

UQ Wire: The Crimes Of 9/11 (Part 2)
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THE CRIMES OF 9/11:
Bush Administration, CIA and FBI Misconduct Caused "Intelligence Failure"
(Part 2)

See also... UQ Wire: The Crimes Of 9/11 (Part 1)

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CRIMINAL INVESTIGATION AND PROSECUTION OF RANKING INTELLIGENCE AND NATIONAL SECURITY OFFICIALS

The first thing that was apparent to investigators on the scene of the World Trade Center, Pentagon and Pennsylvania crash sites was that a crime of mass murder and conspiracy had taken place. The next two questions that should have been asked were: how did this sort of coordinated attack against multiple targets happen, and what sort of negligence (or worse) by US officials allowed it to happen as it did? Somewhere between question two and question three there was a disconnect. Certain obvious lines of inquiry were cut-off because the same agencies that investigated the crime were also charged with operations to detect and prevent it before it even happened. This set up a fundamental conflict of interest, quite frankly, one which is insurmountable under the present political circumstances that the Executive, Legislative and Judicial branches of the federal government are controlled by the same political party that also has a vested interest in an investigative whitewash that would exonerate the Administration and its heads of law enforcement and intelligence community from any civil or criminal culpability for the 9/11 crimes.

Certain investigative and prosecutorial inquiries and strategies must, nonetheless, proceed in the interim, until the justice system is able to deal with them, if only because the victims and the general public have a need to know what happened. These interested parties also need to know what measures the criminal justice system can eventually impose once it is again able to dispense impartial justice to those whose criminal negligence, recklessness and obstruction of justice contributed, before and after the fact, to the crimes of 9/11. [See, Part 1; also see, , " How U.S. Counterterrorism failed in 911, and Why the Bush Administration Can't Fix It", Parts 1 and 2, http://www.democraticunderground.com/articles/02/09/26_failed.html] [also see,

revised and expanded Part 2, Bush Administration Suppressed FBI 9/11 Probe - <http://www.voy.com/7297/191.html>].

Preservation of the rule of law requires nothing less than a public trial of those officials who by negligence or malice aforethought are clearly culpable for the largest act of mass murder in American history. The discretion to prosecute is held in several jurisdictions -- US Attorneys, District Attorneys, state and federal Attorney General -- pending indictments that might be handed down by federal or state Grand Juries. Failure to convene a Grand Jury and then vigorously prosecute this case would compound the obstruction. Under the constitution, the power to compel prosecutors to act is reserved to the People of the United States.

It is with this in mind that we approach the facts concerning official conduct prior to 9/11 that obstructed justice and led to 3,000 counts of negligent homicide.

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The major media has spun the Congressional 9/11 findings to convey the impression that the 9/11 attack occurred primarily because of a last-minute communications breakdown between the CIA and FBI. The Washington Post, for instance, reported:

"Two weeks before the September 11 terrorism attacks, a desperate FBI agent begged his superiors to launch an aggressive hunt for one of the men who would participate in the suicide hijackings, warning that 'someday someone will die' because his request was denied . . . on August 29, 2001 [the NY field office agent asked his Washington superiors] to allow his office to search for Khalid Almihdhar, who would later help commandeer the aircraft that slammed into the Pentagon. But lawyers in the FBI's National Security Law Unit refused. . . The CIA [had] monitored Almihdar at a meeting of al Qaeda operatives in Malaysia more than 18 months before the September 11 attacks, and knew at that time that he held a visa that allowed him to enter and exit the United States repeatedly. But the [congressional] report found that the CIA did not adequately inform other agencies and made no effort to until summer 2001 to add the names of Almidhar or Alhazmi [a second 9/11 hijacker who also attended the Malaysia al Qaeda meeting] to immigration watch lists . . ." (Washington Post, A1, Sept. 21, 2002)]

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In the immediate aftermath of the attack, the Bush Administration and the intelligence community issued a series of erroneous statements. Congressional

findings have since corrected some lingering fictions. We now know the following
to false: 1) the attacks on the WTC and Pentagon had been a complete surprise that occurred because U.S. intelligence had no one inside the bin Laden organization positioned to warn of the plan; 2) US counterterrorism efforts were divided and underfunded, and 3) the FBI and CIA weren't talking to each other because of legal obstacles. A close examination of the record, particularly the testimony of CIA Director Tenet, delivered to the Joint Congressional Panel on October 17, 2002, reveal that these assumptions are little more than convenient myths. [See, Written Statement for the Record of the Director of Central Intelligence Before the Joint Inquiry Committee, 17 October 2002, http://www.cia.gov/cia/public_affairs/speeches/speeches.html; and, Oral Testimony of George Tenet Before the Joint Inquiry Committee, 17 October 2002, <http://www.guardian.co.uk/september11/story/0,11209,814749,00.html>; also see, "How U.S. Counterterrorism failed in 9/11, and Why the Bush Administration Can't Fix It", Parts 1 and 2, http://www.democraticunderground.com/articles/02/09/26_failed.html]

Director Tenet's testimony belies the oft-repeated assertion that the FBI was not notified by the CIA about the activities of known al-Qaeda operatives until mere days before the attack. That is a core myth at the center of the initial official version of the 9/11 "intelligence failure". [see, sidebar at right]. That myth has been frayed by recent revelations, many of them coming from the CIA. American counterterrorism officials knew far more about the activities of key terrorists abroad -- before they entered the U.S. -- than had been previously revealed.

Furthermore, the early explanations about a "surprise attack" given by Bush Administration officials for the 9/11 debacle have become untenable. It is no longer possible for officials to claim that they had no prior warning of the kind of attack that occurred on September 11, 2001. The official story has had to change. officials to claim that they had no prior warning of the kind of attack that occurred on September 11, 2001. The official story has had to change.

Recent elaborations have begun to emphasize alleged legal impediments to joint CIA and FBI counterterrorism efforts. The so-called Wall - domestic warrant requirements and other legal procedures in national security cases - is now blamed for frustrating investigators in the weeks before the attack. The Wall, in fact, had little to do with the circumstances under which the key 9/11 hijackers got into the country and were able to plan and carry out their mission. The Wall, nonetheless, now provides the primary justification for the intelligence "reforms" enacted by the USA PATRIOT Act.

Findings released by Congress since September 2002 show that the CIA and the FBI knew a great deal about the 9/11 hijackers and their plans many months in advance. Lack of information and resources by US counterintelligence were not among the real reasons the attack occurred.

The facts now available indicate that the CIA and FBI had mounted a joint surveillance operation of al-Qaeda planners, and somehow that operation went out of control.

As early as 1999, the two agencies had jointly identified two key figures -- Khalid al-Mihdhar (the suspected hijacker of Flight 77 that crashed into the Pentagon) and Nawaf al-Hazmi (who was also aboard that flight) - as participants at an important al-Qaeda planning session held in Malaysia on January 5-8, 2000.

In conjunction with Malaysian intelligence, the CIA surveilled the planning session, photographed the participants, and trailed the pair with a ranking al-Qaeda operations director to another country in South Asia. The pair entered the US a week later on a flight from Bangkok.

The Bureau claimed the Agency failed to inform the FBI of their entry until mid-August 2001, which set off a frenzied search for the pair. In his October 17 testimony, CIA Director Tenet responded that the Agency "informally" notified the FBI liaison officer at the CIA's Counterterrorism Center (CTC) in March 2001. This happened, he says, when CIA learned of al-Mihdhar's entry (al-Hazmi's presence on the same flight, Tenet says, was not known by the CIA until mid-August). Neither the CIA nor the FBI alerted any other federal agency about the pair until just three weeks before the attacks occurred.

Many people looking into the matter have asked similar questions about the delay in notification of some FBI offices. Perhaps the most probing of these have come from within the FBI NY office, which was apparently blacked-out of information previously made available to the FBI liaison at CTC. On September 20, one of the agents at the NY Field Office testified before the Congressional Committee. His recollection of the comment, "someday someone will die ", has been widely reported. The major media has failed, however, to reflect two other issues he shared with the committee:

"I, myself, still have two key questions today that I believe are important for this committee to answer. . . First, if the CIA passed information regarding Al-Mihdhar and Al-Hazmi to the FBI prior to the June 11, 2001 meeting - in either January 2000 or January 2001 - then why was that information not passed, either by CIA or FBI Headquarters personnel, immediately to the New York case

agents, criminal or "Intel", investigating the murder of 17 sailors in Yemen when more information was requested? A simple answer of "The Wall" is unacceptable. Second, how and when did we, the CIA and the FBI, learn that Al-Mihdhar came into the country on either or both occasions, in January 2000 and/or in July 2001 and what did we do with the information?"

While Tenet's testimony clarifies some previous misconceptions, the NY Agent and other sources within the law enforcement community continue to raise some other troubling questions that have not yet been answered or even focused on in the mainstream media:

According to Newsweek magazine, Nawaf al-Midhar and al-Hazmi had already been living in San Diego apartment taking flying lessons when they traveled to Malaysia. [Newsweek, "The Hijackers We Let Escape" , June 5, 2002 CIA Director

Tenet states that US intelligence learned about al-Mihdhar through an intercept of communications at an "al-Qaeda logistics center" in Yemen that referenced "Nawaf." In December 1999, the Agency obtained advance information about al-Mihdhar's planned travel to the Kuala Lumpur. The CIA tailed the pair to Malaysia, sharing this surveillance with the FBI liaison at CTC on January 5. If

that chronology is correct, and the pair were indeed in the United States in December, then the CIA would have known about at least two of the primary al-Qaeda operatives, and likely what their activities were. Was this information about the pre-2000 activities of al Mihdhar and al-Hazmi also known to FBI counterterrorism personnel? Why wasn't this information shared with the FBI National Security office in New York? Why has this issue not been publicly addressed?

