to FBI headquarters. These workstations are inadequate and difficult to use, and they are located in small Secure Compartmented Information Facilities (SCIF) that are not in the agent or analyst work areas. An impediment to field expansion of SCION is the lack of SCIF space for the Field Intelligence Groups (FIGs) and the Joint Terrorism Task Forces (JTTFs) personnel. (U)

Access to the intelligence and homeland security communities at the SECRET level is provided via the Department of Defense SECRET Internet Protocol Router Network (SIPRNET) which provides the communications backbone to INTELINK-Secret. Our goal is to provide SIPRNET/INTELINK-Secret access through secure dynamic virtual private networks to all FBI workstations in the near future. Today you cannot directly access any external networks from the FBINET and only limited batch transactions through secure guards are permitted. The Anti-Drug Network (ADNET) rides the SIPRNET communications backbone and provides terminals and access as a vehicle for the domestic exchange of intelligence on anti-drug efforts. SIPRNET is also used to support the Terrorist Explosive Device Analysis Center, the National Virtual Translation Center, and the Foreign Terrorism Tracking Task Force.

In the area of organizational message traffic for dissemination of official information and taskings to other agencies, the FBI has just implemented its new FBI Automated Messaging System (FAMS) which is based on the Defense Messaging System (DMS). The FBI is the first civilian agency to operate the classified DMS. FAMS will provide on-line message creation, review, and search capabilities to everyone connected to FBINET. FAMS gives us the capability to send and receive critical organizational message traffic to any of the 40,000+ addresses on DMS or Automated Digital Network (AUTODIN). The TS/SCI version of FAMS is currently in testing and will provide the same capability to everyone on SCION or IISNET by the end of this year. The FBI's implementation of the DMS will provide writer-to-reader secure e-mail to internal and external users. Within the government, DMS will replace AUTODIN and a diverse array of e-mail systems currently in use throughout the Department of Defense and Intelligence Agencies. In its final form, DMS will become the government's global secure e-mail system. It will provide certified interoperability of various commercially off the shelf software products and connect over 2 million civilian and military users. The system will permit multi-media attachments to messages and provide end-to-end security. (U)

In the area of connectivity for data products, the FBI is just beginning to implement our initial programs for data marts as part of the Intelligence Community System for Information Sharing (ICSIS). Current FBI intelligence products in the form of Intelligence bulletins, Intelligence Assessments, and IIRs are being published on FBI web sites connected to SIPRNET and JWICS. The first FBI TS/SCI IC Data Mart (ICDM) is currently in development and should be on line by the end of 2004. The FBI Chief Information Officer is also working with the Department of Justice on interfaces between ICSIS and the Law Enforcement Information Sharing initiative and with the FBI Criminal Justice Information Services (CJIS) Division to increase the sharing of intelligence related information from and to state and local officials. (U)

The FBI is currently deploying the SECRET versions of FAMS, which uses DMS and secure Outlook like e-mail for organizational messages, so that our analysts and reports officers can send and receive timely intelligence with other agencies in near real time. The FBI is also working on a digital production capability for IIRs using extended markup language (XML) that will interface with FAMS and support on-line digital

production of intelligence reports. The FBI is applying XML data standards and meta-data tagging to facilitate the exchange of information with the intelligence community. The FBI is also applying new security technology to deploy a Protection Level 3 Data Mart capability with discretionary access controls and Public Key Infrastructure certificates in support of closed Community of Interests which will permit secure sharing of our most sensitive data with trusted members of other agencies. The FBI is also investigating the use of secure one way transfers to move information between security domains and to permit all-source intelligence analysis. The use of next-generation, community High Assurance Guards is being planned to provide for the two way transfer on critical intelligence between security domains. Secure wireless connectivity and Virtual Private Networks are also being looked at to provide increased access to intelligence to deployed personnel. The FBI is also starting to use On-line, desktop collaboration tools such as Info Work Space which is the foundation for the Intelligence Community Collaboration Portal to increase intelligence collaboration. (U)

The FBI plans to use additional systems as the foundation for additional information sharing with the IC, Federal State and Local entities. (U)

