

PANEL ONE OF THE TENTH HEARING OF THE NATIONAL COMMISSION ON
TERRORIST ATTACKS UPON THE UNITED STATES RE: "LAW ENFORCEMENT
AND THE INTELLIGENCE COMMUNITY" THOMAS H. KEAN, CHAIR; LEE H.
HAMILTON, VICE CHAIR PHILIP D. ZELIKOW PRESENTS STAFF STATEMENT:
"LAW ENFORCEMENT, COUNTERTERRORISM, AND INTELLIGENCE COLLECTION
IN THE UNITED STATES PRIOR TO 9/11"

WITNESS: LOUIS J. FREEH, FORMER DIRECTOR OF THE FBI

9:01 A.M. EDT, TUESDAY, APRIL 13, 2004

MR. KEAN: (Sounds gavel.) Good morning. As chair of the National Commission on Terrorist Attacks on the United States, I hereby convene this commission's 10th public hearing. The hearing will run all today and tomorrow. Our focus for the next two days will be "Law Enforcement and the Intelligence Community."

As we did with our two prior sets of hearings this calendar year, we precede each series of witnesses with a statement from the Commission staff. These statements are informed by the work of the Commissioners, as well as the staff, and they represent the staff's best efforts to reconstruct the factual record of what happened. Judgments and recommendations are for commissioners and the Commission to make, and of course we'll do that in the course of our work, and most definitively and finally in our final report.

Viewers, by the way, who are watching at home can obtain staff statements at www.9-11commission.gov.

Before we begin, let me make just a brief request to members of the audience who have taken the time to be with us today. We're going to be hearing from a lot of witnesses in the course of the next two days. As a courtesy to them and the Commissioners, I ask you if you could refrain from any loud demonstrations of approval or disapproval because that simply takes time away from the witnesses and takes time away from the Commission members who are questioning. There are ample other ways in which you can inform the Commission of your opinions, and I encourage you to avail yourselves of them. On behalf of the witnesses, on behalf of the staff and the Commission, thank you very much for your cooperation.

We will now hear our first staff statement. It is entitled, "Law Enforcement, Counterterrorism and Intelligence Collection in the United States Prior to 9/11."

It will be read by our executive director, Phil Zelikow, of the Commission staff.

MR. ZELIKOW: Members of the Commission, with your help your staff has developed initial findings regarding law enforcement and intelligence collection in the United States prior to the 9/11 attacks. These findings may help frame some of the issues to be discussed during this hearing and inform the development of your judgments and recommendations.

This statement reflects the results of our work so far. We remain ready to revise our understanding of this topic as our investigation progresses.

This staff statement represents the collective efforts of a number of members of our staff. Caroline Barnes, Christine Healey, Lance Cole, Michael Jacobson, Peter Rundlet, Doug Greenburg and Barbara Grewe did most of the investigative work reflected in this statement.

We were fortunate in being able to build upon strong investigative work done by the congressional Joint Inquiry and by the Department of Justice's Office of the Inspector General. We've obtained excellent cooperation from the FBI and the Department of Justice, both in Washington and in six FBI field offices across the United States.

The role of the FBI. The FBI played the lead role in the government's domestic counterterrorism strategy before September 11. In the 1990s most of the FBI's energy was devoted to after-the-fact investigations of major terrorist attacks in order to develop criminal cases. Investigating these attacks always required an enormous amount of resources. As most of these attacks occurred overseas, many of the FBI's top terrorism investigators were deployed abroad for long periods of time.

New York was the office of origin for the al Qaeda program, and consequently where most of the FBI's institutional knowledge on al Qaeda resided. Working closely with the U.S. Attorney for the Southern District of New York, the Justice Department and the U.S. intelligence community, the FBI's New York field office was often successful in these investigations. Many of the perpetrators of these plots were identified, arrested,

prosecuted and convicted. These were episodes such as the World Trade Center bombing, the Landmarks plot, the Manila airlines plot, the Khobar Towers bombing, the East Africa embassy bombings, the Millennium plot and the *U.S.S. Cole* bombing.

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The approach to counterterrorism. The FBI took a traditional law enforcement approach to counterterrorism. Its agents were trained to build cases. Its management was deliberately decentralized to empower the individual field offices and the agents in the street. The Bureau rewarded agents based on statistics reflecting arrests, indictments and prosecutions.

As a result, fields such as counterterrorism and counterintelligence, where investigations generally result in fewer prosecutions, were viewed as backwaters. Agents developed information in support of their own cases, not as part of a broader, more strategic effort.

Given the poor state of the FBI's information systems, field agents usually did not know what investigations agents in their own office, let alone in other field offices, were working on. Nor did analysts have easy access to this information. As a result, it was almost impossible to develop an understanding of the threat from a particular international terrorist group.

Agents also investigated their individual cases with the knowledge that any case information recorded on paper and stored in case files was potentially discoverable in court. Thus, there was a disincentive to share information, even with other FBI agents and analysts. Analysts were discouraged from producing written assessments which could be discoverable and used to attack the prosecution's case at trial.

In the investigative arena, the field office had primacy. Counterterrorism investigations were run by the field, not headquarters. Moreover, the field office that initiated a case maintained control over it, an approach the FBI called the "Office of Origin Model." This decentralized management structure allowed field offices to set their own priorities, with little direction from headquarters.

Management priorities and challenges. The FBI determined early on in the 1990s that a preventive posture was a better way to counter the growing threat from international terrorism. In its first budget request to Congress after the 1993 World Trade

Center bombing, the FBI stated that, "merely solving this type of crime is not enough; it is equally important that the FBI thwart terrorism before such acts can be perpetrated."

By the late 1990s the FBI recognized that certain limitations undermined a preventive counterterrorism strategy and it initiated several significant reforms. Yet the FBI's leadership confronted two fundamental challenges in countering terrorism.

First, the FBI had to reconcile this new priority with its existing agenda. This immediately required choices about whether to divert experienced agents or scarce resources from criminal or other investigative or intelligence work to terrorism. As the terrorism danger grew, Director Freeh faced the choice of whether to lower the priority the FBI attached to work on general crime, including the war on drugs, and allocate these resources to terrorism.

The Department of Justice inspector general found that when the FBI designated national and economic security as its top priority in 1998, it did not shift its human resources accordingly. Although the FBI's counterterrorism budget tripled during the mid-1990s, FBI counterterrorism spending remained relatively constant between fiscal years 1998 and 2001. The inspector general stated that before 9/11, the Bureau devoted significantly more special agent resources to traditional law enforcement activities, such as white collar crime, organized crime, drug and violent crime investigations, than to domestic and international terrorism issues. According to another external review, there were twice as many agents devoted to drug enforcement matters as to counterterrorism. On September 11th, 2001, only about 6 percent of FBI's total personnel worked on counterterrorism.

Former FBI officials told us that prior to 9/11, there was not sufficient national commitment or political will to dedicate the necessary resources to counterterrorism. Specifically, they believed that neither Congress nor the Office of Management and Budget fully understood the FBI's counterterrorism resource needs, nor did the FBI receive all it requested from the Department of Justice under Attorney General Janet Reno.

Reno told us that the Bureau never seemed to have sufficient resources, given the broad scope of its responsibilities. She said, in light of the appropriations FBI received, it needed to prioritize and put counterterrorism first. She also said that Director Freeh seemed unwilling to shift resources to terrorism

from other areas, such as violent crime. Freeh said it was difficult to tell field executives they needed to do additional counterterrorism work without additional resources.

Finally, even though the number of agents devoted to counterterrorism was limited, they were not always fully utilized in the field offices. We learned through our interviews that prior to 9/11, field agents often were diverted from counterterrorism or other intelligence work, in order to cover major criminal cases.

The second core challenge was a legal issue that became a management challenge as well. Certain provisions of federal law had been interpreted to limit communication between agents conducting intelligence investigations and the criminal prosecution units of the Department of Justice. This was done so that the broad powers for gathering intelligence would not be seized upon by prosecutors trying to make a criminal case. The separation of intelligence from criminal investigations became known as "the wall."

New procedures issued by Attorney General Reno in 1995 required the FBI to notify prosecutors "when facts and circumstances are developed in a foreign intelligence or counterintelligence investigation that reasonably indicate a significant federal crime has been, is being or may be committed." The procedures, however, prohibited the prosecutors from, quote, "directing or controlling," close quote, the intelligence investigation.

Over time, the wall requirement came to be interpreted by the Justice Department and particularly the Foreign Intelligence Surveillance Court as imposing an increasingly stringent barrier to communications between FBI intelligence agents and criminal prosecutors.

Despite additional guidance on information sharing issued by Attorney General Reno in February 2000, and by Deputy Attorney General Larry Thompson in August, 2001, the wall remained a source of considerable frustration and concern within the Justice Department. Justice Department prosecutors and FBI criminal agents were responsible for large criminal cases like the embassy bombings. The intelligence side of the FBI, though, had the legal tools essential for domestic intelligence work, such as FISA surveillance. In this environment, domestic counterterrorism efforts were impaired.

Attempts at reform. There were attempts at reform. Start with the 1998 Strategic Plan. The FBI issued a five-year strategic plan in May, 1998, spearheaded by Deputy Director Robert Bryant. The plan mandated development of a strong intelligence base, including human sources, intelligence collection and reporting requirements. As a result of the strategic plan, the FBI created an Office of Intelligence that was superseded by a new Investigative Services Division created in 1999. That division was intended to strengthen the FBI's strategic analysis capability across the spectrum of traditional criminal, counterintelligence and counterterrorism cases. Thus, for the first time, the strategic analysis function was made independent of the operational divisions.

The Investigative Services Division also was intended to increase the professional stature of analysts. An internal review of the FBI's intelligence analysis function at the time found that 66 percent of the Bureau's analysts were not qualified to perform analytical duties. The review made recommendations for improvements. It appears that these recommendations were either not implemented or not enforced. The new division did not succeed. FBI officials told us that it did not receive sufficient resources, and there was ongoing resistance to its creation from the senior managers in the FBI's operational divisions. Those managers feared losing control, they feared losing resources, they feared they would be unable to get the assistance they wanted from the new division's analysts. Director Robert Mueller dismantled the division soon after the 9/11 attacks. We will discuss his changes in Staff Statement No. 12.

The Counterterrorism Division and MAXCAP 05. In 1999, the FBI also created separate Counterterrorism and Counterintelligence Divisions to ensure enough focus on these missions.

By late 1999, Dale Watson, the first head of the new Counterterrorism Division, recognized the urgent need to elevate the counterterrorism capacity of the FBI organization-wide. He developed the strategy he called MAXCAP 05. His goal was that the Bureau reach its maximum feasible capacity in counterterrorism by 2005 through a strategy focused on intelligence gathering, valid and straightforward reporting and tracking mechanisms, effective interagency liaison and cooperation, and accountable program management.

During July and August of 2000, at four regional conferences, Counterterrorism Division leadership presented the new strategy

to all of the FBI's assistant directors and special agents in charge of the FBI's 56 field offices. Field executives told Watson they did not have the analysts, linguists or technically trained experts to carry out the strategy. Watson asked for help from the Training Division and the new Investigative Services Division. Watson told us that trying to implement this strategy was the hardest thing he had ever done in his life.

One year after the regional conferences, almost every FBI field office's counterterrorism program was assessed to be operating at far below maximum capacity. Watson thought the FBI had to step up to a major choice of mission, perhaps turning over a significant share of narcotics enforcement to the DEA in order to free up resources for countering terrorism. Although he thought FBI director Freeh was sympathetic, most FBI managers opposed such a fundamental change before 9/11, and none of the pre-9/11 budgets made that choice.

The FBI's new counterterrorism strategy was not a focus of the Justice Department in 2001. Attorney General Ashcroft told us that upon his arrival at the department, he faced a number of challenges that signaled the need for reform at the FBI. He mentioned the Ruby Ridge and Waco incidents, the Wen Ho Lee investigation, FBI agent Robert Hanssen's espionage, the late discovery of FBI documents related to the Timothy McVeigh case, and public disclosures about lost laptops and firearms.

The new Bush administration proposed an 8 percent increase in overall FBI funding for fiscal year 2002. This included the largest proposed percentage increase in the FBI's counterterrorism program since fiscal year 1997. On May 9, 2001, Attorney General John Ashcroft testified at a hearing on U.S. efforts to combat terrorism. He testified that the Justice Department had no higher priority than to protect citizens from terrorist attacks.

On May 10th, the department issued guidance for developing the fiscal year 2003 budget that made reducing the incidence of gun violence and reducing the trafficking of illegal drugs priority objectives. Watson told us that he almost fell out of his chair when he saw the memo, because it made no mention of counterterrorism. The department prepared a budget for fiscal year 2003 that did not increase counterterrorism funding over its pending proposal for fiscal year 2002. It did include an enhancement for the FBI's information technology program intended to support the collection, analysis and rapid dissemination of information pertinent to FBI investigations.

Acting FBI Director Thomas Pickard told us he made an appeal to Attorney General Ashcroft for further counterterrorism enhancements not included in this budget proposal. On September 10th, the attorney general rejected that appeal.

Despite recognition by the FBI of the growing terrorist threat, it was still hobbled by significant deficiencies. Some of those deficiencies were, for instance, in intelligence collection. Intelligence collection efforts should begin with a strategy to comprehend what is being collected, identify the gaps, and push efforts toward meeting requirements identified by strategic analysis. Prior to 9/11 the FBI did not have a process in place to manage its collection efforts effectively. It did not identify intelligence gaps. Collection of useful intelligence from human sources was limited. By the mid-1990s senior managers were concerned the Bureau's statistically-driven performance system was resulting in a roster of mediocre sources.