According to the CIA, both the Agency and the Bureau learned weeks in advance that al-Mihdhar and al-Hazmi would be traveling to the Malaysia meeting. There was extensive preparation and cooperation between the two agencies, involving several third-country intelligence services in surveillance of the meeting and its participants. Yet, with all this advance notice and planning, and all the surveillance technology available, US intelligence claims it was unable to record any conversations of the participants who met in a condominium near a golf course in Kuala Lumpur. Why has this not been explained? What has happened to the raw intelligence, the photos and any other materials gathered?

At the end of the Malaysia meeting on January 8 2000, US intelligence observed al-Mihdhar and al-Hazmi as they accompanied Saeed Muhammad Bin Yousaf (aka, Khallad), described as the most important al-Qaeda figure present, as they traveled to an undisclosed country in South Asia. The CIA then claims it lost track of the pair. Where did they go, and why has this not been revealed? Why was US intelligence unable to follow the pair to Thailand, from which they flew to Los Angeles on January 15?

By the CIA's account, the pair had been under intensive surveillance since late December. They were observed in the company of a ranking al-Qaeda figure as they left Malaysia. Were they able to shake off pursuers, or was surveillance called off? How were the pair able to enter the U.S. unnoticed a week later?

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Tenet testified on October 17 that the CIA and FBI knew weeks in advance that al-Mihdhar and al-Hazmi would be traveling to a suspected al-Qaeda planning summit in Malaysia, and that the Bureau was subsequently informed that al-Mihdhar had been in attendance:

"In December 1999, CIA, FBI, and the Department of State received intelligence on the travels of suspected al-Qa'ida operatives to Kuala Lumpur, Malaysia. CIA saw the Kuala Lumpur gathering as a potential source of intelligence about a possible al-Qa'ida attack in Southeast Asia. We initiated an operation to learn why those suspected terrorists were traveling to Kuala Lumpur" [Tenet, prepared testimony, 10/17/02].

The Malaysia meeting was considered to be of great importance, according to the CIA's guidelines, as at least two senior al-Qaeda figures were in Kuala Lumpur.

The other persons they met with there would also have been routinely added to the watch list, if they were not already under surveillance. Tenet stated:

"In early January 2000, we managed to obtain a photocopy of al-Mihdhar's passport as he traveled to Kuala Lumpur. It showed a US multiple-entry visa issued in Jeddah on 7 April 1999 and expiring on 6 April 2000. We learned that his full name is Khalid bin Muhammad bin 'Abdallah al-Mihdhar.

"We had at that point the level of detail needed to watchlist him-that is, to nominate him to State Department for refusal of entry into the US or to deny him another visa. Our officers remained focused on the surveillance operation, and did not do this." [Tenet, Prepared Testimony, Ibid.]

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On October 17, Tenet offered some more important details in his oral testimony before the panel. The CIA, he revealed that the surveillance operation of the participants in Kuala Lumpur was seen as so important that it involved multiple CIA stations and foreign intelligence agencies:

"We had learned in late 1999 that two suspect Bin Ladin operatives, "Nawaf" and

"Khaled," were planning to travel to Malaysia . . . CIA initiated an operation to place "Khaled" under surveillance . . . The subsequent operation to learn more involved eight stations and bases and a half-dozen liaison services. Our interest in monitoring the meeting was based on our suspicion that Khaled's travel to Malaysia was associated with supporting regional terrorist plans or operations . . . In early 2000, just before he arrived in Malaysia, we acquired a copy of "Khaled's" passport, which showed a US multiple entry visa issued in Jeddah in April 1999 and expiring on 6 April 2000." [Tenet, Oral Test., 10/18/02]

According to Tenet, further information about Nawaf and Khalid became known to both the CIA and the FBI in late 2000 after an agent inside al-Qaeda confirmed that the pair were linked to Khallad, the suspected mastermind of the Cole bombing who may have also helped plan the 9/11 attack. For the first time, the Director publicly revealed that US intelligence had a jointly-controlled foreign agent working for the CIA and FBI within al-Qaeda:

"The Malaysia meeting took on greater significance in December 2000 when the investigation of the October 2000 USS Cole bombing linked some of Kahlid al-Midhar's Malaysia connections with Cole bombing suspects. We further confirmed the suspected link between al-Midhar and al-Hazmi and an individual thought to be one of the chief planners of the Cole attack, via a joint FBI-CIA HUMINT asset." [Tenet, oral test., 10/18/02]

THE FISA RED-HERRING

Given these facts already known in concert to the Agency and the FBI in early 2000, there would have been no problem subsequently obtaining a FISA warrant to surveil anyone who had been seen at that meeting or any non-US person communicating with them. Obviously, by 2001, there was still adequate cause for the FBI to obtain a surveillance warrant for al-Midhar and al-Hazmi, who had emerged as central characters in the CIA and FBI surveillance operation of al-Qaeda. Stories that emerged after 9/11 of FBI agents being unable to obtain warrants and permission to track down al-Midhar and al-Hazmi during the late summer of 2001 - because of FISA requirements -- do not have the ring of truth about them. What actually happened, if Tenet is being truthful, was that the FBI officers who had earlier been working with the CIA at CTC did not - or were ordered not to -- fully notify the rest of the Bureau of what was known at that time about the intending hijackers. In addition, CIA officers assigned to Minneapolis and New York investigations did not - or were ordered not to -

reveal full details of why the Agency had been surveilling al-Qaeda in Malaysia.
Finally, it also seems likely that certain CIA and FBI officers may still not be fully forthcoming with Congress about the case.

THE SECOND WALL: WHY THE CIA SUPPRESSED EVIDENCE SOUGHT BY FBI FIELD INVESTIGATORS FOR FISA WARRANTS

Eleanor Hill, the staff director of the Joint Congressional Investigation delivered a number of bombshells in her reports of September 20 and 24 on the delays and mishandling of the FBI investigation into Zacarias Moussaoui, Nawaf al-Mihdhar and al-Hazmi during the last days before 9/11. One critical point she raised has thus far gone without comment, but it may provide important evidence of CIA obstruction of that investigation.

Hill points out that within a week of Massaoui's August 16 arrest on immigration charges, details of the FBI investigation of the French Moroccan suspect had been widely disseminated within the CIA:

A CIA officer detailed to FBI headquarters learned of the Moussaoui investigation from CTC in the third week of August 2001. The officer was alarmed about Moussaoui for several reasons. CIA stations were advised of the known facts regarding Moussaoui and al-Attas and were asked to provide any relevant information they might have.[Hill, prepared testimony, 9/24/02]

The Congressional staff report lets this point pass without further comment. However, this appears to confirm that the CIA liaison at the FBI counterterrorism office, and others within the Agency, were well aware that the Minneapolis FBI office was seeking evidence that would have justified issuance of a FISA warrant to open Moussaoui's laptop computer.

Much has been made about the apparently over-restrictive interpretation of FISA requirements made by certain middle-level officers in the FBI's National Security Legal Office. Poor legal judgment in Washington, DC did unnecessarily delay investigators' access to the contents of Moussaoui's computer, perhaps thwarting the possibility of a last-minute discovery of the conspiracy and apprehension of other al-Qaeda members. Tragically, we will never know.

What we do now know is that there was more than enough evidence to obtain a warrant - either FISA or a criminal warrant - for all the attendees at the January 5-8, 2000 al-Qaeda planning summit. That obviously includes al-Mihdhar, al-Hazmi and Jarrah. Yet, one was not applied for. Why?

Surveillance of the January 5-8 Malaysia summit had been a major Agency

undertaking, involving eight CIA stations and dozens of officers and allied personnel. Details about it were quite widely known throughout the Agency.
CIA

Director Tenet was briefed about the event on more than one occasion, Ms. Hill reported in September 20th:

"[D]ocuments reviewed by the Joint Inquiry Staff show that the Malaysia meeting was deemed sufficiently important at the time that it was included - along with several other counterterrorst activities -in several briefings to the DCI in January 2000." [Hill, prepared testimony, 9/20/02]

Despite the importance given their surveillance by CIA, the record shows that the Agency refused to provide pertinent details of what was known about to the FBI agents in New York who were seeking a FISA warrant to hunt down al-Mihdhar and al-Hazmi:

"On June 11, 2001, FBI headquarters representatives and CIA representatives met with the New York FBI agents handling the Cole investigation. The New York agents were shown, but not given copies of the photographs and told they were taken in Malaysia. When interviewed, one of the New York agents recalled al-Mihdhar's name being mentioned. He also recalled asking for more information on why the people in the photographs were being followed and for access to that information. The New York agents were advised they could not be told why al-Mihdhar and the others were being followed. An FBI headquarters representative told us in her interview that the FBI was never given specific information until it was provided after September 11, 2001. The CIA analyst who attended the New York meeting acknowledged to the Joint Inquiry Staff that he had seen the information regarding al-Mihdhar's U.S. visa and al-Hazmi's travel to the United States. But he stated that he would not share information outside of the CIA unless he had authority to do so and unless that was the purpose of the meeting." [Hill, prepared testimony, September 20, 2002].