The CJIS National Data Exchange (NDEx) has plans for developing a systems approach to the operation, and maintenance of several interconnected IT and supporting telecommunications systems including Law Enforcement On-line (LEO) and CJIS WAN. The NDEx is to be a repository of national indices and a pointer system for state/local/federal and inter-governmental law enforcement entities. The NDEx will also be a fusion point for the correlation of nationally-based criminal justice information with certain national security data. (U)

Law Enforcement On-Line provides web-based communications to the law enforcement community to exchange information, conduct on-line education programs, and participate in professional special interest and topically focused dialog. The system has been operational since 1995 and presently serving about 30,000 users. LEO has secure connectivity to the Regional Information Sharing Systems network (riss.net). The FBI Intelligence products are disseminated weekly via LEO to over 17,000 law enforcement agencies and to 60 federal agencies, and providing information about terrorism, criminal and cyber threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public. The FBI plans to enhance LEO for robust, high-availability operation. The FBI will use the enhanced LEO as the primary channel for sensitive but unclassified communications with other federal, state and local agencies. LEO and the Department of Homeland Securities Joint Regional Information Exchange System (JRIES) will be interoperable. (U)

The Investigative Data Warehouse (IDW) is following a multiple-phased approach to quickly provide support to FBI investigators, and Task Force members in the form of a spirally-developed operational prototype system, the *Secure Counterterrorism Operational Prototype Environment* (SCOPE). The enterprise system which builds upon SCOPE is the IDW system; the full deployment of IDW is scheduled for December 2004. The IDW will

help meet the law enforcement and the IC need for rapid, secure, dependable indexed data and will provide data mining access to FBI investigative files. (U)

The Multi-agency Information Sharing Initiative is intended to enable Federal, state, and local law enforcement agencies to share regional investigative files and provide powerful tools for cross-file analyses. A proof-of-concept effort is underway in St. Louis; additional demonstration sites are being planned. The goal of the demonstrations is to (1) show the value of sharing investigative data which can be analyzed by modern software tools; and (2) help define technical and organizational approaches for regional shared systems. Final decisions about deployment of the MIS will be based on the results of the demonstrations and the department wide plan for law enforcement information sharing being developed by the Department of Justice. (U)

With the creation of the Office of Intelligence at the FBI, each FBI field office has established a Field Intelligence Group (FIG). It is the responsibility of these FIGS to manage, execute and maintain the FBI's intelligence functions within the FBI. FIG personnel have routine access to TS and SCI information so they will be able to receive, analyze, review and recommend sharing this information with entities within the FBI as well as our customers and partners within the Intelligence and Law enforcement communities. (U)

Recommendation No. 11: Ensure appropriate physical infrastructure in FBI field offices to handle highly classified information. (U)

The FBI agrees with the recommendation and has taken steps to address the issue. To address the Bureau's increased demand for access to Sensitive Compartmented Information (SCI) systems the following actions have been taken: (U)

1) Large SCIFs are being designed and incorporated into new FBI Facilities. This will allow field offices investigative and intelligence elements to be located in areas that are conducive to the free flow of intelligence and common access to highly classified information systems. (U)

2) In addition, ten (10) field offices, including the New York Field Office mentioned in the above finding, have been identified as those that are most in need of SCIF upgrades. Associated costs include construction costs and miscellaneous costs. Miscellaneous costs include Eagle phones (1 per person); secure phones (1 per 10 people); shredders (1 per 10 people); and secure fax machines (1 per 30 people). This information was provided in response to Questions for the Record which followed from the March 30, 2004 testimony of DADs Harrington and Ford concerning the counterterrorism budget for FY 2005. The construction of the SCIF upgrades is dependent on the FBI receiving the required funding. (U)
3) The FBI is currently implementing a plan to adhere to the National Security Agency mandate to have all STU instruments replaced with STEs by 2005

Recommendation No. 12: Improve dissemination of threat information. (U)

Response: The FBI agrees that, like other intelligence and law enforcement agencies, it needed to improve in every way possible the processes used to disseminate threat information. Since September 11, 2001, the FBI has issued clear guidance for the dissemination of threat information. Additional policy development and training initiatives are in progress to further strengthen the FBI's threat information dissemination processes. Below are the steps the FBI has taken: (U)

- As indicated earlier, the FBI's EAD-I, a senior Intelligence Community career professional, has established concepts of operations, policies, and procedures related to the dissemination, both internally and externally, of threat information. (U)