The wall between criminal and intelligence investigation apparently caused agents to be less aggressive than they might otherwise have been in pursuing Foreign Intelligence Surveillance Act (FISA) surveillance powers in counterterrorism investigations. Moreover, the FISA approval process involved multiple levels of review, which also discouraged agents from using such surveillance. Many agents told us that the process for getting these FISA packages approved was incredibly lengthy and inefficient. Several agents added that, prior to 9/11, FISA-derived intelligence information was not fully exploited anyway, but was collected primarily to justify continuing the surveillance.

The FBI did not dedicate sufficient resources to the surveillance or translation needs of counterterrorism agents. Surveillance personnel were more focused on counterintelligence and drug cases. Many field offices did not have surveillance squads before 9/11. Similarly, the FBI did not have a sufficient number of translators proficient in Arabic and other languages useful in counterterrorism investigations, and that resulted in a significant backlog of untranslated FISA intercepts by early '01.

FBI agents received very little formalized training in the counterterrorism discipline. Only three days of the 16-week new agents course were devoted to national security matters of any kind, counterterrorism or counterintelligence, and most

subsequent counterterrorism training was received on an ad hoc basis or on the job.

Additionally, the career path for agents necessitated rotations between headquarters and the field in a variety of work areas, making it difficult for agents to develop expertise in any particular area, especially counterterrorism or counterintelligence.

We were told that very few field managers of the FBI had any counterterrorism experience, and thus either were not focused on the issue or did not have the expertise to run an effective program.

Finally, agents' investigative activities were governed by Attorney General Guidelines, first put in place in 1976, the so-called Levy Guidelines, and revised in 1995, to guard against misuse of government power. The guidelines limited the investigative methods and techniques available to agents conducting preliminary investigations of potential terrorist activities or connections. They prohibited the use of publicly available source information, such as that found on the Internet, unless specified criteria were present. These restrictions may have had the unintended consequence of causing agents to even avoid legitimate investigative activity that might conceivably be viewed as infringing on religious liberties or lawful political protest. Agents we interviewed believed these limitations were too restrictive and adversely affected their intelligence investigations.

Strategic Analysis. It is the role of the strategic analyst to look across individual operations and cases to identify trends in terrorist activity and develop broad assessments of the terrorist threat to U.S. interests. The goal is not abstract. Such analysis drives collection efforts. It is the only way to evaluate what the institution does not know. The FBI had little understanding of, or appreciation for, the role of strategic analysis in driving investigations or allocating resources.

The role of the tactical analyst, on the other hand, is geared toward providing direct support to investigations. Agents viewed tactical analysts as performing duties that advanced their cases. They failed to see the value of strategic analysis, finding it too academic and therefore irrelevant. Creation of the ill-fated Investigative Services Division may even have

worsened this attitude by distancing strategic analysts from agents in the operational divisions.

Moreover, strategic analysts had difficulty getting access to the FBI and intelligence community information they were expected to analyze. The poor state of the FBI's information systems meant that analysts' access to information depended in large part on their personal relationships with individuals in the units or squads where the information resided. In short, analysts didn't know what they didn't know. As a result, prior to 9/11 relatively few strategic counterterrorism analytical products had been completed. Indeed, the FBI had never completed an assessment of the terrorist threat to the U.S. homeland. According to the Department of Justice inspector general, FBI officials were comfortable relying on their individual professional judgment regarding the terrorist threat and, quote, "did not value a formal written assessment that uses a structured methodology," close quote.

Compounding this situation was the FBI's tradition of hiring analysts from within the agency, rather than recruiting individuals with the relevant educational background and expertise. In our field visits, we encountered several situations in which poorly qualified administrative personnel were promoted to analyst positions as a reward for good performance in other positions. When the FBI hired or promoted people with appropriate analytical skills, the Bureau's lack of a long-term career path and a professional training program caused many capable individuals to leave the Bureau or move internally to other positions.

In addition, managers often did not use qualified analysts effectively, especially in the field. Some field analysts we interviewed told us they were viewed as "über-secretaries," expected to perform any duty that was deemed non-investigative, including data entry and answering phones. Headquarters managers often did not have sufficient staff support, so they too turned to analysts to perform policy-oriented and programmatic duties that were not analytic in nature.

Knowledge management. Prior to 9/11, the FBI did not have an adequate ability to know what it knew. In other words, the FBI did not have a mechanism for effectively capturing or sharing its institutional knowledge. FBI agents did create records of interviews and other investigative efforts, but there were no reports officers to condense the information into meaningful intelligence that could then be retrieved and disseminated.

The FBI's private primary information management system, using 1980s technology already obsolete when installed in 1995, limited the Bureau's ability to share its information internally and externally. The FBI did not have an effective system for storing, searching or retrieving information of intelligence value contained in its investigative files.

Director Freeh told us that he went before congressional staff and members twice a year "begging and screaming" for funds to improve the FBI's information technology infrastructure. Former Department of Justice and FBI officials told us that the FBI lacked personnel with the necessary expertise leading its information technology improvement efforts, increasing Congress' reluctance to support funding proposals in this area.

Once Freeh brought former 30-year IBM executive Robert Dies on board in 2000, the Bureau developed a comprehensive IT plan that Congress did support. The FBI received congressional approval in late 2000 for the Trilogy project, a 36-month plan for improving its networks, systems and software. Dies told us that given the enormity of the task at hand, his goal was merely to "get the car out of the ditch." As of September 2001, the project was under way but by no means fully implemented.

The FBI's Joint Terrorism Task Forces, JTTFs, were the primary mechanism for sharing counterterrorism information with other law enforcement agencies in the field. The FBI expanded the number of JTTFs throughout the 1990s; by 9/11 there were 35.

The JTTFs, while useful, had limitations. They set their own priorities in accordance with regional and field office concerns; most were not fully staffed. Many state and local entities believed they would gain little from having a representative on a JTTF. Most detailees were mainly there as liaison rather than as full working members of the JTTFs, and many did not have access either to FBI information systems or their own home agency systems while in the FBI workspace. Moreover, the supervisors in their home agency chains of command often did not have security clearances, making it difficult to share important intelligence information.

We were told that at headquarters, information sharing between the FBI and CIA improved greatly when the agencies began exchanging senior counterterrorism officials in 1996. After serving on rotation, they understood each other's agencies and missions better than they had before. But as will be discussed in the next staff statement, there were other problems with

information sharing between the FBI and the CIA. The FBI's unwillingness or inability to share information reportedly frustrated the White House national security officials. Richard Clarke told us that the National Security Council never received anything in writing from the FBI whatsoever. Former Deputy National Security Advisor James Steinberg said the only time the FBI gave the NSC relevant information was during the Millennium crisis. Clarke told us that Attorney General Reno was notified the NSC could not run an effective counterterrorism program unless it had access to FBI information.

The Justice Department representative on Clarke's interagency group, the CSG, has told us, however, that to his knowledge, neither Clarke nor anyone else at the NSC raised any systemic issue of FBI information sharing as a policy issue or a matter to be considered by Attorney General Reno. Reno, in any case, initiated biweekly briefings of National Security Advisor Berger with FBI Director Freeh.

Reno told us that she was very concerned about the Bureau's information sharing and intelligence capabilities. In 2000, she sent several memoranda to Director Freeh expressing these concerns. One memo stated "it is imperative that the FBI immediately develop the capacity to fully assimilate and utilize intelligence information currently collected and contained in FBI files and use that knowledge to work proactively to identify and protect against emerging national security threats." Reno's requirements included improved information sharing, improved counterterrorism training, a threat assessment, and a strategy to counter the threat. It is not clear what actions the FBI took in response to these directives from the attorney general.

Terrorist financing. The FBI worked hard on terrorist financing investigations. The Bureau primarily utilized an intelligence approach. Agents in a number of field offices gathered intelligence on a significant number of suspected terrorist financing organizations. Before 9/11, those FBI offices had been able to gain a basic understanding of some of the largest and most problematic conspiracies that have since been identified.

The agents understood that there was a network of extremist organizations operating in the United States supporting global Islamic jihadi movements. They did not know the degree to which these extremist groups were associated with al Qaeda. It was also unclear whether any of these groups were sending money to al Qaeda.

The FBI operated a web of informants, conducted electronic surveillance, and had opened investigations in a number of offices. Numerous offices, including New York, Chicago, Detroit, San Diego and Minneapolis, had significant intelligence investigations into groups raising money for extremists. Many of these groups appeared to the FBI to have some connection to either al Qaeda or Bin Ladin.

But the problems in the FBI's counterterrorism program affected these investigations, too. The FBI was hampered by an inability to develop an endgame. Its agents continued to gather intelligence with little hope that they would be able to make a criminal case or otherwise disrupt the operation. Agents were stymied by rules regarding the distinction between intelligence and criminal cases, in part due to the wall then in place between criminal and intelligence investigations, as described above.

Making a terrorist financing case was at least as difficult, perhaps more so, than other similarly complex international financial criminal investigations. The money inevitably moved overseas. Once that occurred, the money was much harder to track, and the agents were at a dead end. In addition, due to the FBI's inadequate information management systems, strategic analysis and information sharing capabilities before 9/11, the FBI lacked a fundamental strategic understanding of the nature and extent of the al Qaeda fundraising problem in the U.S.

As a result, the FBI could not fulfill its responsibility to provide intelligence on domestic terrorist financing to policymakers. It did not contribute to national policy coordination on this issue. Instead, FBI agents simply kept tabs on the fundraisers, even as millions of dollars flowed to foreign Islamic extremists.

Conclusion. From the first World Trade Center attack in 1993, FBI and Department of Justice leadership in Washington and New York became increasingly concerned about the terrorist threat from Islamic extremists to U.S. interests, both at home and abroad. Throughout the 1990s the FBI's counterterrorism efforts against international terrorist organizations included both intelligence and criminal investigations. The FBI's approach to investigations was case-specific, decentralized and geared toward prosecution.

Significant FBI resources were devoted to after-the-fact investigations of major terrorist attacks, resulting in several successful prosecutions.

The FBI attempted several reform efforts aimed at strengthening its ability to prevent such attacks, but these reform efforts failed to effect change organization-wide.

On September 11, 2001, the FBI was limited in several areas critical to an effective counterterrorism strategy that could prevent attacks. Those working counterterrorism matters did so despite limited intelligence collection and strategic analysis capabilities, despite a limited capacity to share information both internally and externally, despite insufficient training, an overly complex legal regime, and despite inadequate resources.

MR. KEAN: We will now hear from our first witness. Our first witness, the Honorable Louis J. Freeh, who served as the director of the Federal Bureau of Investigation from 1993 to 2001.

Director Freeh, we're very pleased to welcome you this morning. Will you please rise and raise your right hand.

Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

MR. FREEH: I do.

MR. KEAN: Please be seated.

Director Freeh, your prepared statement will be entered into the record in full. As you know, we've got an agreement that your statement summarized will be about 10 minutes long. And so please proceed.

MR. FREEH: Thank you, Mr. Chairman, members of the Commission.

Let me just begin by again expressing publicly my condolences to the families of the 9/11 attack and to extend my prayers and support for them and my wishes that this commission, as the joint intelligence committees before it, does not only find some answers but certainly recommendations for change and improvement, many of which have already been undertaken, so that

this type of awful, horrific human and personal tragedy never affects anyone else.

I wanted to just make a couple of points. I certainly appreciate the work of the staff and the report of the executive director. And, maybe not addressing all the details of what has been a very careful review of the FBI operation certainly prior to September 11th and thereafter and a very good audit with respect to many of the programs and operations, I would like to talk about some larger general issues and certainly then engage in whatever questions you want.

I think the point that I would like to make is that it is imperative, in my view, that the Commission distinguish between the period before September 11th and the period after September 11th; that this is, I would respectfully suggest, a central question for the Commission and for the American people. And I think the inability to focus on that question leaves not only a lot of speculation but, I think, a lot of misinformation about some of the activities and some of the dynamics here involved.

I guess my view is that al Qaeda declared war on the United States in 1996. That's when bin Ladin issued his first fatwa. The 1998 fatwa was much more specific. It directed his followers to kill Americans anywhere. That was followed by attacks against Americans soldiers in Yemen in 1992, which was actually the subject of a Southern District of New York FBI indictment returned in June of 1998 prior to the attacks against the embassies in East Africa.

The attacks upon the American soldiers in Somalia, in Project Restore Hope, was an activity sponsored and directed by al Qaeda soldiers. That, as you know, was one of the overt acts publicly identified in the New York City indictment with respect to bin Ladin. The attacks against the embassies in 1998, acts of war against the United States; the attacks against our warship in 2000, acts of war against the United States.

I remember briefing Senator Kerrey and Senator Shelby after one of these attacks. It was the embassy attacks. And he asked me a very good question, a question I think is maybe more relevant today than it was then.

And he said, "Why is the FBI over in East Africa, hundreds of FBI agents sifting through a crime scene, maintaining chain of custody, talking to people and giving them their Miranda rights, when this is an act of war against the United States?"

And my response then, as it would be now, is that absent a declaration of war back by the United States against al Qaeda, against this very competent and very dangerous terrorist organization, we were left with the tools that were available to fight terrorism and to neutralize and incapacitate not just bin Ladin but many of his operatives and allied organizations.