Thus, according to the Congressional staff report, the CIA withheld the bulk of what it knew about al-Mihdhar's presence at the Malaysia meeting. In the absence of that critical information, the FBI's New York field office decided not to seek either a FISA or a criminal warrant. Ms. Hill reported on September 20:

On August 23, 2001, the CIA sent a cable to the State Department, INS, Customs Service, and FBI requesting that "Bin Ladin related individuals" - al-Mihdhar, Nawaf al-Hazmi, and two other individuals at the Malaysia meeting - be watchlisted immediately and denied entry into the United States "due to their

confirmed links to Egyptian Islamic Jihad operatives and suspicious activities while traveling in East Asia." Although the CIA believed al-Mihdhar was in the United States, placing him on the watchlist would enable authorities to detain him if he attempted to leave.

Meanwhile, the FBI headquarters' Usama Bin Ladin Unit sent to the FBI's New York field office a draft document recommending the opening of an intelligence investigation on al-Mihdhar "...to determine if al-Mihdhar is still in the United States." It also stated that al-Mihdhar's confirmed association with various elements of Bin Ladin's terrorist network, including potential association with two individuals involved in the attack on USS Cole, "make him a risk to the national security of the United States." The goal of the investigation was to locate al-Mihdhar and determine his contacts and reasons for being in the United States." This document was sent to New York in final form on August 28. New York FBI agents told us that they tried to convince FBI headquarters to open a criminal investigation on al-Mihdhar, given the importance of the search and the limited resources that were available to intelligence investigations. FBI headquarters declined to do so because there was, in its view, no way to connect al-Mihdhar to the ongoing Cole investigation without using some intelligence information.

Ms. Hill touches on what may be the essential truth in this matter. The CIA withheld what it knew in order to protect its own operational methods from exposure. Meanwhile, FBI headquarters had apparently withdrawn into a nest of senseless legalism in order to shield itself from a visibly disintegrating CIA operation:

"There is, however, a second type of wall that can also limit the flow of information to criminal investigators from intelligence agencies; that wall exists to protect foreign intelligence sources and methods from disclosure in a criminal prosecution. Intelligence agencies often provide information to the FBI, for example, with a limitation that it may only be used for lead purposes as distinct from evidentiary purposes. In the case of al-Mihdhar and al-Hazmi, evidently, assisting the Cole criminal investigation was deemed insufficient to justify breaching the "wall" that prevented the full sharing of relevant intelligence information with the agents handling that criminal investigation.

An August 29, 2001 e-mail exchange between FBI headquarters and a FBI agent in New York is illustrative. The agent, who had been involved in the Cole criminal investigation since the day of that attack, asked FBI headquarters to allow New

York to use the full criminal investigative resources available to the FBI to find al-Mihdhar. Headquarters responded that its National Security Law Unit advised that this could not be done.

This was the exchange:

- From FBI Headquarters: "A criminal agent CAN NOT be present at the interview.
This case, in its entirety, is based on [intelligence]. If at such time as information is developed indicating the existence of a substantial federal crime, that information will be passed over the wall according to the proper procedures and turned over for follow-up criminal investigation." [Emphasis in original.]

- From FBI agent, New York: "Whatever has happened to this - someday someone will die - and wall or not - the public will not understand why we were not more effective and throwing every resource we had at certain 'problems.' Let's hope the [FBI's] National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most 'protection.'"

On his way to the US earlier in 2001, Zakarias Moussaoui had also been the houseguest of the businessman who owned the Kuala Lumpur condominium. French intelligence had also provided its American contacts with extensive information it possessed that indicated Moussaoui to be an Islamic militant with "some autonomy and authority". TIME magazine reported:

" In the late 1990s, it turns out, French police had placed Moussaoui on a watch list: using London as his base, Moussaoui shuttled in and out of Kuwait, Turkey and Continental Europe, forming ties with radical Islamist groups and recruiting young men to train and fight the jihad in Chechnya. French intelligence officials also believed Moussaoui spent time in Afghanistan, and his last trip before arriving in the U.S. last February was to Pakistan. A French justice official says the government gave the FBI 'everything we had' on Moussaoui, 'enough to make you want to check this guy out every way you can. Anyone paying attention would have seen he was not only operational in the militant Islamist world but had some autonomy and authority as well.' . . ." [TIME, "How the FBI Blew the Case", 5/22/02]

Again, it appears that field FBI investigators sought the assistance of the CTC, but the counterterrorism center did not provide the field office with information in its possession with which investigators might have obtained warrants. In her statement of September 24, The joint committee staff director

provided a detailed description of apparent obstruction in the Moussaoui case:

"Based on concerns expressed by a private citizen, the FBI's Minneapolis Field Office opened an international terrorism investigation of Moussaoui on August 15, 2001. . .

On the same day the Minneapolis field office learned about Moussaoui, it asked both the CIA and the FBI's legal attache in Paris for any information they had or could get on Moussaoui. At the same time, they also informed FBI headquarters of the investigation. . .

The INS agents determined that Moussaoui had not received an extension to allow him to stay in the United States beyond May 22, 2001, so they took him into custody. The agents packed Moussaoui's belongings, noticing that he had a laptop computer among his possessions. . .

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After Moussaoui's detention, the Minneapolis supervisory agent called the office's legal counsel and asked if there was any way to search Moussaoui's possessions without his consent. He was told he had to obtain a search warrant.

Over the ensuing days, the Minneapolis agents considered several alternatives, including trying to obtain a criminal search warrant, seeking a search warrant under FISA, and deporting Moussaoui to France after arranging for the French authorities to search Moussaoui's possessions and share their findings with the FBI. Adding to the sense of urgency, a supervisor in the INS' Minneapolis office told the FBI that INS typically does not hold visa waiver violators like Moussaoui for more than 24 hours before returning them to their home countries. Under the circumstances, however, the INS said it would hold Moussaoui for seven to ten days.

On Saturday, August 18, Minneapolis sent a detailed memorandum to FBI headquarters. That memorandum described the Moussaoui investigation and stated that it believed that Moussaoui posed a threat.

The Joint Inquiry Staff has been told in interviews with the Minneapolis agents that FBI headquarters advised against trying to obtain a criminal search warrant as that might prejudice any subsequent efforts to get a search warrant under FISA. Under FISA, a search warrant could be obtained if they could show there

was probable cause to believe Moussaoui was an agent of a foreign power and either engaged in terrorism or was preparing to engage in terrorism. FBI headquarters was concerned that if a criminal warrant was denied and then the agents tried to get a warrant under FISA, the court would think the agents were trying to use authority for an intelligence investigation to pursue a criminal case.

During this time frame an attorney in the National Security Law Unit at FBI headquarters asked the counsel in the Minneapolis field office if she had considered trying to obtain a criminal warrant and she replied that a FISA warrant would be the safer course. Minneapolis also wanted to notify the Criminal Division about Moussaoui through the local U.S. Attorney's Office, believing it was obligated to do so under Attorney General guidelines that required notification when there is a "reasonable indication" of a felony. FBI headquarters advised that Minneapolis did not have enough evidence to warrant notifying the Criminal Division.

The FBI case agent in Minneapolis had become increasingly frustrated with what he perceived as a lack of assistance from the Radical Fundamentalist Unit (RFU) at FBI headquarters. He had had previous conflicts with the RFU agent over FISA issues and believed headquarters was not being responsive to the threat Minneapolis had identified. At the suggestion of a Minneapolis supervisor, the Minneapolis case agent contacted an FBI official who was detailed to the CTC. The Minneapolis agent shared the details of the Moussaoui investigation with him and provided the names of associates that had been connected to Moussaoui. The Minneapolis case agent has told the Joint Inquiry Staff that he was looking for any information that CTC could provide that would strengthen the case linking Moussaoui to international terrorism. . . .

A CIA officer detailed to FBI headquarters learned of the Moussaoui investigation from CTC in the third week of August 2001. The officer was alarmed about Moussaoui for several reasons. CIA stations were advised of the known facts regarding Moussaoui . . . and were asked to provide any relevant information they might have.

. . . The Minneapolis case agent contacted CTC, asking for additional information concerning connections between the group and al-Qa ida; he also suggested that the RFU agent contact CTC for assistance on the issue. The RFU agent responded that he had all the information he needed and requested that Minneapolis work through FBI headquarters when contacting CTC. Ultimately, the RFU agent agreed to submit Minneapolis' FISA request to the attorneys in the FBI's National Security Law Unit (NSLU) for review.

The Joint Inquiry Staff interviewed several FBI attorneys with whom the RFU agent consulted about Moussaoui. All have confirmed that they advised the RFU

agent that the evidence was insufficient to link Moussaoui to a foreign power.
One of the attorneys also told the RFU agent that the Chechen and his rebels were not a "recognized" foreign power. The attorneys also told the Staff that, if they had been aware of the Phoenix memo, they would have forwarded the FISA request to the Justice Department's Office of Intelligence Policy Review (OIPR). They reasoned that the particulars of the Phoenix memo changed the context of the Moussaoui investigation and made a stronger case for the FISA warrant. None of them saw the Phoenix memo before September 11.

. . . In a subsequent conference call with FBI headquarters, the chief of the RFU Unit told Minneapolis that a connection with a specific recognized foreign power, such as HAMAS, was necessary to get a FISA search warrant.

. . . After concluding that there was insufficient information to show that Moussaoui was an agent of any foreign power, the FBI's focus shifted to arranging for Moussaoui's planned deportation to France on September 17. French officials would search his possessions and provide the results to the FBI. Although the FBI was no longer considering a search warrant under FISA, no one revisited the idea of attempting to obtain a criminal search warrant, even though the only reason for not attempting to obtain a criminal search warrant - the concern that it would prejudice a request under FISA - no longer existed.