- In December 2003, an EC was distributed to all Field Offices and Legats, entitled, "Reporting Raw Intelligence." This EC provided guidance, reporting thresholds, and reporting procedures for raw intelligence derived from FBI investigations and intelligence collection, and emphasized threat information reporting and dissemination procedures. (U)

- The FBI has prepared and distributed standing and ad-hoc sets of intelligence requirements (intelligence collection and reporting guidance) for agency-wide use. These requirements are posted on the FBI intranet and available to all employees. The requirements provide strategically-developed and well-defined intelligence needs concerning the threat environment. The requirements framework and format includes detailed reporting thresholds, time frames, and reporting instructions, to include reporting formats and to what components the threat information should be reported. (U)

- The FBI has developed and implemented a two-week specialized training course for analysts and agents in reporting and disseminating raw intelligence. This course teaches the evaluation of collected intelligence for dissemination, as well as reporting and dissemination trade craft using the most up-to-date FBI business processes, formats, and policies. (U)

- The FBI is nearing completion of the development of a new web-based Intelligence Information Report (IIR) application, which will serve to vastly improve the efficiency and effectiveness of reporting and disseminating threat information. The new application will contain a single IIR format for use throughout all of the FBI's programs, and will have a number of advanced features, such as electronic approval, date and time stamping, work flow tracking, and standard dissemination lists. The application will be supported by a comprehensive IIR handbook which will be distributed throughout the FBI in June 2004. (U)

The National Threat Center Section (NTCS) is the Counterterrorism Division's (CTD) focal point for the receipt, preliminary analysis, and assignment for immediate action of all emerging International Terrorism (IT) and Domestic Terrorism (DT) threats. The NTCS coordinates these threats with several entities and agencies, to include the Terrorist Threat Integration Center (TTIC), Terrorist Screening Center (TSC) and the Foreign Terrorist Tracking Task Force (FTTTF). (U)

The NTCS is comprised of five units: CT Watch (CTW), Public Access Center Unit (PACU), Strategic Information Operations Center (SIOC), Terrorist Watch and Warning Unit (TWWU), and Threat Monitoring Unit (TMU). TMU and CTW are responsible for most interfacing with TTIC, TSC, and FTTTF. (U)

Information Sharing with the Terrorist Threat Integration Center

Threat Monitoring Unit

The mission of TMU is to support the FBI's role in defending the United States from the threat of terrorism by receiving, assessing, disseminating, and memorializing threat information and suspicious activity in conjunction with FBIHQ, FBI Field Offices, Legal Attaches, and the U.S. Intelligence Community (USIC). (U)

Each month, TMU receives approximately 1,000 threat and suspicious activity referrals from various federal, state and local government and law enforcement agencies. Each of these referrals, in the form of e-mail transmissions, electronic communications, or hard copy submissions, are reviewed and assessed by TMU Supervisory Special Agent personnel. TMU immediately insures the appropriate FBI substantive units, Joint Terrorism Task Force (JTTF) agencies, or other government agencies, are expeditiously apprized of the threat information, and makes a record of this threat information referral. Additionally, if baseline criteria are met, these threat and suspicious activity reports are assigned to Technical Information Specialists who insure the threat information is researched, summarized, fully addressed, and entered in the searchable TMU threats database. (U)

During fiscal year 2003, TMU received and assessed approximately 11,000 threat and suspicious activity referrals. TMU subsequently memorialized more than 2,700 individual threat and/or suspicious activity reports in the TMU database. TMU disseminated the threat and suspicious activity information to the organizations and entities that had oversight responsibility for individuals or property affected by the threat or incident. TMU routinely provides all threats meeting its baseline criteria to the Terrorism Reports and Requirements Section (TRRS) who disseminates the information in the form of an Intelligence Information Report (IIR), to multiple counterterrorism customers, including TTIC. Before the FBI became actively involved in the publication of IIRs, TMU had direct contact with TTIC on a daily basis. (U)

Over 300 individualized searches of the TMU threats database were requested of, and conducted by, TMU to facilitate threat trend analysis by FBI units, the Department of