The point there is not that anybody in the FBI or anybody in the United States thought that investigating these cases was the best response to a war that was declared against the United States. You could poll any FBI agent, any jury that tried and convicted many of the people in these cases, and they would tell you absolutely not. An arrest warrant -- two of them for bin Ladin in the Southern District of New York -- was not going to deter him from what happened on September 11th.

But the point of these investigations was, in the absence of invading Afghanistan, in the absence of armed Predator missiles seeking out our enemies, in the absence of all the things that were appropriately done after September 11th, when the United States declared war back on al Qaeda, we were left with alternatives which were better than no alternatives. And as I said in my statement, sometimes they worked.

And the investigations were not investigations that dealt with individuals. When the FBI investigated La Cosa Nostra, it wasn't investigating a particular person or group of people; it was investigating the organization and the enterprise. The purpose there was to get as much information as possible to incapacitate the leadership and dissolve the organization. The Watergate investigation would be the same example of that. These investigations were not cases, they were initiatives that were designed to gather information.

So before September 11th, most of the information that was residing in the United States government with respect to al Qaeda came from FBI investigations, not from intelligence operations, not from collection. It came from the cooperating witnesses that we found in 1993 after the World Trade bombing in February, the FBI conducting an investigation, but an investigation that went to the identification of the people who might have been involved in supporting that attack, led to, if you recall, the prevention -- I stress that word, the prevention -- of a second major terrorist attack against the United States in New York City, which was called the "Day of Terror."

And the organization was going to blow up tunnels and bridges and the United Nations and federal office buildings, killing potentially thousands and thousands of Americans. It was the investigation of the World Trade tower that prevented that and also gave us an arrest warrant for one Ramzi Yousef.

Ramzi Yousef, related to Sheikh Khalid Mohamed (sic), one of the architects of the September 11th attack. He was found in Pakistan, staying in an al Qaeda guest house, by FBI agents who had an arrest warrant, and without that arrest warrant he would never have been brought back to the United States. Why was it important to have an arrest warrant? Because incapacitating him would prevent him from further attacks against the United States. As you know, in 1995 he and others -- Sheikh Khalid Mohamed (sic) being one of them -- were planning to blow up 12 U.S. airliners over the Pacific Ocean, killing hundreds of Americans. That was aborted due to a series of events, but precisely the FBI criminal investigation served to prevent that from happening.

My point is that these investigations are projects that seek to gather maximum amount of information so the organization can be stopped from committing future acts of terrorism. It was never our notion in the FBI that criminal prosecutions of terrorists and investigations of their organizations was a substitute for military action, for foreign policy action, for the United States doing what it did on September 11th: declaring war on an enemy that had declared war on us many years ago.

The point of it is that these investigations, as they existed, prevented acts of terrorism with very limited resources. The FBI, as you know, before September 11th had three-and-a-half percent of the federal government's antiterrorism budget. And it's no news to anybody that for many, many years, as your executive director recounted, the resource issue and the legal authority issue certainly limited what we were able to do before September 11th.

In the budget years 2000, 2001, 2002, we asked for 1,895 people -- agents, linguists, analysts. We got a total of 76 people during that period. That's not to criticize the Congress, it's not to criticize the Department of Justice; it is to focus on the fact that that was not a national priority. To repeat what we saw in the 2000 Presidential election, terrorism was not discussed; this was not an issue that the candidates talked about, that the American people talked about during that period, and this was right after the attack on the *U.S.S. Cole*.

For many, many years, a lack of these resources, and maybe more importantly, a lack of legal authority, prevented us from doing what was easily done after September 11th. The PATRIOT Act, the November 18, 2002 decision by the Court of Review, which threw out a 20-year interpretation of the FISA statute; the court said to the judges, to the Department of Justice, to the FBI, to the intelligence community: You've been misreading the statute for 20 years. Not only does the PATRIOT Act provide for this, but the actual statute provides for that. So this wall that had been erected was a self-erected wall by the United States government, confirmed by interpretation by the FISA Court, but when challenged for the first time in 20 years, was found by the Court of Review to be inconsistent with the statute as well as inconsistent with the Constitution.

All of these things being said, the point I guess I want to make to you this morning, and which I tried to make in my statement, is that we had a very effective program with respect to counterterrorism before September 11th, given the resources, in my view, and given the authorities that we had. Bin Ladin was indicted in June of 1998. He was indicted again after the African bombings. He was put on our top 10 list. George Tenet and I reviewed plans to have him arrested and taken into custody in Afghanistan and brought back to the United States. I went over to see then-Chief Executive Musharraf in 2002 and made the case for him that this person be thrown out of Afghanistan; that he help us take him into custody so we could bring him back to the United States. All of the other things that were being done were being done in a limited framework given, again, lack of resources, and maybe more importantly, the legal authorities that we had to live with.

MR. KEAN: If you could wrap up now, your time's up.

MR. FREEH: Thank you, Mr. Chairman.

The final point I think I want to make then is that we can change the law, we can pass new statutes, we can add billions of dollars to the fight. We need to keep in perspective, however, what was the reality before September 11th; what was the reality thereafter. And at the end of the day, the FBI, as a part of the Department of Justice, has to obey the law. And whatever that law is, it's one that protects us. It protects our constitution, it also protects our people. And that law can change. But I think we have to keep in mind that when that changes, we can't judge what happened in the past by different standards.

Thank you.

MR. KEAN: Thank you, sir.

Commissioner Fielding?

MR. FIELDING: Morning, Mr. Director. Thank you very much for being here today and for all the cooperation you've provided to the Commission and its staff in closed sections heretofore and for your very fulsome statement that you gave us. And, also, thank you on behalf of the whole commission for your public service, both in the executive and judicial branch.

I am sure it's no surprise to you or anybody here that there's a lot of interest in today's hearings and there's a lot of interest simply because on September 11th we were totally beaten. We were beaten and all our systems failed. Our systems to stop hijackings failed. Our intelligence -- domestic and foreign apparatus -- failed. We had 19 people who were able to -- some of whom were known by the CIA to be terrorists -- entered our country, got visas, were living under their own names in this country, took flight lessons, beat the security screening with knives to get into the aircraft, and turn four aircraft into missiles. And they had to have -- it was interesting, they had to have a 100 percent success in order to do this and they did.

So we've now found in our discovery that there have been some clues; some dots, as we say, might have been connected were not. We're not passing judgment on that at this point, but what we're trying to determine here is how this intelligence failure occurred so that we can deny it from occurring again, if at all possible. And quite frankly, we're also trying to determine whether the FBI should continue to have its counterterrorism responsibility, whether it's capable of carrying out the new mission of counterterrorism and the enhanced mission and the enhanced responsibilities. So we appreciate your being here.

You became the director in September of '93 and had a long service through June of '01, so you're clearly aware of the terrorists targeting U.S. interests in the '90s.

It was often said that because you're a former field agent yourself that you had little time for headquarters, and that you created or enhanced what has been described to us as the "culture of the field." And during your tenure counterterrorism investigations were run out of the field, as we understand it.

And the New York field office was the office of origin for al Qaeda, and therefore, our -- as the staff statement said, our expertise for a large part was there. Now, also in 1994 when you came on, you reassigned over 600 headquarters supervisory administrative agencies out into the field, ostensibly to make the FBI more efficient and to put more FBI agents on the street.

Now, some have looked at this approach -- and I want to read a quote. It says, "The FBI's policy to decentralize investigations was inefficient for counterterrorism operations, especially against international terrorist targets," and that's from the report of the House Permanent Select Committee on Intelligence that analyzed this approach. So my first question to you is -- you obviously made this decision. How -- to you, what were the strengths of this approach, of using the office of the origin concept as opposed to the FBI's now current, more centralized approach to counterterrorism?

MR. FREEH: Well, you've asked a number of questions. Let me see if I can respond to some of them.

With respect to the 600 agents being assigned out of headquarters, that wasn't because I believed that we shouldn't have them in headquarters but should have them in the field; it was because for 22 months the FBI had a hiring freeze. So we were having offices around the country, literally the RA offices -- the resident agencies -- becoming vacant because there were no agents being hired. Twenty-two months, not one FBI agent was hired. So my reassignments in 1994 were not to decentralize the FBI; it was to put agents in spaces where they had to be put with respect to that.

Al Qaeda. In terms of the cases, as you call them correctly, but also the investigation of al Qaeda was centralized in New York City. That's where the primary office and the three squads that were established ultimately in New York City dealt with the Cole bombing, the East Africa bombing as well as the al Qaeda organization in general. That doesn't mean that we didn't organize and centralize and direct those investigations from headquarters.

We set up, as your executive director mentioned, in 1999 a Counterterrorism Division.

The purpose of the Counterterrorism Division was to control and help support a national program where cases, although they have to be worked in the field -- that's where the U.S.

Attorneys are -- they also were directed and supervised by headquarters.

It was interesting that when I submitted the proposal for the Counterterrorism Division, with the full support of the attorney general, Janet Reno, it took nine months for the Office of Management and Budget and the Congress to approve that. Which again goes to my point before about the priorities with respect to getting things done.

We had an al Qaeda/Osama bin Ladin unit set up at headquarters. In our SIOC operation we had 24 by 7 coverage of those matters and those cases. So the cases were being worked in New York City. I don't know where else they could have been worked. But the coordination between headquarters and the field, in my view, was very, very good.

Now, I got involved very directly in many of those operations. For instance, I went to Pakistan to ask Mr. Musharraf to help us arrest Bin Ladin. I also asked him for witnesses, which he ultimately agreed to send, one to New York City for the trial. I went to East Africa and negotiated the return of Odeh and some of the other hijackers to be prosecuted in New York, where they were convicted. So there was a lot of headquarters involvement; in fact, there was huge headquarters involvement in the New York cases. The fact that they were in the field was just the reality of that's where cases are, and that's where grand juries and prosecutors and courts are.

But the point is that that group of New York City agents were functioning not just as case agents, they were the intelligence, they were the analysis, they were the whole embodied knowledge of the United States government at that time with respect to al Qaeda and its principals. And their job was to disable the organization, eliminate the leadership of -- at that point by arrest or custody. And many efforts, heroic efforts on their part were extended in that regard.

MR. FIELDING: Okay. Then if the -- is it your testimony that the al Qaeda cases, if you will, that were being run out of the New York office were really being directed out of headquarters?

MR. FREEH: Yes, sir.

MR. FIELDING: Then help me a little. How under that structure would the rest of the field offices really have the same sense of urgency, understanding or know-how, if you will, to

contribute to the antiterrorist -- the counterterrorism effort? For instance, use as the example, the infamous or famous "Phoenix memo" that never seems to get where it should get. Could you comment on that?

MR. FREEH: On the Phoenix memo or the fact that we had the expertise in New York City?

MR. FIELDING: Both. Both. I'm using that as an example. Isn't this decentralization inhibit the interplay between the offices, so to speak?

MR. FREEH: Well again, I guess I don't agree with the term "decentralization." I mean, the cases had to be worked where they were worked. We had a body of expertise with respect to al Qaeda and Bin Ladin resident in New York. We had an equal and ample, in my view, body of expertise at our headquarters with Dale Watson and Debbie Stafford and Mike Rolince -- all the people that your staff has spent many, many hours with over the last few months. So, you know, we didn't only have the expertise in New York. And Dale's job and Mike Rolince's job and the counterterrorism section, before it was the Counterterrorism Division's job, was to ensure that, first of all, expertise was available to support cases in smaller offices that perhaps didn't have that kind of experience, would not have had that kind of experience.

The purpose of, you know, MAXCAP 05, the purpose of seminars, the purpose of SAC conferences was to disseminate all that information and make sure that the field not only was aware of those investigations, but if they had matters in their own divisions -- and there were 70 cases around the FBI in the summer of 2001, not on al Qaeda members or Bin Ladin supporters, but on fundamentalist jihadists who were of great interest to the Bureau because of their potential, as we saw in East Africa and other cases, to be co-opted and enlisted into operations -- so the decentralization I don't think is something that I would characterize it as.

With respect to the Phoenix memo, which is your second question, you know, my understanding of that memo, mostly what I've read in the newspapers, is that it was sent to headquarters; it was not decentralized in the sense that it never made it to headquarters. It was looked at there. It was analyzed. People took what they thought was the appropriate action at the time.

I know, as a aftermath of the information contained in that memo, everyone was interviewed -- the people who were identified in the memo. All the leads were run out after the fact. And there was nothing about the information contained in that memo, as far as I've read, or as I understand it, that would have led you to September 11th.

MR. FIELDING: Well, then do you disagree -- well, let me ask it another way. The PENTTBOMB investigation is now being run out of headquarters. Would you disagree with the way that Director Mueller is running that?

MR. FREEH: No. Again, I think, after September 11th, there had to be a completely new restructuring of how counterterrorism cases and operations were going to be conducted. So I would not have any disagreement with that.

And by the way, if you were going to do a criminal prosecution there, not that that would be appropriate, you would do it in the Eastern District of Virginia. So it wouldn't make any sense for agents in New York City to be working on it, if you were to do a criminal case.

MR. FIELDING: So you think that post-9/11 that's the better way to run counterterrorism cases?

MR. FREEH: I don't think you can run counterterrorism cases out of headquarters. That's not my experience or my view. I think you have to coordinate them out of headquarters. The liaison throughout the government, the ability to share intelligence, the overseas connections that are necessary -- you can't run it without headquarters, but you can't prepare a criminal case for a field presentation in a U.S. district court in headquarters. That's just my own view.