The record leading up to 9/11 demonstrates the CTC repeatedly withheld evidence that suspected al-Qaeda operatives were connected to terrorist organizations. This crippled several investigations, preventing FBI field investigators from obtaining sufficient evidence to seek FISA or criminal warrants. This was the result of the "second wall" - excessive secrecy and lack of accountability in the conduct of domestic counterintelligence operations -- that no one in government or the press wants to address. There is a pattern of obstruction of justice that runs through these operations. The commingling of domestic law enforcement and intelligence operations allowed by USA PATRIOT threaten to make this problem even worse.

THE WALL IS THUS A RED-HERRING

The Wall is thus a red-herring, a ruse, an irrelevancy with regard to primary 9/11 conspirators who had already been identified. The FBI and CIA are blowing smoke when they imply that 9/11 occurred because of a wall-created problem of interagency coordination. The supposed issue of the failure to watchlist the Kuala Lumpur attendees also distracts from the real issue: why did US counterintelligence lose sight and control over these known al-Qaeda operatives

who apparently gave the slip to the CIA (so very easily) abroad after they were observed at a major terrorist conference , and then entered the country (we are to believe, again, without being noticed by the Feds)? Furthermore, the Agency had other 9/11 terrorists under surveillance:

A member of the Hamburg al-Qaeda cell, Ramzi Bin Al-Shibh was also present at the Kuala Lumpur meeting. Bin Al-Shibh was roommate of Mohammed Atta, whose apartment was the hub of the al Qaeda cell in Hamburg, Germany. Investigators believe he was originally intended to be the 20th hijacker. After four failed attempts to obtain a US visa, Al-Shibh wired hundreds of thousands of dollars from Germany to his former roommates who had entered the United States, and later cabled money to Moussaoui. The CIA surveillance team in Malaysia obtained video and still pictures of al-Shibh next to bin Atash, Osama bin Laden's former chief of security. (Los Angeles Times, 09/01/02; Time, 09/15/02; Die Zeit, 10/01/02; Newsweek, 11/26/01.) He was reported to have been identified at the time of the meeting, which would have resulted in his being followed by the CIA back to Germany and his roommates in Hamburg. (Der Spiegel, 10/01/02).

Ziad Jarrah is believed to have piloted Flight 93 that crashed in Central Pennsylvania later in the morning of 9/11. On January 30, 2001, he was detained and questioned for several hours at the Dubai International Airport. CNN reported that the interrogation was conducted at the behest of the CIA by the UAE authorities. Jarrah was "suspected [of] involvement in terrorist activities." [CNN, Sheila MacVicar and Caroline Faraj "September 11 Hijacker Questioned in January 2001. Sources: CIA was interested in his travels in Afghanistan" , 08/01/02.][The CIA has subsequently denied that this stop took place at its behest, and claims it actually occurred in January 2000 - in fact, that would actually be more proximate to the Malaysia meeting.]

CNN reported the CIA had tracked Jarrah as he boarded a flight from Pakistan to Germany on his way back to the US in January 2001. UAE officials quieried Jarrah at the airport about his activities in Afghanistan and how long he had been there. Jarrah had already spent six months in the United States learning to fly. He had a valid U.S. multiple-entry tourist visa in his passport, a fragment of which was found at the Flight 93 crash site. Investigators have confirmed that Jarrah had spent at least three weeks in January 2001 at an al Qaeda training camp in Afghanistan. Yet, again, for some unexplained reason, he was then allowed to continue his travels to Germany and then on to the U.S., where he met up with Mohamed Atta and the other members of the Hamburg al-Qaeda cell, who had regrouped in Florida, where they were attending flight schools. Atta, it was reported in the Berliner Zeitung newspaper, had been under CIA surveillance

since 1998 [Berliner Zeitung, Andreas Forster, "CIA Had Attacker In Its Sights", 09/24/01]

The CNN report states that Jarrah's questioning at Dubai airport was part of "a pattern" of CIA monitoring of international travelers to the UAE who had recently visited Afghanistan. "He was released because U.S. officials were satisfied, according to sources. The CIA spokesman repeated the agency's denial that there was any such contact. After his release, Jarrah boarded a KLM flight in the early hours of January 31 and flew to Europe. Between then and September, Jarrah traveled to the United States, Lebanon and Germany before returning to the United States . . . UAE and European intelligence sources told CNN that the questioning of Jarrah fits a pattern of a CIA operation begun in 1999 to track suspected al Qaeda operatives who were traveling through the United Arab Emirates. These sources told CNN that UAE officials were often told in advance by U.S. officials which persons were coming through the country and whom they wanted questioned." [CNN, 08/01/02, Ibid.]

During his questioning, according to another report, Jarrah "divulged that he had spent the previous 'two months and five days' in Pakistan and Afghanistan -- the only known acknowledgment of an Afghan visit by any of the hijackers -- and that he was returning to Florida..." That article published in The Chicago Tribune on December 13, 2001 describes Jarrah as a "crucial figure in [the] plot" with close ties to the other principal hijackers. The Tribune report states that he was "one of only five trained pilots among the 19 hijackers and, according to a federal indictment issued Tuesday, a co-founder of the Al Qaeda terrorist cell in Hamburg that also produced Mohamed Atta and Marwan Al-Shehhi, who are believed to have piloted the two hijacked planes that hit the World Trade Center."

As we now know, many of the primary 9/11 conspirators were in the CIA's crosshairs many months before 9/11. It is certain that al-Mihdhar, al-Hazmi, Jarrah and possibly Atta, were targets for intelligence collection, subjects whom the Agency considered important as links who would lead to the CIA and FBI to others. This can be seen in the language Tenet used in his prepared statement to describe the Malaysia surveillance protocol:

"Surveillance began with the arrival of Khalid al-Mihdhar on 5 January 2000, and ended on 8 January, when he left Kuala Lumpur. Surveillance indicated that the behavior of the individuals was consistent with clandestine activity-they did

not conduct any business or tourist activities while in Kuala Lumpur, and they used public telephones and cyber cafes exclusively.

"Other individuals were also positively identified by the surveillance operation.

"Later in 2001 an individual was identified as Saeed Muhammad Bin Yousaf (aka Khallad), who became a key planner in the October 2000 USS Cole bombing. Because of his later connection with the Cole bombing and other serious plotting, we believe he was the most important figure to attend the Kuala Lumpur meeting." [Tenet, prepared testimony. 10/17/02]

Recall that just a few weeks before his own testimony before the committee, Director Tenet had tried to suppress public disclosure by the Congressional panel of what was known about Khallad, "whom the United States intelligence community had had identified as early as 1995". Tenet also seems to have tried to hide Khallad's connection to the 9/11 hijackers; ". . . the joint committee was prevented from publicly identifying him". (Congressional Intelligence Committee, 9/18/02; New York Times, James Risen, " C.I.A.'s Inquiry on Qaeda Aide Seen as Flawed", 9/22/02). [Tenet's testimony altogether omits mention of Tawfiq bin Atash, the head of bin Laden's bodyguard, widely reported to have been photographed with al-Hazmi in Malaysia. Tawfiq bin Attash has been identified as Khallad in at least one report, and may be one and the same person. (see, Newsweek, "The Hijackers We Let Escape" June 5, 2002)]. Most striking, Tenet doesn't mention the presence of Khalid Shaikh Mohammed at the meeting. Mohammed is regarded as the chief financier of the USS Cole bombing, and was indicted in 1996 for his role in bankrolling the bomb attack on the WTC three years earlier. CNN reported:

"U.S. officials say the planning for the bombing of the USS Cole (in October 2000 that killed 17 U.S. sailors) and September 11 took place in this condominium complex on the outskirts of Malaysia's capital, Kuala Lumpur.

"In January of 2000, about a dozen of Osama bin Laden's trusted followers met here.

"The host was [alleged regional terrorism chief Riduan Isamuddin, also known as] Hambali.

"Among those who attended: Tawfiq bin Attash, a key suspect in the bombing of the USS Cole 9 months later; Khalid Al-Midhar and Nawaf Al-Hazmi, who nearly two years later crashed a plane into the Pentagon, and Khalid Shaikh Mohammed, Osama Bin Laden's lieutenant, a key planner, U.S. officials say, of September 11.

"Eight months after that al Qaeda meeting, another guest would stay here -- Zacarias Moussaoui, now on trial in the United States for September 11 related charges." [CNN, Maria Ressa, "The quest for SE Asia's Islamic 'super' state:

1995 report forewarned of U.S. terror attacks, August 30, 2002 Posted: 11:32 AM
HKT (0332 GMT)

The Malaysia meeting thus may have also provided CIA and FBI observers with a link to Zacarias Moussaoui months before he was taken into custody. On his way to the U.S., Moussaoui was the guest of Hambali and his associate, Malaysian businessman, Yazid Sufaat, who is accused of providing his condominium for the meeting along with more than \$30,000 in funds which Moussaoui had to declare when he entered the U.S. in early 2001. Sufaat's signature also appears on a letter of introduction found by the FBI in Moussaoui's possession. [LA Times, Mark Fineman and Bob Drogin, "In Malaysia, a jailed Cal State graduate helps unravel Al Qaeda's Southeast Asia Network", February 2, 2002].