Homeland Security, the National Infrastructure Protection Center, and other agencies of the USIC who are seeking to measure target vulnerability. Also, in 2003, over 200 individual threat items were submitted by TMU to TTIC for publication in the joint FBI/Central Intelligence Agency Threat Matrix. This threat information was then distributed to the President as well as multiple federal agencies. TMU also received requests for, and conducted, more than twenty specialized threat database searches for major events (i.e., Superbowl, World Series), and for significant dates such as those corresponding with religious celebrations. (U)

Counterterrorism Watch

All TTIC personnel with access to FBI internal e-mail have been granted proxy rights to the main CT Watch e-mail folder and the CT Watch Daily Log. Many new issues and updates are reported to CTW by e-mail. All actions taken, incoming telephone calls, faxes, teletypes and e-mails are documented, in detail, in the Daily Log. Through this unlimited, real-time access to both the e-mail and log, all information reported to CT Watch is also available to TTIC. Furthermore, a CTW analyst is physically assigned to TTIC where they serve in a liaison role, ensuring information is shared between the FBI and TTIC. Conversely, CTW personnel also have access to TTIC Online where TTIC records all new threat information and provides updates on current threat investigations. In the late summer to early fall of 2004, CTW will be relocated to a new building and, as such, will be physically collocated with TTIC. (U)

Information Sharing with the Terrorist Screening Center

The TSC initially receives an inquiry from a law enforcement agency subsequent to a Violent Gangs and Terrorist Organization File (VGTOF) record match. The TSC communicates with the inquiring law enforcement agency to provide direction and confirm a match on the subject(s). If a possible match is made, the TSC generates a report containing all pertinent biographical data and a checklist of any research conducted. The TSC then makes direct contact with the CTW via telephone and/or secure facsimile to provide the information regarding the possible match. (U)

Upon receipt of the telephonic notification from the TSC, an analyst from the CTW will review all identifying information regarding the possible terrorist subject and confirm any database searches already conducted by the TSC, such as National Criminal Instant Background Check, ACS and Tip-Off. If necessary, the analyst will initiate additional database searches to include: a more detailed ACS search, Telephone Applications, Integrated Intelligence Information Application, Treasury Enforcement Communication System, Watchlist, Department of State, Immigration and Naturalization Service, Transportation Security Administration, Bureau of Prisons, INTERPOL, and pertinent public databases such as ChoicePoint, AutoTrack, and LexisNexis. (U)

The CTW analyst provides a brief synopsis to a CTW Agent, who then coordinates reactive and investigative action with the field via the FBI JTTFs, Field/LEGAT Offices, FBI case agents, and/or FBI Airport Liaison Agents. The CTW

disseminates the information to all relevant agencies and coordinates final resolution directly with the JTTF. When confirmation regarding the final resolution is received from the JTTF, the CTW provides a summary of the encounter in the CTW/TSC Group Daily Logs. These TSC Group Daily Log entries contain specific details such as names, locations, identifiers, call-back numbers, and a description of how the matter was resolved. The log entries are read in real time by FBI personnel at the TSC in Crystal City, Virginia, and used to document a final resolution for the encounter and "close the loop." The TSC ultimately reports all pertinent investigative and/or intelligence information back to the respective agency that nominated the terrorist-related subject for inclusion into the VGTOF database (TTIC or FBI). (U)

Information Sharing with the Foreign Terrorist Tracking Task Force

A representative from the FTTTF has been assigned full-time to CTW. Additionally, under the new CTD organizational chart, FTTTF has been placed under the umbrella of the NTCS. This collocation of resources will facilitate the flow of information between the NTCS and FTTTF. (U)

D. Other Recommendations:

Recommendation No. 13: Evaluate the effectiveness of the rapid rotation of Supervisory Special Agents through the FBI Headquarters' Counterterrorism Program. (U)

Supervisory Special Agents (SSAs) assigned to the Counterterrorism Division follow the same career path and related promotional timetables established for all Agent supervisors assigned to FBI Headquarters (FBIHQ). First line supervisors in the field and at FBIHQ have on average served as investigators for 10.5 years prior to assuming their management positions. GS-14 SSAs currently serving at FBIHQ have on average 2.43 years in their FBIHQ SSA positions. FBIHQ SSAs are in fact required to complete at least two full years in their HQ assignment before their transfer to other assignments. Even then, far from being a prescheduled rotation, their movement to a field assignment requires that they successfully compete for assignments pursuant to the demanding requirements of a completely restructured selection system. (U)