MR. FIELDING: Let me switch gears for a second. In September of 1999, the GAO issued a report that recommended that the FBI develop a national-level terrorist threat and risk assessment, so it could be used how -- to determine how to allocate resources and budget in dealing with domestic threats, plus the -- analyzing the likelihood of such a threat, and to identify any potential intelligence gaps, I believe, was part of the charter.

And it was my understanding that the department and you agreed to do that. And that's September -- or the end of '99, and that wasn't completed until January of 2003.

And when we were talking to people that were involved in that, a senior CIA official that was detailed to the FBI after 9/11 told the Commission that the assessment was completed actually by CIA analysts that had been detailed to the FBI, since the FBI analysts were not capable of producing such a product.

Now, I'd like your comment on that and even the deeper question of was the FBI unwilling to do an analysis or was it unable to do an analysis from '99 at least until you left?

MR. FREEH: Well, I don't think it was incapable of doing that. In fact, there were analyses that were made with respect to assessments which were done in the context of the Counterterrorism Division, which was set up at about the same time.

Did we have a deficiency with respect to analytical capability? Absolutely. I talked about that at appropriation hearings over many years. Most of the non-agent resources in our three-year request for 1,895 people were analysts. They were people who could perform strategic, as opposed to tactical, analysis for us and give us the type of strategy plans and disruption plans that we began to see actually in the spring and summer of 2001 in the FBI with respect to al Qaeda. But that capability was not there when I was director. You know, we're in the process now of hiring 900 analysts, but that's 2004. It doesn't cover the gaps over many, many years, particularly the years that you cite.

MR. FIELDING: But you would agree that counterterrorism needs that as a component of its total effort, would you not?

MR. FREEH: Absolutely. It needs linguists, which were also, you know, requested year after year. We asked for the authority to hire Arabic and Farsi speakers at a higher rate than the GS scale provided for in New York City. You can't hire an Arabic or Farsi speaker for a GS-6 salary, which is what we were relegated to. We did get a brief experiment with respect to a Title 5 exemption, but not what is now available and funded at least to the point where you can make an initiative.

MR. FIELDING: Okay. Now, the last -- oh, I guess that is my last one. I'm sorry, I see my time is up. Thank you, Mr. Director.

MR. FREEH: Yeah

MR. KEAN: Commissioner Ben-Veniste.

MR. BEN-VENISTE: Good morning, Director Freeh.

MR. FREEH: Good morning.

MR. BEN-VENISTE: As you know, the purpose of this commission may be divided into two broad categories. First, we are charged with providing a full accounting of the 9/11 catastrophe, a challenging investigative responsibility. Second, we're asked to make recommendations in a wide variety of areas, all of which with the common goal of improving the security of our nation.

We should be reminded that the ability to have such a commission to operate in part through public hearings and to ultimately deliver a report to the President of the United States, to the United States Congress and to the American people, a report on our findings and recommendations, is a remarkable testimonial to the strength and durability of our democracy. Few countries in the world would tolerate, much less welcome, such an open and public process.

Director Freeh, you have served in two of the three branches of government. You were an FBI agent; an assistant U.S. attorney in the Southern District of New York, an office for which I have great affection, as you know, and continuing admiration. Indeed, during my service as an assistant United States attorney, I worked closely with many FBI agents who I regarded as among the most dedicated and patriotic Americans I've ever met. Indeed, some of them are close friends today. You have served as a federal district court judge in the Southern District of New York, appointed by President Reagan, and then you were appointed by President Clinton to be FBI director. Your experience and observations will be an important source of information for this commission.

You have reemphasized this morning the fact that the New York office of the FBI, which was led by James Kallstrom and then Barry Mawn and John O'Neill, particularly focused on the al-Qaeda terrorist threat. In fact, John O'Neill perished in the attack on the World Trade Center on September 11, 2001, at the hands of cowards who murdered civilian men, women and children - - people who John O'Neill had hunted with the determination that sometimes bordered on an obsession.

Indeed, in January 2001 O'Neill's concerns stimulated an interagency group white paper, urging greater protection of

federal buildings in Lower Manhattan. And that white paper noted that Osama Bin Ladin, his al Qaeda organization and affiliated extremist groups currently pose a clear and immediate threat to U.S. interests.

Do you recall discussions with John O'Neill about the threats from al Qaeda or others that might occur within the United States?

MR. FREEH: Yes, I do, and particularly in that time frame. If you recall, the trial was actually starting in January of 2001. It went through May. This was the trial of the four subjects in custody for the East African bombings. So the New York office, as well as headquarters and myself, were intensely concerned about the security for that trial. And if any of you saw the courthouse during the period of that trial, there were cement trucks, streets closed because we were focused on a domestic attack in the United States by the co-conspirator in that case, indicted but a fugitive, Osama Bin Ladin.

MR. BEN-VENISTE: Let me ask you this. You have talked this morning and in your submitted statement and previously about your efforts to increase the counterterrorism budget, efforts that were not accepted by the Congress of the United States in allocating more funds for you. But can you tell us whether it was possible within the FBI structure to reallocate resources within a particular field office or in general, perhaps using as an example James Kallstrom, the former head of the New York office of the FBI, who unilaterally shifted resources to counterterrorism from other areas?

I believe you have told us in staff meetings that Jim Kallstrom had half of his criminal division working on counterterrorism, pulling agents away from such traditional investigative efforts as bank robberies, drug investigations, the type of investigations which can overlap with other federal agencies or with state and local operations.

Did Kallstrom's sort of entrepreneurial decision on his own, recognizing the terrorist threat, to make those reallocations trouble you?

MR. FREEH: Well, no, since I concurred in it. I wouldn't call it an entrepreneurial decision at all. I mean, when we needed to put 400 FBI agents in East Africa in August of 1998, we put them there. Now, they weren't allocated in our congressional funding stream as counterterrorism agents, but we sent them there

because we needed them there. For years in the New York office, we -- the term is "overburned" the number of agents working counterterrorism cases.

Now, there were only three squads that were full-time assigned to Bin Ladin cases and al Qaeda investigations, but when we had a trial or we had an emergency, like we were preparing for the 50th anniversary of the U.N. or the NATO meeting or the pope was coming to New York, we would, of course, allocate hundreds and hundreds of agents who were not authorized budgetarily to perform counterterrorism assignments to that job. So that was something we did continuously.

There was never a case, Mr. Ben-Veniste, anywhere in the Bureau that I was aware of where we could not assign agents in an emergency or in the threat of danger to help prevent that. But the reality is, in terms of our congressional budget, they were not then authorized to be working the matters they were working.

MR. BEN-VENISTE: Well, given the fact that you concurred and supported Jimmy Kallstrom's efforts in New York City, and given the fact that there has been criticism about the FBI's inability to reallocate resources toward the growing threat of terrorism and reallocate those resources, as I say, away from more traditional FBI jurisdictional areas which could be covered by other federal and state agencies, how do you answer that criticism?

MR. FREEH: Well, I think I would address it by saying two things. One, you know, the positions that are authorized by the Congress and audited by their committees as well as GAO have to be allocated to the program areas where they're funded to. That's number one. Now, from time-to-time, as in the New York case, we would ask the congressional committees for temporary reallocations. We would advise them as to what we were doing. My answer to getting counterterrorism resources to fight terrorism was to ask for them, and to ask for them in addition to what we already had.

MR. BEN-VENISTE: Were you ever reprimanded for reallocating on your own, either on the basis of emergency or on a more generalized basis, resources to counterterrorism as a result of congressional oversight?

MR. FREEH: No, but I think that's because we were doing it on an emergency basis and on a temporary basis.

If we had taken a thousand agents from our criminal programs and assigned them full-time to counterterrorism matters, I don't believe we could have done that. I don't believe the committees would have permitted it at the time.

MR. BEN-VENISTE: But you did not try that. You did not try --

MR. FREEH: No, I did not try that, because that's not the way resources are allocated.

MR. BEN-VENISTE: Let me turn to the subject of the state of the intelligence community's knowledge regarding the potential for the use of planes, airplanes, as weapons, a subject of obvious interest to this commission. Did the subject of planes as weapons come up in planning for security of the Olympics held in Atlanta in 1996?

MR. FREEH: Yes. I believe it came up in a series of these, as we call them, special events. These were intergovernmental planning strategy sessions and operations. And I think in the years 2000, 2001, even going back maybe to the 2000 (sic) Olympics, that was always one of the considerations in the planning, and resources were actually designated to deal with that particular threat.

MR. BEN-VENISTE: So it was well-known in the intelligence community that one of the potential areas or devices to be used by terrorists, which they had discussed, according to our intelligence information, was the use of airplanes, either packed with explosives or otherwise, in suicide missions.

MR. FREEH: That was part of the planning for those events. That's correct.

MR. BEN-VENISTE: Now did that come up -- the same subject come up again? I know you carried on from the Clinton administration through six months, more or less, of the Bush administration. Did that subject come up again in the planning for the G-8 summit in Italy?

MR. FREEH: I don't recall that it did, but I would not have been involved in that planning. The FBI would not have been involved in that particular planning.

MR. BEN-VENISTE: We were advised that there was a cap or a no-fly zone imposed over first Naples, in the pre-planning session, and then Genoa, during the meeting of the eight heads

of state, and that subsequently it was disclosed that President Mubarak of Egypt had warned of a potential suicide flight using explosive-packed airplanes to fly into the summit meeting and to --

MR. FREEH: Yeah. I don't dispute that. But that planning would have done -- be done by the Secret Service, probably the Department of Defense. We would not have been involved in that event outside the United States, in terms of the special planning, although we probably detailed some people there.

MR. BEN-VENISTE: Let me ask you this. To your knowledge, coming back to the United States, was the intelligence information accumulated by the year 2001 regarding various plots, real or otherwise, to crash planes using suicide pilots integrated into any air defense plan for protecting the homeland and particularly our nation's capital?

MR. FREEH: I'm not aware of such a plan.

MR. BEN-VENISTE: Can you explain why it was, given the fact that we knew this information and given the fact that, as we know now, our air defense system on 9/11 was looking outward, in a Cold War posture, rather than inward, in a protective posture, that we didn't have such a plan? Was that a failure of the Clinton administration, was that a failure of the Bush administration, given all of the information that we had accumulated at that time?

MR. FREEH: Well, I mean, I don't know that I would characterize it as a failure by either administration.

I know, you know, by that time there were air defense systems with respect to the White House. There were air defense systems that the military command in Washington, D.C. area, you know, had incorporated. I don't think there were probably -- at least, I never was aware of a plan that contemplated commercial airliners being used as weapons after a hijacking. I don't think that was integrated into any plan. But with respect to air defense issues and that threat, it was clearly known and it was incorporated, as I mentioned, into standard special events planning.

MR. BEN-VENISTE: Into special events, but never into the actual defense posture for the homeland protection of the United States.

Let me ask you a final question with respect to the Millennium threat. The FBI and the CIA have been criticized for being unwilling to work cooperatively together, yet it appears during the period of heightened alert prior to the Millennium the FBI and CIA worked closely together and had several notable successes as the result thereof. Could you explain how that operation worked and whether you reported to the National Security Council of the United States?

MR. FREEH: Well, with respect to the Millennium planning, I reported of course to the attorney general. The attorney general and I worked very closely in concert with the National Security Council, with the director of Central Intelligence, the CIA, military components, civilian components. This was an integrated and long-term planning operation with respect to Millennium threats, which were not only issues concerning technology exploitation but also the occasion of the Millennium as a terrorism attack.

But your more important question, I think, is the CIA-FBI cooperation. I don't think it was unique to the Millennium planning. My experience in eight years there is that there was extremely good cooperation between the FBI and the CIA, and that goes back to matters such as the *Cole* bombing, the East African embassy bombings cases. The Alex Station, which you know from your staff was set up in 1997, the CIA and the FBI together in a station dedicated to al Qaeda investigations and disruption activities overseas. FBI agents would regularly accompany CIA officers overseas to exploit al Qaeda cells and disrupt them. I think that cooperation, in my view, was a very outstanding one for many years.

MR. BEN-VENISTE: Thank you, sir.

MR. KEAN: Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman.

I've asked for the microphone only to say that I will not be questioning Director Freeh or Attorney General Reno. Under our commission policy, several commissioners have recused themselves from considering various issues that they worked on or elements of the government that they've worked with at one time or another. While I'm recused only from review of actions during my tenure at the Department of Justice, which ended in March of 1997, because I worked closely with Director Freeh and with

Attorney General Reno I've decided not to participate in this questioning at all.

As my colleagues know, the vast preponderance of our work, including with regard to the Department of Justice, focuses on the period of 1998 forward, and I have been and will continue to be a full participant in that work.

So all I will say today is thank you for your testimony today, Director Freeh.

MR. FREEH: Thank you.

MR. KEAN: Thank you. I've got a couple of questions. First, I'm interested in your communications with the White House. When you had a serious problem where you thought there were threats, did you go directly to the President or was there another mechanism you used to communicate with the White House, either in the Clinton administration or the Bush administration -- or both, I guess.

MR. FREEH: Well, I mean, my procedures would normally be to communicate first with the attorney general. On many occasions after that communication we would go to the White House. If it was a national security issue we would certainly see the national security advisor. In the last year that Janet Reno and I served together, we actually had a routine meeting with the national security advisor, I'd say probably every two or three weeks. We had another one with Secretary Albright probably once a month. And the purpose of those meetings was to discuss not just counterintelligence and counterterrorism matters, but even other Department of Justice issues that had national security implications.

On some occasions I would go directly to the national security advisor. I did not have an experience in either administration of going directly to the President on a matter.