According to Newsweek, US counterintelligence maintained surveillance of Sufaat's condominium after the meeting adjourned. But, for some reason, the Agency claims it soon called off the watchers working for Malaysian intelligence:

"After the meeting, Malaysian intelligence continued to watch the condo at the CIA's request, but after a while the agency lost interest. Had agents kept up the surveillance, they might have observed another beneficiary of Sufaat's charity: Zacarias Moussaoui, who stayed there on his way to the United States later that year. The Malaysians say they were surprised by the CIA's lack of interest following the Kuala Lumpur meeting. "We couldn't fathom it, really," Rais Yatim, Malaysia's Legal Affairs minister, told Newsweek. "There was no show of concern." [Newsweek, "The Hijackers We Let Escape", June 5, 2002]

To further underscore their significance, al-Mihdhar and al-Hazmi traveled after the Malaysia meeting with Khallad to an unspecified third country. In addition, Tenet's prepared statement shows the CIA knew that "Khalid [al-Mihdhar] had [earlier] been at a suspected al-Qa'ida logistics facility in Yemen." Therefore, after January 8, 2000, Khalid al-Mihdhar and Nawaf al-Hazmi could by no means still be considered small fish. " We arranged to have them surveilled.", Tenet concedes. [Tenet, prepared testimony] This raises the obvious question: when did the surveillance actually end, on September 11, 2001? Did surveillance of Jarah end about an hour later the same morning?

[The CIA had many opportunities to take preventative action against al-Mihdhar and al-Hazmi. "A March 2000 cable sent to CIA headquarters concerning Alhazmi's presence in the US was marked 'Action Required: None.' The next day, a second overseas CIA station noted that the cable had been 'read with interest,' '. . . particularly the information that a member of this group traveled to the US...'. . .

This establishes that 18 months prior to the attack the presence of at least two 9/11 hijackers in the United States was known in Langley as well as by at least two CIA foreign stations. At that point, a decision had apparently already been made as to whether, and to what extent, to share this information with the FBI. CIA Director George Tenet and ranking counterterrorism and operations officials would have had to be privy to that sort of extraordinary decision. The Congressional inquiry noted that, "Although the individuals had already entered the United States, the sharing of this information with the FBI and appropriate law enforcement authorities could have prompted investigative efforts to locate these individuals and surveil their activities within the United States." [Congressional Intelligence Committee, 9/20/02], [from, "How U.S. Counterterrorism failed in 911, and Why the Bush Administration Can't Fix It", Part 2].

WHAT ARE YOU PREPARED TO BELIEVE?

We are expected to accept a series of vague, incredible assertions by the CIA and FBI: that no US agency continued surveillance of al-Mihdhar and al-Hazmi after the pair left Malaysia and entered the U.S on January 15 2000; that US intelligence lost track of them after they departed Malaysia; that the US then unknowingly allowed al-Midhar to obtain a new visa and permitted his return on July 4 2001; that the CIA somehow also lost track of Jarah after his interrogation in Abu Dhabi; and that Jarah was then unknowingly allowed back in to the US on a tourist visa to continue his unauthorized flight instruction, as was Mohamed Tenet. Tenet raises yet more questions when he gave the committee an overview of events, as the CIA now depicts them:

"In August 2001, because CIA had become increasingly concerned about a major attack in the United States, we reviewed all of our relevant holdings. During that review, it was determined that al-Mihdhar and al-Hazmi had entered the US on 15 January 2000, that al-Mihdhar had left the US on 10 June 2000 [his tourist visa had expired 6 April] and returned on 4 July 2001, and that there was no record of al-Hazmi leaving the country. On 23 August 2001, CIA sent a Central Intelligence Report to the Department of State, FBI, INS, and other US Government agencies requesting that al-Hazmi and al-Mihdhar be entered into VISA/VIPER, TIPOFF, and TECS [Treasury Enforcement Communication System]. The message said that CIA recommends that the two men be watchlisted immediately and

denied entry into the US." [Tenet, Oral testimony, 10/18/02]

In fact, the CIA waited to sound the alarm until after the FBI New York office learned that Al-Midhar and Mohamed Atta had returned to the US. The CIA professes that it belately learned in May 2001 of al-Mindhar's January 15 2000 trip from Bangkok to Los Angeles International Airport. Strangely, as well, the Agency claims that it was unaware that al-Hazmi was on the same flight until several months later. Even more perplexing are reports that the Agency withheld news of al-Mindhar's January 2000 entry from the FBI. Newsweek commented, "astonishingly, the CIA did nothing with this information. Agency officials didn't tell the INS, which could have turned them away at the border, nor did they notify the FBI, which could have covertly tracked them to find out their mission." [Newsweek, 6/10/02]. The CIA claims it learned two months later that Almidhar had also been on the flight -- yet again, the Agency says it didn't notify other federal agencies [Michael Rolince Congressional Testimony, 9/20/02]].

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CIA counterterrorism chief Cofer Black testified on September 26: "While the [Malaysian] meeting was in progress, CTC [CIA] officers detailed to the FBI kept the FBI updated through verbal briefings. Where we fell short was in our not informing the Department of State that we had identified two al Qaeda men so that the Department could decide whether to place them on the watchlist."

Black was pushed by Sen. Carl Levin to explain why some FBI officials had claimed the CIA had delayed informing the FBI of the entry of al-Mindhar and al-Hazmi.

Sen. Levin probed, "There's another problem here besides failing to notify the State Department," Levin said, "and that was the failure to notify Why was the FBI not notified until August 2001?" Black replied that there had been "communication between CIA officers in the Counterterrorist Center and individuals in the FBI . . . the identities and the names of the individuals were [communicated], but the issue of the visa is problematic. We have no evidence that that piece of information was communicated."

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It is difficult to believe that the pair lived in the US without surveillance, and Al-Midhar later traveled abroad totally unobserved, and he then again reentered the US undetected in the summer of 2001 with a freshly-issued visa. This is simply so implausible that one must seek another explanation in the factual record that has been released by Congress and in the accounts published in newspapers of record.

It seems entirely more likely that Al-Mihdhar, at least, remained under intense scrutiny of counterterrorism units of both agencies. Indeed, if Tenet is being truthful, the FBI liaison officer at the CIA Counterterrorism Center (CTC) was fully briefed about the travels of the future Flight 77 hijacker. While en route to Kuala Lumpur, a copy of al-Midhar's passport containing a multiple-entry U.S. tourist visa was obtained by the CIA. Tenet says CIA briefed the FBI at CTC about the Malaysia meeting on the first day the meeting took place, and passed a copy of al-Midhar's passport to its Bureau liaison at that time. In his prepared Congressional statement, Tenet stated:

"At this early stage, the first days of January 2000, CIA briefed the FBI, informally, about the surveillance operation in Kuala Lumpur. We noted in an internal CIA communication on 5 January 2000 that we had passed a copy of al-Mihdhar's passport-with its US visa-to the FBI for further investigation. A CTC officer at the FBI wrote an e-mail in January 2000 reporting that he briefed FBI officers on the surveillance operation . . ."

Since 1996, the co-director of CTC was then FBI Director of Counterterrorism and Counterterrorism, Dale W. Watson. [Watson Congressional Testimony, 9/22/02]. He met almost daily with his counterpart at the CIA, Cofer Black, who resigned in 2002. Black was subsequently appointed at Ambassador rank to head the Bush State Department's counterterrorism office. The two, in turn, had answered to the National Security Counsel (NSC) counterterrorism director, Richard Clark, who after 15 years departed his post only a few weeks before 9/11, as did the head of the FBI NY National Security office, John O'Neill.

For some reason, as yet unexplained, neither the CIA nor FBI watchlisted the attendees at the Kuala Lumpur meeting. Indeed, the US Government made it exceptionally easy for most of the 9/11 conspirators to enter the US, even though several of them had outdated visas or admitted to INS inspectors that they had violated the terms of their tourist visas by attending flight school. There is a rational explanation for this. Permitting these al-Qaeda operatives to enter the US unhindered allowed US intelligence to track them as they crisscrossed the country, training, meeting with others, receiving funds, and communicating with higher-ups in the network. The operation needed to be conducted in absolute secrecy, which necessitated extraordinary compartmentalization and some short-cuts in paperwork, such as FISA warrants.

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"In Washington, O'Neill became part of a close-knit group of counter-terrorism experts which formed around Richard Clarke. In the web of federal agencies concerned with terrorism, Clarke was the spider. Everything that touched the web eventually came to his attention. The members of this inner circle, which was known as the Counter-terrorism Security Group (C.S.G.), were drawn mainly from the C.I.A., the National Security Council, and the upper tiers of the Defense Department, the Justice Department, and the State Department. They met every week in the White House Situation Room. "John could lead a discussion at that level," R. P. Eddy, who was an N.S.C. director at the time, told me. "He was not just the guy you turned to for a situation report. He was the guy who would say the thing that everybody in the room wishes he had said." The New Yorker, Lawrence Wright, "THE COUNTER-TERRORIST, John O'Neill was an F.B.I. agent with an obsession: the growing threat of Al Qaeda." (Issue of 2002-01-14). [O'Neill perished on 9/11 at the WTC complex. He had taken the post of security director of the Towers after his retirement from the FBI.]

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All the while, it seems, John O'Neill, the chief of the Bureau's National Security office in New York from 1997 until August 22, 2001 was being kept in the dark about the attendees at the Malaysia meeting. O'Neill was a legend within counterterrorism circles has been lionized [and denigrated] for his aggressive approach to stalking the perpetrators of the American Embassy and USS Cole attacks. O'Neill offended various US and foreign officials, and was forced to resign from the FBI under a cloud after he headed up the FBI investigating team in Yemen.

The best available facts now indicate the FBI National Security division and most other parts of the Bureau were kept in the black about the al-Qaeda conspiracy until near the very end. This decision seems likely to have been taken by the CIA in concert with the highest levels of the Bureau's counterterrorism liaison at CTC, possibly with the nod of the FBI and CIA Directors. It also seems clear that the CIA knew precise details about the identities and plans of the 9/11 conspirators, yet this information seems to have been withheld from all but a handful of domestic counterterrorism officers.

Do these actions and the subsequent coverup constitute a criminal conspiracy by the officials involved?