Similar to other intelligence agencies, the FBI 's growing cadre of experienced support intelligence analysts and other operations specialists provide a significant portion of the continuity of knowledge required to understand and effectively evaluate the emerging threats over the long term. However, it is not accurate from the perspective of the FBI to characterize a two-year commitment to an FBIHQ position as a "rapid rotation," implying that SSAs on these two-year assignments contribute at a less then optimum level to the FBI's counterterrorism mission due to their length of service. The intention of service at FBIHQ is to provide Bureau leaders, selected on the basis of their demonstrated achievements, with a series of uniquely intense, particularly demanding challenges. The assignments provide experiential opportunities on a national and global scale. First line managers, working with their more experienced superiors and supported

by a knowledgeable intelligence staff, play a vital role in the identification of operational priorities, development and implementation of agency-wide initiatives, the assessment of the effectiveness of those initiatives, and the preparation of proactive responses to address emerging trends. These FBIHQ SSAs subsequently utilize this gained knowledge and experience in the domestic field and overseas in furtherance of the FBI's mission. (U)

If the FBI is to foster the development of true leaders to enhance its management cadre, it is imperative that all first line and mid-level managers actively and fully avail themselves of the widest possible range of leadership challenges, most particularly those available in FBIHQ SSA positions. The FBI's Executive Development and Selection Program has sought to strike the appropriate balance between providing first line managers with a range of developmental opportunities, and thereby address leadership succession concerns, while still providing continuity in the management of priority programs and regularly reinvigorating those programs with the new perspective and approaches of new first line managers. (U)

Recommendation No. 14: Provide guidance on the type of information that agents should obtain for evaluating assets and for documenting the yearly check on assets. (U)

The FBI agrees with recommendation and has implemented policy to address the issue. Current policy requires agents to provide semi-annual or annual evaluations, depending on the type of asset being developed or operated. The NFIPM Section 27-26 establishes 12 points which must be addressed in each evaluation. Among the twelve points are: 1) accomplishments attributable to the asset, 2) a characterization statement of the asset, and 3) the amount of money paid to the asset. The annual evaluation is not intended to document the asset's bona fides. NFIPM Section 27-29 provides examples of tests that the handling agent might utilize to determine the asset's bona fides. Additional steps to validate the asset are conducted by the handling agent and are used to determine the asset's reliability and veracity of the information they provided. These areas of reporting lend themselves to the administrative facet of asset development and operation. (U)

Within one year of opening and every 18 months thereafter, the handling agent is required to submit a case agent assessment to FBIHQ. This assessment is a brief narrative based on the handler's observations of and interactions with the asset, and provides insight into an asset's motivation and control, beliefs, habits and any significant behavioral changes. This time table does not preclude the agent from submitting a revised case agent assessment in the interim if the asset's behavior changes significantly. Additionally, a revised version of the NFIPM section 27 is currently in the draft stage. The new NFIPM will include language that directs agents to notify their immediate supervisor if they identify a significant change in the asset. The SSA will then determine if the asset's behavioral change rises to a level which would require FBIHQ notification. (U)

In contrast, agents receive information from assets which, although administrative in nature, and depending on the information's bearing on the investigative program, may require followup. These areas of reporting lend themselves to the investigative facet of asset development and operation. Further, this facet of asset development and operation are dictated by the logical progression of the investigative process and cannot be limited to or defined in administrative policy. (U)

Recommendation No. 15: Improve the flow of intelligence information within the FBI and the dissemination of intelligence information to other intelligence agencies. (U)

The FBI has a responsibility to the nation, IC, Federal, State and Local law enforcement to disseminate information and to do so is an inherent part of its mission. Sharing FBI information will be the rule; filtering the information will be the exception, where sharing is legally or procedurally unacceptable. The FBI will deliver its information through the systems the FBI and its customers and partners use. (U)

The FBI is connected to the rest of the U.S. Intelligence Community at the Top Secret (TS) Sensitive Compartmented Information (SCI) level via the new SCI Operational Network (SCION). The SCION project was initiated in September, 2001, and has met all schedule, budget and performance requirements. SCION connects to the Intelligence Community (Intelink) [redacted] SCION is the business tool for the FBI's Office of Intelligence, Counterterrorism (CT), and Counter Intelligence (CI) Divisions. It has enabled FBIHQ CT and CI personnel to perform their duties more efficiently and effectively. [redacted]