MR. KEAN: Okay. One of the questions that may be one of the most important that our commission is charged with is looking at the intelligence agencies and seeing whether any changes ought to be made.

Now, I read our staff statement as an indictment of the FBI for over a long period of time. You know, when I read things like that your -- 66 percent of your analysts weren't qualified, that you didn't have the translators necessary to do the job,

that you had FISA difficulties, that you had all the information on the fundraising but you couldn't find a way to use it properly to stop terrorism -- and that's without counting, of course, the things that were going on at the same time -- Ruby Ridge or Waco or the Wen Ho Lee case or the Hanssen case or the lost laptops and firearms and all the rest.

The present director, your successor, has a whole series of reforms that he is trying to put to make the agency work better. You tried reforms; you tried very hard to reform the agency. According to our staff report, those reforms failed.

I guess my question to you is, looking at this director's efforts to reform the agency, can those reforms work or should there be some more fundamental changes to the agency in the way we get our intelligence?

MR. FREEH: Well, first of all, I take exception to your comment that your staff report is an indictment of the FBI. I think your staff report evidences some very good work and some very diligent interviews and a very technical, almost auditing analysis of some of the programs. I think the centerpiece of your executive director's report, as I heard it, came down to resources and legal authorities. So, I would ask that you balance what you call an indictment, which I don't agree with at all, with the two primary findings of your staff -- one is that there was a lack of resources and, two, there were legal impediments.

With respect to your question, I certainly support and applaud the director's efforts -- the PATRIOT Act, the court of review. A couple billion dollars is certainly a big help when we're talking about changes.

With respect to the jurisdiction of the FBI, I do not believe that we should establish a separate domestic intelligence agency with respect to counterterrorism. I think that would be a huge mistake for the country for a number of reasons. One, I don't think in the United States we will tolerate very well what in effect is a secret -- a state secret police, even with all of the protections and the constitutional entitlements that we would subscribe it with. Americans, I don't think, like secret police and you would, in effect, be establishing a secret police. Secondly, if you look at the models around the world where this has been tried, it hasn't worked very well, in my opinion.

The other thing, it would take a long time to integrate. If the Homeland Security Department and 170,000 people to be integrated is going to take a couple of years, standing up a brand new domestic intelligence agency would take a decade, and we would lose very precious time at a very dangerous time for the United States.

If you look at some of the analyses of MI5 operations -- and you can look at the Bishopsgate bombing, you can look at the Dockland bombing, the Matroyan (sp) case -- I'm sure your staff has looked at that -- it's been found to be not very effective. In fact, one of the studies that I know your staff has looked at, in the United Kingdom -- that looked at this, actually said the FBI was the preferred model because it breaks down the barriers between enforcement and intelligence.

A lot of the good work of this commission has been to identify the barriers that existed, and still exist, between intelligence and law enforcement. Standing up a separate intelligence agency will just increase those barriers. And if you thought the wall was a big one, that's a fortress, in my view, and will make for a very ineffective counterterrorism program, and I think expose the country to dangers.

So I think we ought to have the Department of Justice supervised by the attorney general; FBI agents who are schooled in the constitution, who have a transparent operation with respect to oversight by courts, as well as by Congress. Give them the tools, give them the legal authority, give them the budget, and they'll do this job very well.

It's not very different from looking at organized crime, from looking at counterintelligence, which, in my view, the Bureau has done exceptionally well for decades. The difficulty with the wall was that the wall that was set up in Janet Reno's guidelines of July 19th were completely appropriate with respect to counterintelligence cases because counterintelligence cases happen in two dynamics. One, there is an investigation, and then there's either an indictment or an expulsion.

Counterterrorism cases are completely different. Because of the threat, there's always an ongoing need to act and to use the intelligence to prevent attacks from taking place. So the wall is not an appropriate one with respect to counterterrorism, and that's been repaired both by the PATRIOT Act and the Court of Review.

MR. KEAN: Thank you.

Senator Kerrey.

MR. KERREY: Thank you very much, Mr. Chairman.

Director Freeh, I'll do whatever I can here to make sure I don't call you "Director Clarke" as I ask you these questions. (Laughter.)

But first of all, do you think it was a mistake not to -- talking about Khobar now, starting at Khobar in '96, not to have you report directly to the National Security Council and the President on what was going on in that investigation?

MR. FREEH: Well, I did report through the attorney general and directly to the national security advisor. Are you talking about Khobar?

MR. KERREY: Right. I mean, Dick Clarke and Mr. Steinberg, the deputy at the National Security Council, said that there was never anything -- never any written reports sent by the FBI to the NSC. Is that not true?

MR. FREEH: Well, if we're talking about the Khobar case, you know --

MR. KERREY: Well actually, I begin with Khobar, but all the way through this time period, it seems to me it was a mistake not to have you report directly on what you were learning to the National Security Council or to the President to let him -- because it -- since it was a domestic agency going over to investigate, as I've considered it, an act of war against a U.S. military installation in Saudi Arabia, it seemed to me that there should have been a reporting right back to the National Security Council what was going on.

MR. FREEH: But I guess what I'm saying is there was. I mean, Janet Reno and myself, together on a very, very regular basis; myself individually on numerous occasions directly with Sandy Berger, that's all we talked about was the Khobar case.

MR. KERREY: In an otherwise I thought exceptional staff report, the staff I think miscorrectly describes the seven cases that you were involved with, saying that most of those were overseas. In truth, three of them were domestic and four of them were overseas; World Trade Center number one, Landmarks plot

number one, the Millennium, and indeed, if you include the threats against the city of New York during the 2001 trial, there were four domestic attacks and/or efforts.

Did the FBI ever produce an evaluation of the threat to the homeland during this period to the President? Or was there one requested of you?

MR. FREEH: There was none requested, that I'm aware of. I don't think we ever furnished a national threat report to the President with respect to homeland security.

MR. KERREY: I mean, of all the facts in this whole process that have just caused scales to fall from my eyes was listening to Betty Ong, flight attendant on Flight 11, talk to the ground and hear the ground surprised by a hijacking. I mean, not only were we not at a high state of alert in our airports, we were at ease. We stacked arms. I mean, we weren't prepared at all. And it's baffling to me why some alert wasn't given to the airlines to alter their preparedness and to go to a much higher state of alert. It seems to me that a lot of things would have changed if that would have happened. And I would respectfully disagree with your assessment of the Williams memo coming out of Phoenix, because I think had it gotten into the works up to the highest possible level, at the very least 19 guys wouldn't have got on to these airplanes with room to spare.

MR. FREEH: Well, Senator, I served on the Gore Commission, as your staff may know. And, you know, I thought the leadership, first of all, by the Vice President there was outstanding. I think the recommendations were outstanding. We spent many, many months writing detailed recommendations that asked for passenger screening, asked for many, many things which were never implemented.

The whole purpose and the conclusions of that report, if you read it, was that the airline industry and operations were vulnerable at multi points with respect to hijackings and terrorist attack. So I agree with you, there was no --

MR. KERREY: But, I mean, you said that, you know, we couldn't have had a declaration of war because public opinion wasn't there. I, by the way, disagree with that.

Public opinion wasn't on the side of the Bosnian war or the Iraq war in the beginning either, and the President made a determination in both cases to come to the American people and

say there's a crisis. But even absent a declaration of war, why did we let their soldiers into the United States? Because that's what al Qaeda men were. They were soldiers. They were part of an Islamic army called the jihad to come into the United States. Why did we let them in the United States? Why did we have -- why didn't the President -- why didn't President Clinton and/or President Bush issue an order to change the FISA procedures and other orders, to INS, et cetera, to make sure that their soldiers couldn't get in America? Why did we let them in?

MR. FREEH: Well, again, I think part of my answer is that we weren't fighting a real war. We hadn't declared war on these enemies in the manner that you suggest that would have prevented entry had we taken war measures and put the country and its intelligence and law enforcement agencies on a war footing. The Joint Intelligence Committee in one of their reports -- I think I excerpted the conclusion in my statement -- said that neither administration put its intelligence agencies or law enforcement agencies on a war footing. A war footing means we seal borders. A war footing means we detain people that we're suspicious of. A war footing means that we have statutes like the PATRIOT Act, although with time-et provisions give us new powers. We weren't doing that.

Now, whether there was the political will for it or not, I guess we could debate that. But the fact of the matter is we didn't do it. And we were using grand jury subpoenas and arrest warrants to fight an enemy that was using missiles and suicide boats to attack our warships.

MR. KEAN: Commissioner Thompson.

MR. THOMPSON: I want to explore in a little more detail one of the assumptions of Commissioner Ben-Veniste's questions. In looking at the Olympics, you had a defined event in a defined place over a defined period of time, defined airspace above the Olympic facilities. And so I presume that law enforcement planning to prevent any interruption or interdiction of the Olympics would have imagined any kind of possibility of intrusion of bomb, missile, plane, whatever, into that space. Is that correct?

MR. FREEH: That's correct.

MR. THOMPSON: And though you say the FBI was not involved with the planning of the G-8 summit in Italy, the same sort of

assumptions would have been made, would they not: defined event, defined place, time, airspace?

MR. FREEH: A defined and specific threat in time and place, correct.

MR. THOMPSON: Is it a fair assumption to leap from those kinds of examples to the notion that you could, with the best of intelligence or law enforcement or thought, (have) gone to an assumption that on any given day in any part of the United States, on any one of the more than 4,000 flights that are in the air on any given day in the United States, utilized the same methods and guard against the same kind of attacks? Or is that a leap too far?

MR. FREEH: Well, I think, you know, to amass the kinds of resources and protective operation that you've both alluded to in your questions, there's a limited capability in terms of duration for that kind of an operation.

For instance, with respect to the Millennium, we were planning for months and months prior to that event. And at the time of the Millennium, you know, thousands and thousands of law enforcement agents and other government agents, military personnel, you know, are on duty around the world because of a specific event. The attorney general and I were in, you know, our command post through the night on December 31st. But we could not have sustained that, you know, for weeks and weeks beyond that period, nor would there have been a basis to do that without a specific threat.

So I think to do the kinds of protective operations that we would like to do, and do in fact perform when NATO's meeting, when the Pope is visiting, when the President is at a summit, when the World Cup is going on, when presidential conventions are in session, all of those events, in specific places and times, because of the threats as we understood them, including airborne threats, we were able to marshal resources and perform protective operations. But you need a time and place to do that if you have resources available.

MR. THOMPSON: You testified that you transferred 600 agents from headquarters to the field because there was a 22-month hiring freeze in the FBI. Why was there a 22-month hiring freeze in the FBI, and when did it occur?

MR. FREEH: Well, you'd have to ask Congress about why they had the freeze. It occurred for --

MR. THOMPSON: So it was a congressionally imposed freeze?

MR. FREEH: Yes. We were not authorized to hire people for a 22- month period. When I became director in September of 1993 we were in the middle of that freeze, and it went for a total period of 22 months, which is why I was putting people on the street from headquarters.

MR. THOMPSON: Now the budgeting process in the federal government, with particular regard to the FBI, I assume works something like the FBI decides how much money they'll ask for in any given fiscal year, it moves up through the attorney general's office, goes from there to OMB, and from OMB to the Congress. Is that right?

MR. FREEH: That's correct.

MR. THOMPSON: In the whole time that you were the director of the FBI, did your initial requests for funding going up to the AG ever make it through that process, the level that the FBI requested?

MR. FREEH: No, and that's probably true for every agency in this town.

MR. THOMPSON: So true not only for you and the FBI, but your predecessors and successors and for every federal government agency. Is that right?

MR. FREEH: That's correct. That's how the budget process works.

MR. THOMPSON: Okay.

The PATRIOT Act has some provisions that are due to expire next year, I believe. Do you believe that those provisions should be renewed, and do you think the PATRIOT Act needs strengthening in any provision apart from that to help us protect America from terrorism?

MR. FREEH: Which provisions in particular are you speaking about with respect to renewal?

MR. THOMPSON: There is a -- there were at least two. And I think -- it may not have been in your testimony, but in the testimony we'll hear later this afternoon from acting director -

MR. FREEH: Yeah, it's not in my testimony.

I mean, I'll comment on them.

MR. THOMPSON: Yeah.

MR. FREEH: I just don't know which ones you're referring to.

MR. THOMPSON: I think maybe in Pickard's -- (pauses to search through materials) -- well, let me come back to that after I find what I'm looking for. And let me ask you this --

MR. FREEH: Okay. I can answer the second part of your question.

MR. THOMPSON: Go ahead.

MR. KEAN: This will be the last question, Commissioner.

MR. FREEH: Yeah. With respect to one area that's not addressed -- and I've mentioned this in my testimony, and the members of the Intelligence Committee and others have heard me testify about this repeatedly -- nowhere in the PATRIOT Act nor in any of the other post- September 11 measures is there any effort to address the issue of encryption. It's mind-boggling to me that in the aftermath of September 11th and the information that we've accumulated to date, including the use of encrypted channels of communication by terrorists, that our law enforcement agencies still do not have either the authority or the technology to break down encrypted messages.

And for those who don't know about the issue -- none of the Commissioners, but other people -- encryption is the technology that allows message bits, communications, either data or voice, to be scrambled so you can't understand what's being said.

Again, it's mind-boggling to me -- and I testified dozens and dozens of times, along with Janet Reno and others, for some relief -- that this is completely unaddressed. I think it's a huge gap in our national security, and one that I would urge the Commission to look at.

MR. THOMPSON: Thank you, Mr. Chairman.