A number of conclusions could be drawn. The evidence may already support the empanelment of a Grand Jury to decide whether probable cause exists to support criminal indictments for negligent homicide and obstruction of justice. One would want to know the answers to a few critical questions before prosecuting a criminal case against those government officials responsible. The element of

criminal intent must be established to support additional conspiracy charges. It is essential to any showing of conspiracy to know the following:

Was the operation that allowed the 9/11 hijackers to enter the US legally authorized, or were required procedures circumvented?

Why was such an extraordinary level of secrecy and compartmentalization thought necessary - was this a high level "sting" or was it a rogue covert operation? (Put another way, was there an expectation of a security breach if other FBI offices and federal agencies were briefed about al-Qaeda's hijacking plans or was stealth used in an intent to deceive lawful command authority and Congressional oversight?)

What were the ultimate goals of the operation? The 9/11 attack may have been "allowed to happen" - an explanation that is in some ways consistent with events. Certainly, it is a possibility (nauseating to contemplate), which cannot now be ruled out altogether. In this case, the US officials in command would have had some extremely compelling motives. Possibly, the intent was less lethal -- the hijackings may have ended up going terribly wrong in ways that were not anticipated by officials. Such a large loss of life may not have been entirely expected, even by al-Qaeda commanders. However, any Americans who knowingly allowed passenger airliners to crash into the World Trade Center towers and the national headquarters of the US military must have believed they were performing some sort of sacrificial purpose of overriding moral or national importance - preserving American hegemony in the Middle East, or continued access to endangered energy supplies. Was 9/11 based in some esoteric scenario planning that projected the Saudi Royals falling to a Khomeini-style revolution by 2005, and a nuclear clash of civilizations that followed, unless something dramatic happened to upset the historical trends? Perhaps, there was a simple commercial motive - to drive up the cost of oil. One struggles to comprehend the moral depravity of such motives, but they must be considered, nonetheless.

The best place to obtain an answer to these questions would be before a federal grand jury.

THE COVER STORY DOES NOT HOLD UP

By late 2000, the four primary 9/11 hijackers had entered the US, where they enrolled in flight training without proper visas. Separate testimony given to Congress reveals that the FBI had surveillance on al-Qaeda cell members in the U.S. long before 9/11, and FBI headquarters had received numerous reports of suspected terrorist pilots from its field offices. In fact, Khalid al-Mihdhar

and Nawaf al-Hazmi who hijacked Flight 77 that crashed into the Pentagon, lived in the apartment of an FBI informant in San Diego during the autumn of 2000. Several other 9/11 hijackers, including Mohamed Atta, lived with or visited the two in San Diego and in other locations. All four key 9/11 hijackers had attended US flight schools or rented aircraft. Neighbors frequently observed these individuals using PC flight simulator games, talking on cell phones outside their apartment, and being picked up in limousines late at night. Who were they talking to and meeting with? Who was listening and watching?

The cover story that the FBI was kept in the dark by CIA does not hold up. The facts now indicate a different chain of events leading to 9/11 - and a different sort of intelligence failure, suggesting an entirely different set of solutions.

A limited circle of ranking officials in both agencies were aware of the identities of the primary hijackers, and that they were in the U.S. By the summer of 2001, the principal al-Qaeda members in the United States were already so closely monitored that the CIA may have thought it an acceptable risk to allow Mohamed Atta and two other al-Qaeda operatives (already under intense scrutiny by the CIA and FBI) to reenter the U.S. in the final months of planning prior to the attack. Obviously, something went terribly wrong at that point with this joint surveillance operation, as well as with the individual roles played by the CIA and FBI counterterrorism.

At minimum - even if there was no criminal intent on the part of US officials -- the heads of both agencies bear joint responsibility for the gross mishandling of the operation. The American people are now asked to believe that the 9/11 attack boils down to a failure by low-level officials to watchlist [notify other federal agencies (e.g., INS, FAA)] about the identities of known al-Qaeda operatives who held U.S. visas. Tenet attempted to minimize the problems with U.S. counterterrorism, and to counter the conclusion that there had been any fundamental flaws in judgment at the top. He implied that 9/11 was due to a training error affecting rank-and-file employees, a problem he assured Congress the Agency has since corrected. His prepared testimony states:

" There are at least two points before August 2001 when these individuals were on our scope with sufficient information to have been watchlisted. During the intense operations to thwart the Millennium and Ramadan threats, the watchlist task in the case of these two al-Qaida operatives slipped through. The error exposed a weakness in our internal training and an inconsistent understanding of watchlist thresholds. Corrective steps have been taken."

We may also consider the possibility that the crimes committed by US officials were primarily ones of omission. Even if their offenses were merely technical violations of agency rules, the watchlist issue is actually only part of a pattern of illegal and improper practices by U.S. intelligence before 9/11. Rather than follow procedures that require surveillance of foreign terrorist suspects be formally transferred to the FBI once they enter the US, and that the Bureau seek warrants to continue surveillance operations, as required by law, there is no record of a CIA "hand-off" of these al-Qaeda operatives to the FBI. Nor is there any record that any federal agency sought a FISA surveillance warrant in this case. Either such records were withheld from Congress or, it seems more likely, regulations were not followed, and mandatory FISA court papers were not filed; thus, the CIA conducted a covert, illegal operation inside the United States - apparently, with some knowledge and cooperation of the FBI.

Either course of action would have been illegal, a gross violation of the Agency's charter and the Bureau's rules. Such a major violation of law, in itself, would make decision-makers in both agencies responsible for all that happened thereafter.

Potentially, U.S. officials could be held liable for some 3,000 counts of negligent homicide, along with the attendant civil liabilities for harm to the 9/11 victims and their survivors.

Even if the letter of the law was observed, of course, the command authority is still responsible on a practical, political level. The sign on Harry Truman's desk read, "The buck stops here." Today, in the case of G.W. Bush, and DCI Tenet and FBI Director Mueller, the buck has been passed down onto the heads of the rank-and-file counterterrorism officers. This is perhaps a worse injustice than the crimes and errors that allowed 9/11 to happen to begin with.

The effect of the USA Act appears to be an effort to legalize after the fact some of the then-unlawful practices committed by intelligence officials that allowed the 9/11 attack to occur.

THE MYTH OF THE WALL

The best available facts now indicate that the Bush Administration has lied to the American people and unjustly tried to scapegoat rank-and-file counterterrorism officers, most of whom themselves had been kept in the dark about the entry of al-Qaeda until mere weeks before the attack occurred.

It is not true, as unfairly alleged, that the working agents in CIA, FBI, NSA and other federal counterterrorism offices were totally incompetent and uncoordinated. They were not - they were misled and betrayed by their superiors.

It is not true, as has been claimed, that U.S. intelligence was paralyzed by the Wall during the summer of 2001. The Wall was largely ignored in the al-Qaeda investigation, as it had been for a long time in such joint operations.

Rather, there was no real breakdown of coordination between the Agency and the Bureau; instead, in dealing with Mr. Atta and his roommates before 9/11, the agencies operated in a cooperative but informal manner. As they had many times before, American intelligence did not officially "hand off" known terrorists to the FBI when they were observed entering the country. The FBI was not notified in the normally mandated way. When CIA learned that Atta and the others were returning to the U.S. in the summer of 2001, there is no remaining record of written notice given the FBI in the joint Counterterrorism Center.

As one examines the record closely, this is what seems to have actually happened: the ongoing CIA probe of al-Qaeda, known within the Agency as "The Plan", was considered by command authorities to be too sensitive and important to risk a breach of operational security by official notification, which would have been widely-disseminated. According to CIA Director Tenet, there was instead "informal notification" that went to a limited number of eyes. Had the law been followed, FBI would have had to obtain FISA warrants to continue surveillance of the terrorist suspects after they entered the country. Instead, in at least one case, the FBI liaison officer at CTC was notified verbally by his Agency contact that a known al-Qaeda member had arrived at LA Airport. It has not been fully explained why this information not officially recorded at CTC, or whether it was passed up the chain of command. Both agencies are required to keep records, but in this case, the FBI and CIA testified to the Congressional committee that no record of an official pass-off was maintained. By every indication, the CIA continued to run its covert operation after al-Qaeda terrorists entered the United States, while the FBI had at least some knowledge.

In attempting to justify the Bush Administration's refusal to hand over to Congress the terrorism briefing paper, "Bin Laden Determined to Strike in the U.S." read to G.W. Bush on August 6, 2001, Vice President Cheney said, "[I]t contains the most sensitive sources and methods. It's the family jewels." [Daniel Schorr, The Christian Science Monitor, "Washington's Secrecy Battles - From 9/11 to Enron", May 31, 2002]

The "family jewels" of US intelligence that the Bush Administration is presently trying to protect at all costs is the fact that Mr. Atta and his confederates, before they obliterated themselves, were the apparent focus of a CIA covert operation that was - for whatever reason -- allowed to cross over the borders

into the U.S. Laws requiring FISA wiretaps were also ignored in the case of the al-Qaeda cells (there is no record that they were sought), [Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801-1863] as were regulations mandating a "pass-off" of surveillance to FBI within the U.S. were violated [See, Appendix A, Executive Order 12333 of Dec. 4, 1981, appears at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, Part 2, Sec 2.5] [Footnote] [APPENDIX] While Bureau liaison officers were apparently notified of the entry of Mr. al-Mihdhar, official notification was not given to the Attorney General through his designate at the joint federal agency Counterterrorism Center.