SCION is currently available to over 1000 users at FBI Headquarters, and the FBI has initiated a pilot deployment project to the following Field Offices: New York, Boston, and Kansas City. The plan is to deliver SCION to all FBI Field Offices, as funding becomes available. Limited access to Intelink from other Field Offices is available through the old FBI Intelligence Information System Network (IISNET). Most of the Field Offices have two workstations which have a connection to FBI headquarters. These workstations are inadequate and difficult to use, and they are located in small Secure Compartmented Information Facilities (SCIF) that are not in the agent or analyst work areas. An impediment to field expansion of SCION is the lack of SCIF space for the Field Intelligence Groups (FIGs) and the Joint Terrorism Task Forces (JTTFs) personnel. (U)

Access to the intelligence and homeland security communities at the SECRET level is provided via the Department of Defense SECRET Internet Protocol Router Network (SIPRNET) which provides the communications backbone to INTELINK-Secret. Our goal is to provide SIPRNET/INTELINK-Secret access through secure dynamic virtual private networks to all FBI workstations in the near future. Today you

cannot directly access any external networks from the FBINET and only limited batch transactions through secure guards are permitted. The Anti-Drug Network (ADNET) rides the SIPRNET communications backbone and provides terminals and access as a vehicle for the domestic exchange of intelligence on anti-drug efforts. SIPRNET is also used to support the Terrorist Explosive Device Analysis Center, the National Virtual Translation Center, and the Foreign Terrorism Tracking Task Force.

In the area of organizational message traffic for dissemination of official information and taskings to other agencies, the FBI has just implemented its new FBI Automated Messaging System (FAMS) which is based on the Defense Messaging System (DMS). The FBI is the first civilian agency to operate the classified DMS. FAMS will provide on-line message creation, review, and search capabilities to everyone connected to FBINET. FAMS gives us the capability to send and receive critical organizational message traffic to any of the 40,000+ addresses on DMS or Automated Digital Network (AUTODIN). The TS/SCI version of FAMS is currently in testing and will provide the same capability to everyone on SCION or IISNET by the end of this year. The FBI's implementation of the DMS will provide writer-to-reader secure e-mail to internal and external users. Within the government, DMS will replace AUTODIN and a diverse array of e-mail systems currently in use throughout the Department of Defense and Intelligence Agencies. In its final form, DMS will become the government's global secure e-mail system. It will provide certified interoperability of various commercially off the shelf software products and connect over 2 million civilian and military users. The system will permit multi-media attachments to messages and provide end-to-end security. (U)

In the area of connectivity for data products, the FBI is just beginning to implement our initial programs for data marts as part of the Intelligence Community System for Information Sharing (ICSIS). Current FBI intelligence products in the form of Intelligence bulletins, Intelligence Assessments, and IIRs are being published on FBI web sites connected to SIPRNET and JWICS. The first FBI TS/SCI IC Data Mart (ICDM) is currently in development and should be on line by the end of 2004. The FBI Chief Information Officer is also working with the Department of Justice on interfaces between ICSIS and the Law Enforcement Information Sharing initiative and with the FBI Criminal Justice Information Services (CJIS) Division to increase the sharing of intelligence related information from and to state and local officials. (U)

The FBI is currently deploying the SECRET versions of FAMS, which uses DMS and secure Outlook like e-mail for organizational messages, so that our analysts and reports officers can send and receive timely intelligence with other agencies in near real time. The FBI is also working on a digital production capability for IIRs using extended markup language (XML) that will interface with FAMS and support on-line digital production of intelligence reports. The FBI is applying XML data standards and meta-data tagging to facilitate the exchange of information with the intelligence community. The FBI is also applying new security technology to deploy a Protection Level 3 Data Mart capability with discretionary access controls and Public Key Infrastructure certificates in support of closed Community of Interests which will permit secure sharing

of our most sensitive data with trusted members of other agencies. The FBI is also investigating the use of secure one way transfers to move information between security domains and to permit all-source intelligence analysis. The use of next-generation, community High Assurance Guards is being planned to provide for the two way transfer on critical intelligence between security domains. Secure wireless connectivity and Virtual Private Networks are also being looked at to provide increased access to intelligence to deployed personnel. The FBI is also starting to use On-line, desktop collaboration tools such as Info Work Space which is the foundation for the Intelligence Community Collaboration Portal to increase intelligence collaboration. (U)