MR. KEAN: Commissioner Ben-Veniste has one clarifying remark

MR. BEN-VENISTE: Director Freeh --

MR. KEAN: -- of 10 seconds.

MR. BEN-VENISTE: (Laughs.) I think I can do it in 10 seconds, Tom.

My good friend and former mentor Jim Thompson, I think, has misinterpreted the question put to you about the recognition by the intelligence community of the potential for planes being used as missiles. My question to you was -- given the substantial state of information, whether by rumor or by actual intelligence, relating to the use of kamikazes, suicide pilots, to crash planes into buildings, my question was, was it a failure in thinking not to re-position our domestic air defense, led by NORAD, to protect the capital and elsewhere against the possibility of attack on the United States by air, and particularly during time of heightened threat? You understood that that way.

MR. FREEH: Yes.

MR. BEN-VENISTE: Thank you.

MR. KEAN: Commissioner Lehman.

MR. LEHMAN: Thank you.

Director Freeh, welcome. I have just a few short questions.

First, during your tenure there were sanctuary laws enforced by New York City, by L.A., San Diego, Houston, Chicago and some other cities. These were well-known to al Qaeda, if not to the American public. These laws, as you know, in defiance of Section 133 of the Immigration Act, prohibit local authorities in those cities from cooperating with the FBI or INS in any matters having to do with immigration. Did this trouble you during your tenure, and did you try to do anything about it?

MR. FREEH: Well, as I mentioned in my written testimony, at the request of then-Deputy Attorney General Gorelick I made a series of recommendations with respect to the INS and asked that certain measures be taken, including legislative changes to give

us a better ability to first of all identify alien terrorists, and then detain them and remove them promptly from the United States.

With respect to the laws that you mention, I can't think of an instance in my tenure when that was a prohibition or an inhibition from us, either getting some information or doing something that we wanted to do. We were more frustrated with the length of time that it took to remove aliens for whom we had documented information with respect to terrorist activities.

MR. LEHMAN: And those recommendations that you recommended to Justice, they were turned down or just ignored or --

MR. FREEH: No, they were actually implemented. In fact, President Clinton, to his great credit, introduced in 1996 the antiterrorism bill, HR 2703. Unfortunately, when it was in the House there was an amendment that was entered that was passed by a large majority that stripped the bill of most of its important counterterrorism measures, in fact the ones that Deputy Attorney General Gorelick and I recommended. In fact, I think two of you actually voted on the amendment.

MR. LEHMAN: Thank you. (Laughs, laughter.)

The case law approach has been a subject of a great deal of criticism from many of the witnesses and interviewees. You've made an able defense of it in your op-ed piece and in your testimony. However, it certainly has some limitations according to some of the witnesses we've had.

We've had very senior officials in CIA tell us that they were unaware of any of the connections among the '93 World Trade Center terrorists because all the information was sealed and protected and not shared during the trial of the people. Particularly after that material was released and particularly after you were able to apprehend Ramzi Yousef, one of the principal actors who had escaped to Baghdad, Abdul Rahman Yasin, was in Baghdad and on the payroll of Iraqi intelligence. Did you recommend doing anything to extradite him or to render him in any way as one of the key al Qaeda operatives?

MR. FREEH: Well, over the period of years after the World Trade tower indictments in 1993, but then maybe more particularly following the Manila Air indictment in 1995, and of course the 1998 indictments with respect to Bin Ladin and his associates, we continuously recommended and actually put into

play operations to arrest and render fugitives back to the United States in those cases.

I don't recall an instance with respect to Yasin. With respect to Khalid Sheikh Mohamed, in early 1996 we actually staged agents over in the Persian Gulf and had an operation well underway to arrest him. He was transiting a country that we thought we could get access to him. Unfortunately, that didn't work. We believe he was actually tipped off about the operation. People like Kasi, who of course murdered the people outside the CIA, he was arrested by FBI agents, brought back, convicted of murder in Fairfax County. Ramzi Yousef we spoke about.

So we continuously tried to get, and did in many cases get these fugitives. I don't recall a particular plan with respect to Yasin.

MR. LEHMAN: One last question. The Oklahoma City case, again, one of the criticisms has been that once -- one of the problems of the case law approach to intelligence is that once you focus on convicting particular terrorists, that there has to be a hypothesis of the case, and that's where all the resources, the investigative resources, are put in. In the case of Oklahoma City, the hypothesis was that there were two Americans and they acted alone.

There's a new book out now, as you probably know, called, "The Third Terrorist," that has new information that begs for further investigation, showing the links or purporting very significant links between Terry Nichols and Ramzi Yousef in the Philippines, and also links between the two perpetrators and Hussein al-Husseini, the Iraqi, perhaps, agent.

Did you -- are you satisfied that you ran all of these potential al Qaeda links to ground with McVeigh and Nichols?

MR. FREEH: Other than that book, which I haven't read, you know, I don't know any other credible source with respect to that kind of a link. No, I have not run those links myself. I certainly was not aware of them when I was FBI director. I know that there is a review going on with respect to some of the matters that have been raised by his attorney in connection with the state murder prosecution that's ongoing. I guess I don't want to say anything with respect to that case as it's being tried now by a judge and a jury.

But I don't know of any connections, except the one you just mentioned, between Ramzi Yousef and that terrorist act.

MR. LEHMAN: Thank you.

MR. KEAN: Vice Chairman Hamilton.

MR. HAMILTON: Thank you, Mr. Chairman.

Thank you, Mr. Director, for your testimony. You commented in your opening statements about resources on several occasions. And I was looking at your recommendations at the end of your statement, your printed -- your written statement, and I quickly calculated about eight or 11 of those recommendations require additional funding.

Maybe I'm a little sensitive to this because of my experience in the Congress. I took a quick look at the appropriations for the FBI from 1996 to 2001. It went up from 2.3 billion to 3.3 billion, roughly. That's a very, very dramatic increase. The amount of FBI personnel and funding dedicated to counterterrorism more than tripled between 1993 and 2001. Can't get into the specifics of those figures on counterterrorism, because I think they're classified.

But I want to get a sense from you about this resource problem. I can understand in your position how you would constantly see the need for more resources. I'm not really critical of that. But your sense is that -- my sense of your testimony is that you could have done an awful lot better if you'd had a lot more resources. And in fact, you were receiving a lot more resources.

MR. FREEH: Yeah.

No, there's no question but we were receiving a lot of resources. I think my position, which was the attorney general's position, is there were not enough resources to work a counterterrorism program as the lead agency for the United States. As I said in my testimony, the FBI had 3.5 percent of the government's counterterrorism resources. And as you see in my recommendations, you know, the FBI only has 200 more agents now than it had back in 1999. It's not just a question of allocating agents from criminal programs to counterterrorism programs; it's really substantially enhancing not just the numbers but the training, the expertise, the continuity of people in that particular program.

I mean, I'll give you examples that have nothing to do with people. The Technical Support Center, which the Congress actually authorized in 1995: The purpose of that center was to create a domestic civilian law enforcement facility where we could use technology to solve encryption problems, to solve digital telephony problems, et cetera, et cetera. But the purpose was to give us and our state and local counterparts a counterterrorism civilian technical ability in those cases. It wasn't funded until after September 11th. COLEA was never funded fully after 1994. Example and example of that, which doesn't mean -- and there's nobody more respectful of the budget process than myself -- perhaps you. I know how the budget works and I'm not blaming anybody for not giving these resources.

MR. HAMILTON: I understand that.

MR. FREEH: What I'm saying is that we weren't focused on them the way we're focused on them today.

MR. HAMILTON: I appreciate that approach and I've listened to a lot of reports from commissions when I served in the Congress.

And one of the advantages a commission always has over the Congress is, we don't have to worry about raising the money. We can just make the recommendations to spend it. And there's a big difference, of course.

Final question relates to the broader responsibility. Director Mueller has made the pitch over and over again, and he's done it very effectively, that the FBI is changing its focus from law enforcement to the prevention of terrorism. And everybody of course nods their head in agreement -- that's exactly what ought to be done. This question goes a little outside the Commission's responsibility, but you mentioned a moment ago that we really have not had a large increase in agents. So what's happening is, we're shifting a lot of resources, money and agents, from law enforcement, from criminal prosecution to terrorist prevention. And in the environment of today's world, that makes a lot of sense to most of us. But do you worry then that the FBI is going to lose its effectiveness in law enforcement and criminal prosecution?

MR. FREEH: Well, that's an excellent question. I guess I don't believe that investigations are inconsistent with prevention. I subscribe to the theory that Mary Jo White and I testified to before the Joint Intelligence Committee, and which actually the court of review, in its November 18th opinion,

noted, investigations do lead to prevention. I don't think there's a dichotomy between them. Manila Air, the millennium, the day of terror in New York were all preventions as a result of good investigations.

So I think that's a false dichotomy between investigations and prevention. If you're doing good investigations, you're developing informants, cooperating defendants, like Omar in the trade bombing case. You're creating a database. You're sharing intelligence with other people.

I do think there's a great danger in taking people off investigations that aren't, again, case- or defendant-specific, but are enterprise-specific, and, you know, when agents are off the streets, this is my bias, perhaps, as a street agent, they're not making informants, they're not developing sources. September 11th, had we had the right sources overseas or in the United States, could have been prevented. We did not have those sources. We did not have that telephone call. We didn't have that email intercept that could've done the job. You get that by having sources, and you get sources by good investigations. You also prevent terrorism in that regard.

MR. HAMILTON: Thank you, Mr. Chairman.

MR. KEAN: Congressman Roemer.

MR. ROEMER: Thank you, Mr. Chairman. Welcome, Director Freeh. Nice to see you. And I want to just express my appreciation to you and your family for the sacrifices you made while you served as FBI director and also for your attention here today.

You probably paid attention to the last several weeks of testimony before the 9/11 Commission. We had somebody here by the name of Mr. Clarke and somebody here about a week later called Dr. Rice. They didn't agree on much. They didn't see eye-to-eye on much. They didn't share many of the same opinions. They did agree on one thing, and that was that the FBI could've and should've done a better job than they did leading up to 9/11.

I want to point out two instances where we may have had an opportunity to do something about 9/11.

Now I haven't come down on any kind of conclusion whether 9/11 was preventable, but let me throw these out to you and ask you to carefully respond to them.

One's the Phoenix memo, which I'll get to. The other is an instance where you have just talked about the informants of -- developing informants, getting information, sharing information.

We had an opportunity where we had two of the hijackers have numerous contacts with an active FBI informant. Out of the 19 hijackers, two of them have active contacts with an FBI informant -- doing the right kind of things, developing that informant, sharing information ahead of time from 9/11, the right kind of training for an FBI agent. Why couldn't this have made a difference leading up to 9/11?

MR. FREEH: Okay. It's -- let me give you a careful answer. And again, I don't know all the facts, except, as you know, you know, what I've been reading and listening to.

You know, the presence of those two hijackers in San Diego and their intersection with the informant -- obviously, you know, a very fruitful opportunity for exploitation, intelligence information; maybe, in the best of all circumstances, leading to prevention.

It would have been helpful -- it would have been helpful -- for the FBI at that particular point in time to know the names of those two individuals; that the information which was generated in the January 2000 physical surveillance, not by the CIA but by a liaison agency -- if that information and the initiation for that surveillance, which were phone calls to a central number, which you're well aware of, which plays an integral role not only in the East African bombings case but also in the *Cole* investigation; the, you know, June meeting when three but not all of the photographs were disclosed to FBI agents and the subsequent description of those events -- if all of that had worked the way it could have worked, and that informant, as well as informants all over the FBI's domain, were tasked to find out information about two specific people, you could have had a completely different result.

Now some of that's speculation, but some of it is theory.

MR. ROEMER: Well, later, Director -- later on we'll ask representatives of the CIA and the FBI whether or not that meeting in Kuala Lumpur should have led to the sharing of some of that information and those names.

Let me ask you another question. Here is a declassified copy of the Williams memo. And you said, in an answer to a previous

question, that you thought things might have been handled the proper way. This agent asks that two things be done: one, that the FBI should accumulate a listing of civil aviation universities and colleges around the country and share these with the appropriate liaison, and two, that the FBI should discuss this matter with other elements of the U.S. intelligence community.

Neither one of those is done.

Now I agree with you, this is not the road map to 9/11, but it's certainly asking to do two things, to New York and headquarters. Neither one of them are done. Why not?

MR. FREEH: Well, I don't know. I mean, I can't answer that obviously for the time and space reasons that are obvious. I could speculate on it, and what I would say is that, you know, the simple fact or the apparent simple fact of getting from all of those civil aviation schools around the United States, you know, names and identifying information of those students -- first of all you would have had to overcome a couple of federal statutes that prevent educational institutions from giving that information out without a subpoena or a grand jury request. Assuming you could have done that --

MR. ROEMER: But Mr. Williams didn't do that in Phoenix, did he? I mean, he found out the trend in Phoenix without having to go around a statute or a law, right?

MR. FREEH: Well, yeah, but what he's asking for is a national investigation that would direct itself --

MR. ROEMER: He's asking them to task.

MR. FREEH: -- to thousands and thousands and thousands of students who are from Arab countries who are taking flight lessons in the United States. I don't -- again, I wasn't -- I'm not privy to the information your staff is privy to. From what I've read and heard and talked to, I don't see how that memo unfortunately gets you to prevent the horror of September 11th. I just don't see it in any logical, nonspeculative way.

MR. ROEMER: I'm not sure that it prevents 9/11 either, but it sure points out two or three things that could have been done more efficiently.

Thank you, Mr. Chairman.