Such an operation appears to have breached the Agency's charter that prohibits domestic covert CIA operations and law enforcement activities. [National Security Act of 1947, 50 U.S.C. § 401-441d] If this were to be the finding of a court or official investigation, it would also open responsible officials to liability for billions of dollars in damages in law suits by the victims of the 9/11 attacks. An admission or finding to this effect could politically destroy the CIA, and the Bush Administration along with it. Inasmuch as "The Plan", the operation to neutralize Osama bin Laden, was launched during the Clinton presidency, Democratic leaders also have no real appetite for exhuming the details. All around, there are powerful interests that would prefer that the American people, in the oft-repeated phrase, "just get over it". Congress and President Bush, through amendment to USA PATRIOT and pardons, may well end up immunizing those responsible for breaking the law and their catastrophic breach of duty to protect the public.

None of this necessarily implies that any U.S. official really wanted 3,000 people to die on 9/11. We don't yet know why this operation ended as it did. That question will not be answered, however, except under oath before a Grand Jury or in later sworn testimony by former high officials. As to whether there is a real will to see justice done in open court, time will tell.

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NOTE: FUNCTIONS OF THE FBI AND CIA

: The FBI and CIA had closely proscribed functions prior to the USA PATRIOT Act.

The operative directive was Executive Order 12333 - United States Intelligence Activities (Dec. 4, 1981) 46 FR 59941, 3 CFR, 1981 Comp., p. 200, unless otherwise cited [<http://www.cia.gov/cia/information/eo12333.html>] Part 1.

1.14 The Federal Bureau of Investigation. Under the supervision of the Attorney

General and pursuant to such regulations as the Attorney General may establish,
the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and
(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above. . .

1.8 The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other

departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements. . .

Part 2

Conduct of Intelligence Activities

2.1 Need. Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 Collection of Information. Agencies within the Intelligence Community are

authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

***** INSERT ENDS *****

LOOKING CLOSER

The closer one looks at 9/11 and subsequent events, three things become obvious:

FIRST, the principal hijackers were under close surveillance by U.S. intelligence, both prior to and after their entry into the U.S.

SECOND, "the Wall" -- the FISA law and procedures governing domestic surveillance activities are not the real reason for the 9/11 intelligence "failure" - evasion of these same laws may have had a role, however, in the failure to timely notify the FBI National Security Division in New York, the National Security Law Unit in DC, and other domestic law enforcement agencies of the entry of some of the 9/11 hijackers known earlier to a limited circle of FBI and CIA officers assigned to the Agency's Counterterrorism Center.

THIRD, after what happened on 9/11, handing the CIA and FBI even more power and independence with passage of USA PATRIOT is a prescription for a greater disaster to come.

SEEING THROUGH "THE WALL"

The greatest obstacle to domestic security in the war on terror is the worldview of the liberal elites." No sillier words have ever been written to sum up the American intelligence failure on 9/11 than these, written by Heather MacDonald in the Summer 2002 edition of City Journal, a glossy policy magazine published by the neo-conservative Manhattan Institute. Ironically, no more detailed statement of the Bush Administration version of 9/11 - and passionately-argued rationale for passage of the USA PATRIOT Act has thus far appeared in print than Ms. MacDonald's diatribe against Clinton-era intelligence policies.

The crux of Ms. MacDonald's thesis has a familiar ring: 9/11 happened because "the liberal establishment" sabotaged and hamstrung the FBI with a bunch of foolish regulations. Her version of right-wing conspiracy theory is as follows:

Janet Reno's Justice Department was riddled with "civil libertarian zealots",

who erected "The Wall", a bureaucratic barrier that successfully tripped up America's counterterrorism investigators in the days before the attacks.

There is one big problem with The Wall theory and efforts to blame Clinton, liberals, and civil libertarians for the counterterrorism failure -- 9/11 happened on Mr. Bush's watch.

For eight months, Mr. Bush's appointee, Attorney General John Ashcroft, had been in control of the Justice Department, and he could have changed operating procedures (based as they were in Presidential Orders), if indeed they were perceived then to be a real problem for FBI investigators. From all accounts, however, John Ashcroft showed little interest in counterterrorism. He launched no new initiatives to beef-up what has become known as Homeland Security. In fact, before 9/11, he proposed cuts to the FBI's counterterrorism office. That much can't be denied. It can be obscured, however, and that has been the point of the mudslinging and blame-shifting campaign of which MacDonald's City Journal piece is a part.

WHAT IS "THE WALL"?

According to Ms. MacDonald, The Wall was developed "in the airless world of civil libertarian absolutism." After the intelligence abuses of the Watergate era came to light, Congress passed the 1978 Foreign Intelligence Surveillance Act (FISA). That law set a requirement that the FBI obtain warrants to wiretap suspected spies and terrorists operating inside the country. Guidelines were put into place over the FBI's and CIA's electronic surveillance of foreign nationals. For the first time, warrants would be needed to spy on persons who could be shown to be engaged in some sort of hostile or illegal acts, such as espionage and terrorism. FISA formed the basis of what was dubbed "the Wall".

The Wall needs to be put into historical perspective of the elaborate domestic spying campaigns of the recent past. The FBI's COINTELPRO operations had included some very serious crimes against American dissidents during the McCarthy era through the mid-1970s. The CIA also played a political policing role under the guise of foreign counterintelligence operations, as the Church and Pike committee investigations revealed. During the Vietnam era, Presidents Johnson and Nixon justified domestic spying on the grounds (unsupported, as it turns out) that the anti-war and civil rights movements were believed to be financed by the Kremlin. The post-Watergate FISA requirements have not been popular with many Bureau gumshoes and Agency spooks, who continue to see warrants as inconvenient paperwork.

***** INSERT *****

The Senate "Church Committee" investigation found the intelligence agencies had "adopt[ed] tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes. We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses have characterized as 'vacuum cleaners,' sweeping in information about lawful activities of American citizens. . . . Unsavory and vicious tactics have been employed including anonymous attempts to break up marriages, disrupt meetings, ostracize persons from their professions, and provoke target groups into rivalries that might result in deaths. Intelligence agencies have served the political and personal objectives of presidents and other high officials."

***** INSERT ENDS *****

The warrant procedures mandated by FISA are not particularly complicated. In seeking a surveillance warrant against foreign suspects in the U.S., FBI Investigators have to seek permission within the Justice Department from a legal office, the Office of Intelligence Policy and Review (OIPR), which would in turn apply for warrants to a three-judge court. In reality, the court has not been overly-restrictive. In its 24 years of operation, the judges have declined only one of several thousand applications for FISA wiretaps.

The Wall also mandated that intelligence investigations be separated as much as possible from criminal cases. This is actually not entirely new. For decades prior to enactment of the USA PATRIOT Act, the findings of Grand jury proceedings had been officially off-limits to intelligence. This was done to preserve the integrity of evidence that might later be introduced in court. Fourth Amendment protections previously also meant that criminal warrants could not be based on evidence obtained from FISA wiretaps. The system adjusted to this stricture by duplication and compartmentalization of functions within the FBI. At other times, the Bureau attempted end-runs around the Fourth Amendment by misusing FISA warrants to collect information wanted for criminal investigations, and by actually commingling intelligence operations with criminal investigations.

That abuse became so prevalent that one special agent was officially barred by the FISA Court from submitting warrant applications. In May 2002, after Attorney General Ashcroft promulgated new warrant procedures that effectively eliminated the wall, the Foreign Intelligence Court ruled Ashcroft's order to be illegal and inconsistent with the purpose of Congress in enacting FISA. The US Court of

Appeals overruled the Intelligence Court, finding that the USA-PATRIOT Act had superseded restrictions on the misuse of FISA warrants for domestic criminal investigations. Legal writer Anita Ramasastry commented after that ruling . In a section of the essay entitled, " The Court's Ruling: Evidence Improper Evidence Sharing Was Already Occurring", she observed:

"On May 17, the FISA Court ruled that the proposal was not permissible under current federal law. The ruling was signed by the court's previous chief, U.S. District Judge Royce C. Lamberth. However, it was released by the new presiding judge, U.S. District Judge Colleen Kollar-Kotelly.

"The ruling held that the proposed procedures would clash with FISA itself - for Congress intended, with FISA, to separate evidence gathering for counterintelligence from that for ordinary criminal investigations. It also pointed to evidence that, even without the procedures, both the Clinton and Bush Administrations' Departments of Justice had already ignored the divide between counterintelligence and policing. The evidence cited by the Court is troublesome. :

"According to evidence before the Court, the ruling said, DOJ had misused the FISA process and misled the court at least a dozen times. Justice Department and FBI officials had supplied erroneous information to the court in more than 75 applications for search warrants and wiretaps, including one signed by then-FBI Director Louis J. Freeh.

"The Court also pointed to evidence that authorities had improperly shared intelligence information with agents and prosecutors handling criminal cases in New York on at least four occasions. (The Department discovered the misrepresentations and reported them to the FISA court beginning in 2000.)

"Furthermore, the Court noted, in an "alarming number of instances" during the Clinton administration, the FBI may have acted improperly. In a number of cases, the FBI and the Justice Department made "erroneous statements" in eavesdropping applications about "the separation of the overlapping intelligence and criminal investigators and the unauthorized sharing of FISA information with FBI criminal investigators and assistant U.S. attorneys."

"Indeed, the Court said, there was a "troubling number of inaccurate FBI affidavits in so many FISA applications" and violations of court orders. The inaccuracies and violations, "in virtually every instance," involved

"information sharing and unauthorized disseminations to criminal investigators and prosecutors."