The FBI plans to use additional systems as the foundation for additional information sharing with the IC, Federal State and Local entities. (U)

The CJIS National Data Exchange (NDEx) has plans for developing a systems approach to the operation, and maintenance of several interconnected IT and supporting telecommunications systems including Law Enforcement On-line (LEO) and CJIS WAN. The NDEx is to be a repository of national indices and a pointer system for state/local/federal and inter-governmental law enforcement entities. The NDEx will also be a fusion point for the correlation of nationally-based criminal justice information with certain national security data. (U)

Law Enforcement On-Line provides web-based communications to the law enforcement community to exchange information, conduct on-line education programs, and participate in professional special interest and topically focused dialog. The system has been operational since 1995 and presently serving about 30,000 users. LEO has secure connectivity to the Regional Information Sharing Systems network (riss.net). The FBI Intelligence products are disseminated weekly via LEO to over 17,000 law enforcement agencies and to 60 federal agencies, and providing information about terrorism, criminal and cyber threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public. The FBI plans to enhance LEO for robust, high-availability operation. The FBI will use the enhanced LEO as the primary channel for sensitive but unclassified communications with other federal, state and local agencies. LEO and the Department of Homeland Securities Joint Regional Information Exchange System (JRIES) will be interoperable. (U)

The Investigative Data Warehouse (IDW) is following a multiple-phased approach to quickly provide support to FBI investigators, and Task Force members in the form of a spirally-developed operational prototype system, the *Secure Counterterrorism Operational Prototype Environment* (SCOPE). The enterprise system which builds upon SCOPE is the IDW system; the full deployment of IDW is scheduled for December 2004. The IDW will help meet the law enforcement and the IC need for rapid, secure, dependable indexed data and will provide data mining access to FBI investigative files. (U)

The Multi-agency Information Sharing Initiative is intended to enable Federal, state, and local law enforcement agencies to share regional investigative files and provide powerful tools for cross-file analyses. A proof-of-concept effort is underway in St. Louis; additional

demonstration sites are being planned. The goal of the demonstrations is to (1) show the value of sharing investigative data which can be analyzed by modern software tools; and (2) help define technical and organizational approaches for regional shared systems. Final decisions about deployment of the MIS will be based on the results of the demonstrations and the department wide plan for law enforcement information sharing being developed by the Department of Justice. (U)

With the creation of the Office of Intelligence at the FBI, each FBI field office has established a Field Intelligence Group (FIG). It is the responsibility of these FIGS to manage, execute and maintain the FBI's intelligence functions within the FBI. FIG personnel have routine access to TS and SCI information so they will be able to receive, analyze, review and recommend sharing this information with entities within the FBI as well as our customers and partners within the Intelligence and Law enforcement communities. (U)

Recommendation No. 16: Ensure that field offices allocate resources consistent with FBI priorities.

The FBI agrees with the general concept that the recommendation is based upon and has in fact instructed each field office to address higher priority matters before lower ones. The Director has instructed the field offices to use whatever resources are necessary to handle all Counterterrorism leads. However, it must be pointed out that the level of resources allocated to each priority is not based upon the relative rank of the priority but upon the level and significance of the threat in each priority area and the extent to which the FBI has sole jurisdiction over the matter. Thus, to determine that the appropriate level of resources is allocated to each priority, a simple formula cannot be used. A detailed analysis of the threat and workload in every FBI division must be conducted.

This analysis of the threat and workload is conducted by each FBI program as part of the FBI's resource allocation process. In addition, the FBI has developed and implemented semi-annual program reviews to ensure each field office is appropriately addressing the FBI and the national program priorities. Headquarter's program managers are required to review each office's program review submission and make appropriate management decisions. In addition, the FBI's Inspection Division will use the semi-annual review submissions as a source document of conducting the field office

inspections. If field offices are not addressing priority matters appropriately, the Inspection Division will write a "finding" and require a corrective action be taken. The Inspection Division will also review the actions of the national program manager to ensure that appropriate instruction and actions were taken.

Sincerely yours,

SC McCraw

Steven C. McCraw
Assistant Director
Inspection Division

Enclosure