MR. KEAN: Our last questioner will be Senator Gorton.

MR. GORTON: Mr. Freeh, you heard just before your testimony the staff report on matters relevant to this hearing. The facts outlined in that staff report are almost certain to find their way into our final report unless someone shows us that in whole -- in some part they are irrelevant. I want to read you one paragraph -- it was the subject of Bob Kerrey's question -- and ask you whether or not it is accurate.

The staff report reads: "The FBI's inability or unwillingness to share information reportedly frustrated White House national security officials. According to the former national counterterrorism coordinator, Richard Clarke, the National Security Council never received anything in writing from the FBI whatsoever. Former Deputy National Security Advisor James Steinberg stated that the only time that the FBI provided the National Security Council with relevant information was during the Millennium crisis."

Clarke told us that Attorney General Reno was notified that the National Security Council could not run an effective counterterrorism program without access to FBI information. Is that a correct characterization?

MR. FREEH: I don't think it is. I can't speak for the frustration of other people, but with respect to sharing information -- you know, I didn't provide written memos to Sandy Berger or the President or anybody else at the NSC, but as I said before, the attorney general and I, every two weeks, almost like clockwork in the last 14, 15 months of our overlapping tenure, sat with Sandy Berger in his office for at least an hour, perhaps two hours, and went over every single piece of counterterrorism, counterintelligence case that we had.

By the way, Dick Clarke was never present at any of those meetings. Why Sandy Berger didn't want him there, I don't know. But we had detailed discussions of all those matters on a bi-weekly basis. So the notion that we weren't sharing information is, as far as I'm concerned, an incorrect characterization.

MR. GORTON: The FBI is a unique institution in the United States of America. You had a fixed term. Because of various activities under your predecessor, J. Edgar Hoover, and attempts, sometimes successful, in earlier administrations to use the FBI for political purposes, there seems to be a certain divorce or distance between the FBI and the White House. Did you

feel an ability to go to the President of the United States or to someone else in the White House during the Clinton administration freely? Did you feel that the White House felt free to contact you and communicate with you and ask you for information in a normal manner outside of the realm of politics during the Clinton administration? How many people in the White House did you ever see or communicate with? And then would you answer the same question with respect to the current Bush administration.

MR. FREEH: Yes, I will. I don't feel -- I don't feel that I had any restriction or any prohibition or certainly no reluctance to discuss and communicate with anybody appropriately in the White House, in the State Department, in the Defense Department with respect to any of the matters we've been talking about today or any other FBI matters. There was certainly no distance or separation between the attorney general and I. And we had -- I had, in both administrations, I think, the same relationship. I never felt any restrictions or inhibitions about communicating things. I don't think they did either. And they never expressed any to me at the time.

MR. GORTON: One final question, like the first question, another paragraph in the staff report. "The Department of Justice inspector general found that when the FBI designated national and economic security as its top priority in 1998, it did not shift its human resources accordingly. According to another external review of the FBI, by 2000 there were twice as many agents devoted to drug enforcement matters as to counterterrorism. On September 11th, 2001, only about 1,300 agents, or 6 percent of the FBI's total personnel, worked on counterterrorism."

Are those accurate statements of fact?

MR. FREEH: No, they're accurate. But again, I think they have to be balanced with the discussion we've had here today about resources. And with all due respect to the congressional appropriation process, in 2000, which was the last counterterrorism budget year that I testified for, you know, I asked for \$860 million -- I'm sorry -- (correcting himself) -- \$360 million, 890 positions. I got five positions and \$6 million. You can't fight a war with those kinds of resources.

So your report is accurate. I would hope the Commission would expand a little bit on the executive director's brief, although accurate, statements about resources and legal authorities.

MR. GORTON: Thank you, Mr. Freeh.

Thank you, Mr. Chairman.

MR. KEAN: Mr. Freeh, thank you very much. Thank you for your testimony, thank you for your public service, sir.

MR. FREEH: Thank you.

PANEL TWO OF THE TENTH HEARING OF THE NATIONAL COMMISSION ON
TERRORIST ATTACKS UPON THE UNITED STATES RE: "LAW ENFORCEMENT
AND THE INTELLIGENCE COMMUNITY" THOMAS H. KEAN, CHAIR; LEE H.
HAMILTON, VICE CHAIR

WITNESS: JANET RENO, FORMER U.S. ATTORNEY GENERAL

11:10 A.M. EDT, TUESDAY, APRIL 13, 2004

MR. KEAN: Our second witness today will be the Honorable Janet Reno, who served as attorney general of the United States during the Clinton administration.

Madame Attorney General, we are very pleased to welcome you today before the Commission. Would you please rise and raise your right hand?

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MS. RENO: I do.

MR. KEAN: Please be seated.

Madame Attorney General, your prepared statement will be entered into the record in full. We would ask you to summarize your opening statement and proceed.

MS. RENO: Thank you very much, Mr. Chairman. It is a privilege to be here before you today because I believe this commission is performing a function of the utmost importance to our nation's future. I thank you for giving me the opportunity

to give my perspectives, based on my service as attorney general.

We understood from early on in the Clinton administration that terrorism posed a grave threat to Americans on American soil. The bombings of the first World Trade Center -- the bombing in the first World Trade Center case took place just before I came into office. I inherited that case. I had the opportunity to be briefed; I had the opportunity to meet with the prosecutors and the agents involved to understand the details and to follow through on the case as it expanded into further investigation involving Sheik Rahman. I even made the final decision to indict Sheik Rahman.

So it has been an issue that has been with me ever since I first became attorney general. And I've continued to think back to those days when I made that decision, did not know of the connection with al Qaeda, and watched it develop, so that by 1998, we understood that it was a terrible threat to this country and that we had to do everything we could to be prepared.

Other events followed, and they gave me better perspective. But what I think is important for me to do today, Mr. Chairman, is to try to come to the issues so that we can answer the questions of the family, so that we can provide the best advice we can on how we can prevent this for the future -- not talking about blame, not talking about partisan politics. And this commission has done, I think, a wonderful job in terms of trying to get to the issues without the politics involved. I think we owe it to the American people.

I think, as we -- just to set the background, I came into office in March of 1993. There was a change in leadership to come in the FBI. We inherited a situation where there were budget difficulties. We had two major operations under way, systems being designed, the NCIC system and the IAFIS system, that were to become very important to the FBI. But they were over budget and behind time. Director Freeh had to face these situations, and there was much to do. But, I think, let us look at what needs to be done.

First of all, I am so proud of the FBI, the agents that I've worked with. I've seen so many in action. I've seen them do incredible things. I've seen them risk their lives. And I have a profound respect for all the people that I have worked with in the Bureau.

But quickly, when I came into office, I learned that the FBI didn't know what it had. We found stuff in files here that the right hand didn't know what the left hand was doing. And it was obvious that the development of a computer system and a system of automation would be very helpful to it. But it was also important for people to begin to look at manually what they could do to find out what they had and what they didn't have, and we proceeded in that direction. Sometimes I thought we had made progress, but then we'd find something else that we didn't know we didn't have.

It was very difficult for the FBI to get that problem solved, with Congress' concern about the overruns on the two major projects that preceded it. Director Mueller has had the chance to develop the program. From what I've heard, it's coming online or is online. I'm not sure. But the one recommendation I would make first is that he be given the congressional support and that we find the expertise, if any further is needed, to ensure that that system works correctly, to ensure that agents and others who utilize it know how to utilize it to its maximum capability; that we address the issue of security and understand how we maintain this system, which will be the repository of probably more information than most any other agency could compile on such a diverse number of issues. And I just think that that would be extremely important.

Director Freeh has suggested that there were two other issues that were problems: resources and legal authorities. I think it's important -- I checked yesterday with the department and the best I can read, in the year 2002, he submitted a budget of over a billion dollars. I think I asked for an increase for \$462 million, of which part of it was -- and I can't go further on that.

As Director Freeh pointed out, everybody knows that we're competing for limited resources in the budget process, and people ask for more than they know they're going to receive. But I worked very closely with Director Freeh to try to make sure that we properly pursued a request that reflected the needs of the Bureau. I checked and an appeal was taken from two items. I think I approved both items. And what I think we need to do is make sure, and Director Mueller may have already addressed this issue, make sure that we provide the FBI with the financial expertise that is necessary in the budgeting process and in the technology process to make sure that we understand the processes of Congress and get it done right.

With respect to reprogramming, when I came into office I was told that the FBI had come out of the Cold War. They now had agents who needed something to do and that they had been assigned to and were involved in fighting street crime. Well, America has a lot of resources committed to fighting street crime now. Community police officers were hired, other steps were taken. Crime is down and state and local law enforcement can do that, or at least do a very good job of it. If we needed to reprogram, I told Director Freeh, let's do it and get these people into counterterrorism. We have a drug enforcement agency; if we need to do it, let's get these people into counterterrorism.

Yes, it's sometimes difficult to get reprogramming approval from Congress. But if we have people who work with the Department of Justice, do it the right way, come forward in clear statements, I think we can do a lot more in terms of reprogramming. And if Director Mueller needs support in that area, I think that's important.

With respect to sharing, one of the frustrations is that the Bureau, even when it finds that it has something, doesn't share. And it says it doesn't share because legal authorities prohibit it from sharing.

But I haven't been able to find, with respect to the one instance of the two who came into this country and how we just missed them, what prevented anybody from sharing.

Much of these issues -- many of these issues will or have been resolved by the passage of the PATRIOT Act or other statements, but I think it is extremely important that the director or whoever leads the FBI understands that you've got to repeat the message again and again. And when you institute new programs -- and I've seen it now based on some of the steps that I took -- you've got to make sure that people understand and are trained in an effective, comprehensive way as to new proposals. Otherwise there tends to creep in a feeling that, well, I don't have to do this or that's too much trouble or it's -- if they know how to do it and if we train them right we can expect far more.

They say they can't exchange information with the CIA, but it's all in the context of cases where the FBI and the CIA have been exchanging information. What suddenly prevents them in one situation and not in the other? We can't be selective. Again, we have got to change, and the only two limitations that I have

seen with respect to the transfer of criminal investigation materials to the foreign counterintelligence effort is grand jury and Title III. It had been our impression that with appropriate authority then we could do that, and did that in a number of instances, but that's not an issue anymore. And if there are any issues that linger and remain that say we can't share because of legal authorities, then let's make sure that we've addressed those, and if we haven't addressed them make sure that we take training steps to do it.

I'm not sure that I heard Director Freeh correctly, but one of the points that I think he made was to the effect that the 1995 direction that I gave by letter, that anybody who had reasonable suspicion that they had foreign counterintelligence information that would be relevant to a criminal investigation should take steps through the letter that I sent to make sure that contact was made with the Criminal Division -- Director Freeh says that shouldn't apply in counterterrorism cases, but if the FBI people have information that will go to the investigation/conviction immediately of the person we're trying to take out of the system, then it seems to me a good thing to do.

I don't blame anybody. I'm responsible. If somebody wants to be responsible it's going to be me because I tried to work through these issues while I was attorney general and time ran out on me. And I want to do everything I can to make sure that we move forward in a spirit of cooperation and in a spirit of thoughtfulness. If there are problems that develop, then I think it's important that we address those and get those clarified.

There's a lot of talk about --

MR. KEAN: If we could sum up now, because we're getting short on time.

MS. RENO: -- a lot of talk about a new agency. Don't create another agency. The worst thing that you -- or recommend it. The worst thing you can do is create another agency and then we'll be back talking about whether they can share here or there or what. Let's try to work through it. Director Mueller has the confidence of so many people. He is a wonderful person. He worked with me when he was the U.S. attorney in the Northern District of California. He is approaching things in a thoughtful way. Let's back him up and give him the best tools we can to get the job done.

MR. KEAN: Thank you very, very much.

Lead questions are going to come from Senator Gorton.

MR. GORTON: When Osama Bin Ladin declared war on the United States, did he have a position, in your view of the law, that protected him from assassination under the anti- assassination attempt provisions of our laws and regulations?

MS. RENO: I have not opined on that, and I would have to look at all the facts at the time of the fatwa to know.

MR. GORTON: That's preliminary to a number of reservations, or even complaints, that we have heard directly or indirectly from people in the CIA that your office counseled the White House against any memorandum of notification which unambiguously allowed for the CIA simply to kill or to eliminate Osama Bin Ladin, and that that contributed to the fact that all of its plans inside of Afghanistan failed to come to fruition or were never ordered into execution. Can you comment on that? Did the CIA or did anyone in the White House ask your view as to whether that phrase could be unambiguous? And did you answer that question in the negative?

MS. RENO: I was not asked whether they could assassinate him. I was asked whether they could capture or -- and follow through.

MR. GORTON: Okay. You were only asked if they could capture him or perhaps kill him in an attempt to escape or to resist that. You were never asked the question as to whether or not he could be killed unambiguously?

MS. RENO: I need, Mr. Chairman, some direction. I don't know what the Commission has done in terms of the declassification of these issues. And I want to be able to answer the question.

MR. HAMILTON: Madame Attorney General, I think if there's any doubt in your mind, we should probably talk with you about it privately rather than publicly, particularly on this subject, which is a very sensitive one.

MS. RENO: I'm happy to do anything that will forward the issue. So --

MR. GORTON: We'll submit that question then to you in a closed session.

You've heard Director Freeh speak of his relationships through you with the White House on these security issues. Would you characterize for me whether you felt that the President and the White House and the National Security Council felt any inhibitions about relationships, questions to, or answers from the Federal Bureau of Investigation while you were attorney general, by reason of the history of the sometime misuse of the FBI by -- you know, in previous administrations. Or was the communication free and open, as far as you were concerned, during the whole Clinton administration?