"How these misrepresentations occurred remains unexplained to the court," the opinion noted, somewhat ominously." [FindLaw Writ, "Why the Foreign Intelligence Court Act Court was Right to Rebuke the Justice Department, 09/04/02] <http://writ.news.findlaw.com/ramasastry/20020904.html>

The other side of the Wall - the statutory bar on domestic CIA spying - has proven, in fact, even more problematic. By law, and in theory, the CIA is not supposed to conduct any domestic surveillance, counterterrorism, or covert operations inside the United States. These functions within the U.S. are mandated as the reserve of the FBI. The present rules, as shaped by the 1947 law that created the CIA, and subsequent presidential directives, state that the Agency is required to notify the Attorney General of any covert operations that might spill over onto American soil if these involve significant risk to American lives or interests. The rules say the Agency must "hand-off" surveillance operations to FBI as soon as they know that potentially dangerous suspects enter country. These timely notification, warrant and pass-off requirements were not met in the case of the al-Qaeda operatives. The Agency appears to have thus violated its Charter by operating foreign agents inside the country.

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Kate Martin provides a cogent explanation for why the functions of the CIA and FBI have, until now, been strictly separate by law. She writes in: "Intelligence, Terrorism, and Civil Liberties", Human Rights (Winter 2002) <http://www.abanet.org/irr/hr/winter02/martin.html>

"When Congress created the CIA in the 1947 National Security Act (NSA), it drew the lines very sharply between the agency and the FBI in order to protect civil liberties. Thus, it prohibited the CIA from exercising any "police, subpoena, law-enforcement powers, or internal security functions. The Church Committee found that the CIA had operated with no congressional oversight. Subsequent events show the difficulty of ensuring accountability of secret agencies. Even after enactment of the Intelligence Oversight Act of 1980 requiring the CIA to keep the oversight committees fully and completely informed of its activities, it continued to operate outside the confines of the law. The Reagan White House, for example, used the CIA to end-run legal limits on U.S. support for the Nicaraguan Contras, and CIA officials then lied to Congress about those activities.

"One of the key reforms of the 1970s, in addition to the creation of the

congressional oversight committees, was the attempt to enforce the original intent of the National Security Act: to create a wall between law enforcement and intelligence agencies and to eject the CIA from domestic activities. That wall has been most visible in the statutory authorities for eavesdropping:

Title

III governs wiretapping in the investigation of crimes and the 1978 Foreign Intelligence Surveillance Act (FISA) governs wiretapping of agents of a foreign

power inside the United States for the purpose of gathering foreign intelligence. The distinction is also mirrored in the Attorney General Guidelines first promulgated by Edward Levi, which in the absence of any statutory charter for FBI investigations, set out the rules for Bureau activities. Those guidelines provide one set of rules for criminal investigations and another for gathering foreign intelligence relating to espionage or international terrorism inside the United States. The rules for gathering foreign intelligence allow the government much wider latitude to gather information about Americans and keep it secret than are allowed under the criminal investigation rules.

"Perhaps the most important protection against domestic abuses by the CIA, however, resides not so much in the Attorney General Guidelines, which have since been weakened, but in the different functions assigned to the CIA and the

FBI. The CIA has been confined to gathering foreign intelligence abroad regarding the intentions and capabilities of foreign powers for use by government policymakers. The FBI has been responsible for law enforcement and for counterintelligence activities inside the United States, both counterespionage and the conduct of international terrorism investigations.

"This difference in functions has been mirrored in the difference in agency methods. The CIA acts overseas and in secret, those activities are frequently illegal, and it collects information without considering individual privacy, Miranda rights, or evidence admissibility requirements. It is tasked not just with collecting information, but also with covert disruption and prevention. The

agency gives the highest priority to protection of its sources and methods. In

contrast, the FBI's law enforcement efforts involve the collection of information for use as evidence at trial, and its methods and informants are quite likely to be publicly identified. Perhaps most significantly, and unlike intelligence agencies, law enforcement agencies must always operate within the law."

***** INSERT ENDS *****

CONCLUSION

9/11 was not first time that the Agency and the FBI ignored the law. But, on that occasion - with the arrival of Mohammed Atta, Jarrah Khalid Almidhar and Nawaf Alhazmi - (all of whom had been watched by the CIA and FBI for many months

abroad), official disregard for the law has had the most disastrous consequences. Justice, and the law, require that those responsible also pay the consequences.

The USA PATRIOT Act is worse than just an assault on the Constitution - it gives people false hope that the problems with US counterterrorism have been addressed. This leaves America more open than ever to further attacks, from enemies above and within, as well as from abroad.

***** ENDS *****

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His work on 9/11-related legal issues has been widely published on the Web, including Cooperative Research/PI911, ZNet, DemocraticUnderground and the European Journal of International Law

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hope that the reader finds in it inspiration to work with us further, in helping to build bridges between our various investigative communities, towards a greater, common understanding of the unanswered questions which now lie before us.

APPENDIX A

Courtesy of the National Archives and Records Administration
Federal Register

Executive Order 12333--United States intelligence activities

Source: The provisions of Executive Order 12333 of Dec. 4, 1981, appear at 46 FR 59941, 3 CFR, 1981 Comp., p. 200, unless otherwise noted.

Table of Contents

Preamble

Part 1. Goals, Direction, Duties, and Responsibilities With Respect to the National Intelligence Effort

1.1 Goals

1.2 The National Security Council

1.3 National Foreign Intelligence Advisory Groups

1.4 The Intelligence Community

1.5 Director of Central Intelligence

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies

1.7 Senior Officials of the Intelligence Community

1.8 The Central Intelligence Agency

1.9 The Department of State

1.10 The Department of the Treasury

1.11 The Department of Defense

1.12 Intelligence Components Utilized by the Secretary of Defense

1.13 The Department of Energy

1.14 The Federal Bureau of Investigation

Part 2. Conduct of Intelligence Activities

2.1 Need

2.2 Purpose

2.3 Collection of Information

2.4 Collection Techniques

2.5 Attorney General Approval

2.6 Assistance to Law Enforcement Authorities

2.7 Contracting

2.8 Consistency With Other Laws

2.9 Undisclosed Participation in Organizations Within the United States

2.10 Human Experimentation

2.11 Prohibition on Assassination

2.12 Indirect Participation

Part 3. General Provisions

3.1 Congressional Oversight

3.2 Implementation

3.3 Procedures

3.4 Definitions

3.5 Purpose and Effect

3.6 Revocation

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

Part 1

Goals, Direction, Duties and Responsibilities With Respect to the National Intelligence Effort

1.1 Goals. The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States

persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1.2 The National Security Council.

(a) Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

(b) Committees. The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

1.3 National Foreign Intelligence Advisory Groups.

(a) Establishment and Duties. The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

- (1) Production, review and coordination of national foreign intelligence;
- (2) Priorities for the National Foreign Intelligence Program budget;
- (3) Interagency exchanges of foreign intelligence information;
- (4) Arrangements with foreign governments on intelligence matters;
- (5) Protection of intelligence sources and methods;
- (6) Activities of common concern; and
- (7) Such other matters as may be referred by the Director of Central Intelligence.

(b) Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of

intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

1.4 The Intelligence Community. The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

- (a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;
- (b) Production and dissemination of intelligence;
- (c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;
- (d) Special activities;
- (e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and
- (f) Such other intelligence activities as the President may direct from time to time.

1.5 Director of Central Intelligence. In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

- (a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;
- (b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;
- (c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;
- (d) Ensure implementation of special activities;

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(l) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to

the Secretary of Defense when directed by the President;

(n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

(p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to the requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of

Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1.7 Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

(a) Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(i) Ensure that the Inspectors General and General Counsels for their

organizations have access to any information necessary to perform their duties assigned by this Order.

1.8 The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(d) Coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements.

1.9 The Department of State. The Secretary of State shall:

(a) Overtly collect information relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1.10 The Department of the Treasury. The Secretary of the Treasury shall:

(a) Overtly collect foreign financial and monetary information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1.11 The Department of Defense. The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(k) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1.12 Intelligence Components Utilized by the Secretary of Defense. In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) Defense Intelligence Agency, whose responsibilities shall include; (1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) National Security Agency, whose responsibilities shall include: (1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet the needs of the United States

for signals intelligence and communications security;

(10) Protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include: (1) Carrying out consolidated reconnaissance programs for specialized intelligence;

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include: (1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in

coordination with the CIA, and within the United States in coordination with the
the
FBI; and

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 The Department of Energy. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 The Federal Bureau of Investigation. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

- (d) Produce and disseminate foreign intelligence and counterintelligence; and
- (e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

Part 2

Conduct of Intelligence Activities

2.1 Need. Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decisionmaking in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

- (a) Information that is publicly available or collected with the consent of the person concerned;

- (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2.4 Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile

electronic surveillance; (b) Unconsented physical searches in the United States

by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for: (1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or

against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such

techniques shall not be undertaken unless the Attorney General has determined in

each case that there is probable cause to believe that the technique is directed

against a foreign power or an agent of a foreign power. Electronic surveillance,

as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.6 Assistance to Law Enforcement Authorities. Agencies within the Intelligence

Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence

activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2.7 Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 Consistency With Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 Undisclosed Participation in Organizations Within the United States. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance

with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 Indirect Participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

Part 3

General Provisions

3.1 Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), shall apply to all special activities as defined in this Order.

3.2 Implementation. The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

3.3 Procedures. Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order No. 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

3.4 Definitions. For the purposes of this Order, the following terms shall have these meanings:

(a) Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) Employee means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) Foreign intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) Intelligence activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(3) The Defense Intelligence Agency (DIA);

(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

(g) The National Foreign Intelligence Program includes the programs listed

below, but its composition shall be subject to review by the National Security Council and modification by the President: (1) The programs of the CIA; (2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) United States person means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.5 Purpose and Effect. This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

3.6 Revocation. Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.