MS. RENO: When -- I think when Tony Lake was national security advisor, he came to the Department of Justice and we discussed the exchange of information and the necessity to keep the national security advisor informed. There was concern because these were criminal cases, and I think the Bureau had some concerns. But I said in any instance in which any investigation or any effort that the FBI was undertaking had an effect on national security, some of the top people on the National Security Council would be advised. We were supposed to reduce that to writing. It never got reduced to writing, but it was always the governing principle that I had. It didn't get reduced to writing because people were concerned about the independence of the FBI and couldn't get the language straight. But I think the communication developed there --

MR. GORTON: In fact, the relationship worked, as far as you were concerned, openly and freely?

MS. RENO: There would be complaints made. And that's the reason during the last year and a half I went to a situation where we had regular meetings between Director Freeh and Sandy Berger and myself.

MR. GORTON: And did you feel that your communication -- your lines of communication with Director Freeh were free and open and that you always got the information from him that you needed?

MS. RENO: I had a working relationship with Director Freeh where I could call him and say, "May I come see you and see exactly what's going on. Can we sit down and talk about it?" And I always felt that I got a very straight answer and had a good working relationship with him.

MR. GORTON: One of the factual findings of our staff for this meeting here today says that you were -- that you had already

told us in private sessions that you were very concerned about the Bureau's information-sharing and intelligence capabilities. And the staff statement goes on to say, "In 2000, Reno sent several memoranda to Director Freeh expressing these concerns. One memo stated that, quote, `It is imperative that the FBI immediately develop the capacity to fully assimilate and utilize intelligence information currently collected and contained in FBI files and use that knowledge to work proactively to identify and protect against emerging national security threats,'" end quote. "Reno's requirements involved improved information sharing, improved counterterrorism training, a threat assessment and a strategy to counter that threat." And then it goes on to say, "It is not clear what actions the FBI took in response to these directives from the attorney general." Is it clear to you? Did the FBI respond positively to that direction?

MS. RENO: What I think had happened -- and I'm not sure exactly of the time frame on it, Senator, but what I think happened in the chronology is that Bob Bryant had started earlier to look at some of these issues with respect to how we organized and how we managed the information and how we assigned priorities and how we assigned tasks and how we made sure that we filled the gaps with respect to intelligence information.

When Bob Bryant left, Dale Watson pursued this and continued to try. I think we -- both men made real progress, and I think that much of what I hope has been done in the Bureau has built on that progress. That's what I was trying to get at.

I sent the memo and -- along with other memos, at about the same time, to make sure that we were absolutely on the same wavelength, because there had been -- for example, I kept finding evidence that we didn't have -- didn't know we had. And I would talk to somebody, and they'd say, "Well, just wait till we get automated." I said, "How do you know what you're going to automate unless you find it now? You're going to have to find it now, so let's start and get ready to go." And it was a push in that direction.

I think this is going to be -- when it's finally totally implemented, it's going to be a tremendous tool for the Bureau. It probably is now. I don't know. But that was my reasoning.

MR. GORTON: So this was a long-range direction, going well beyond the end of your term as attorney general, but you think progress was being made as a result of that memorandum --

MS. RENO: I don't know whether it was as a result of the memorandum. They may say they were already doing it. But I did it to push it. And then when the attorney general invited me to have lunch with him after he was sworn in, I came up to Washington. And we sat down and talked about issues that I thought were important, and I gave him a set of the memos.

MR. GORTON: Now I'd like, as my last question, to have it very open-ended and to get the -- for us the benefit of your wisdom from eight years as attorney general and much deep thought on this subject: with respect to the PATRIOT Act. On page 4 of your written testimony, for example, you say, "We continued to seek additional authorities, such as pen register authority under FISA, which we were not able to get passed during my tenure, but that ultimately became a part of the PATRIOT Act."

And Ms. Gorelick tells me you also asked for legislation lowering the FISA bar with respect to intelligence sharing.

Your reflection now, after several years, just in general terms on the PATRIOT Act, did it go too far? Did it not go far enough? Are some of the provisions -- are there some of its provisions about which you have reservations and would not like to see renewed? And are there elements related to our national security that weren't included in it that you would recommend that Congress adopt when it deals with the renewal of the PATRIOT Act?

MS. RENO: I have been asked about the PATRIOT Act, and I've always said that the PATRIOT Act was kind of the umbrella that everything -- that everybody saw happen after 9/11 that they didn't like it fell under. But generally everything that's been done in the PATRIOT Act has been helpful, I think, while at the same time maintaining the balance with respect to civil liberties, except with one respect, to one matter. And there has been so much discussion about it, one of the things that I hope we might be able to do is to build on what the Commission does and have an opportunity to sit down in a thoughtful, nonpartisan way and talk about the details of the PATRIOT Act so that people will have a better understanding of them.

But one issue is with respect to FISA searches. I don't have all the details with me, but that would be one area that I would like to learn more about in terms of the Administration's perspective. And it just seems to me a wonderful time when we could stop for a minute and say this is national security, this

is where America should come together, this is how we should sit down, and must address these issues and see if we can come up with a consensus that will have the confidence of the nation.

MR. GORTON: So of all of the provisions of the Act, the one that you believe requires the most discussion and concern without having a specific position is those search authorities?

MS. RENO: Yes, sir.

MR. GORTON: Now, are there things that you think would be helpful in promoting our national security that were included in the original PATRIOT Act that you would recommend in any successor act?

MS. RENO: I can't think of anything off the top of my head.

MR. GORTON: (Laughs.) In other words, it covered all your wish list and more? (Laughs.)

MS. RENO: Where I think we've got to go -- it's important to cover the wish list, but where we've got to go is making sure we use our experience to make the system work. It's not going to be resources. It's not going to be legislation necessary. It's not going to be legal authorities. It's going to be people sitting down and starting to exchange information, starting to share, starting to trust each other, starting to end the culture that says this is mine, I've got to keep it to me because it's my case.

MR. GORTON: With respect to the way in which we deal with intelligence activities inside the United States for national security, do you believe that the FBI is the proper agency for that, or that it should be separated, you know, from, you know, the agency and handled in a different fashion?

MS. RENO: I have seen the FBI do absolutely wonderful work, and I think if we can address the issues that I talked about, in terms of resolving confusions, addressing points that need resolution, I think the FBI can do a wonderful job for this country.

MR. GORTON: From your observation from the outside, do you think Director Mueller is moving in that direction?

MS. RENO: I think he is. I have a great respect for him and I think we should all back him up and help him get the job done.

MR. GORTON: Thank you, Mr. Chairman.

MR. KEAN: Congressman Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

Welcome, General Reno. And nice to see you again, and appreciate your testimony to us.

You've mentioned several times that you hope to have a nonpartisan discussion between us and sit down and talk about these key national security issues. I hope that's what we can have here this morning, a very honest discussion. We may have a disagreement or two, but hopefully we can engage in that candid discussion.

Let me start by asking you about the FBI, the memos that you sent to the FBI.

One was on February the 29th, 2000. And you sent it to the FBI to, and I quote, "develop and implement a system to ensure the linkage and sharing of intelligence, evidence and other relevant information," unquote, among all components of the FBI, and stating that you wanted, quote, "the system in place by October 1, 2000," unquote.

In March, a March 8th, 2000, letter, again to the FBI, you write, and I quote, "the bottom line is that we must develop a capacity within the Federal Bureau of Investigation, in all fields, to identify relevant information and share it internally and then share it securely with other agencies as authorized by law and the attorney general guidelines," unquote.

And then a May 2nd, 2000, memorandum, to the FBI. You say you believe it's imperative that the FBI "immediately develop the capacity to fully assimilate and utilize intelligence information currently collected and contained in FBI files and use that knowledge to work proactively to identify and protect against emerging national security threats," unquote.

Pretty strong memos; memos that you shoot off almost every month for a four-month period. What prompts these concerns on your part, about emerging national security concerns?

MS. RENO: What prompted me is we had an opportunity during the millennium investigation, in the process that led up to it, to come together, to work together. And I would ask about a

specific matter. Have you checked this to see if we have any additional information?

MR. ROEMER: Can you give me an example of that, General Reno? What --

MS. RENO: I was trying --

MR. ROEMER: What triggered it, in your mind?

MS. RENO: What would trigger it is something that I had learned before where I discovered that they hadn't checked to see whether there was information in a certain district, though they knew they might have a person there that might be involved.

And it was just going through that investigation, going through the long nights that we sat there and tried to put the pieces together, the meetings with the principals, it was -- we don't have it yet, and I don't want to leave this office without making sure that we are on track.

MR. ROEMER: Let me ask you --

MS. RENO: Louis' response was -- and the reason I sent the one memorandum that says I realize that automation may be important -- Director Freeh had said we need the automation. And he's absolutely right. And it was very difficult for him to get that automation in light of the prior overruns on systems that he didn't have real responsibility for.

MR. ROEMER: Did you feel like you were frustrated in sending the series of memos to try to trigger this activity, this proactive activity at the FBI?

MS. RENO: I think they express a certain amount of frustration, but it was not so much frustration as to, let's get it understood; if we don't have the automation, what have we done to start finding what information we have? And I think by the fall, he had identified the expert -- the retired IBM expert and we were on the way to getting it worked out. But I still think it has been a difficult process. And I don't -- I am not criticizing Director Freeh, I am talking about what I thought was essential at the time. And it expresses frustration, but more importantly, it's hey, here's a vision, let's achieve it.

MR. ROEMER: Did you lack confidence in the FBI's ability to accumulate information due to these technological problems?

MS. RENO: I didn't lack confidence in its ability to accumulate. It accumulated more information than, I mean, it --

MR. ROEMER: How about share it?

MS. RENO: Knowing -- what I lacked confidence in was it knowing what it had; and the second thing was, if it knew what it had, sharing what it had.

MR. ROEMER: Now, you said in your statement that "Shortly after he took office, Attorney General Ashcroft invited me to lunch with him," and you gave him these same sets of memorandum. Did you feel like there was some progress then after you gave these same pieces of paper to General Ashcroft, that he was going to implement this change and do something different from what the FBI had done or not done leading up to that time?

MS. RENO: I had, obviously, left office by that point and was no longer briefed or privy to what was going to be done, so I don't know what was done. And I apologize to everybody concerned if I've been presumptuous in suggesting what Director Mueller needs, because I haven't really been involved, but I'm giving my historical perspective of the time. And I think Attorney General Ashcroft was very gracious and said "this is very interesting," and I don't know what happened after that.

MR. ROEMER: Let's stay on the topic of your relationship to the new attorney general. In the transition period, were you able to brief Attorney General Ashcroft as to your concerns on counterterrorism? And did al Qaeda come up in that briefing?

MS. RENO: I don't know whether al Qaeda came up in the briefing or not. I cannot recall whether I specifically talked to him about al Qaeda. But what I did talk about was reflected in the memos which I gave him, which is if we don't put the pieces together and connect the dots, there's going to be something that happens. And there is so much information out there, it is so important that we get this done. And that's the reason I brought the memos with me.

MR. ROEMER: Do you recall -- and excuse me for pushing you on this -- but do you recall mentioning al Qaeda, Osama Bin Ladin, domestic cells of terrorists in the United States to the new attorney general?

MS. RENO: No, I don't.

MR. ROEMER: You don't recall that. Do you recall being briefed on that type of domestic threat by FBI personnel sometime in the 1990s?

MS. RENO: Cells? What I was briefed on was what the Bureau had underway. I don't recall a briefing on cells in the United States.

MR. ROEMER: So all throughout the 1990s, when you had people like Dale Watson or Director Freeh, your contacts with the National Security Council, they never briefed you on al Qaeda cells or a presence of al Qaeda in the United States -- '98, '99, 2000, sometime in that period?

MS. RENO: They briefed me on the presence of al Qaeda in the United States. But in terms of cells and where they were, I don't recall such a briefing.

MR. ROEMER: And therefore, you had no specifics at that point, so you did not brief the new attorney general on something like that?

MS. RENO: What I thought was important was with respect to all terrorism issues, I told him that it was, to me, one of the most important issues. And one of the things that is critically important, I never focused just on al Qaeda because I stood there and watched the Murrah building in rubble, just as we saw the beginnings of the Oklahoma City bombing on CNN and tended to jump to conclusions. You can't jump to conclusions. You can't say that one thing is going to be our overriding issue.

I think one other recommendation I would make is we have got to be prepared for terrorism in any form, and a focus on one is going to make it difficult.

MR. ROEMER: I want to push back a little bit on the Clinton administration here and the priority on terrorism. You say in your statement, "Priority of Counterterrorism Efforts: Counterterrorism was a top priority for the Department of Justice. This priority was reflected in the department's Strategic Plan."

Now, if it's a top priority for you and your administration, wouldn't that be one of the first things that you brief to the new attorney general -- counterterrorism, al Qaeda, the domestic threat?

MS. RENO: Which I did, and which I set -- I did. And the point that I thought most important to make was, if we were going to protect this nation's economic and national security, we had to be prepared at the Bureau in terms of the information, information sharing, organization, training of people, and that was the point I was making.

MR. ROEMER: Okay.

Well, let me come back to a time period when you seem and the Clinton administration seems to be working on al Qaeda and the Millennium threat with meetings five and six times a week, maybe a couple a day with principals involved in them during the Millennium period, in December of 1999. Do you recall, General Reno, at all -- can you describe your personal role in this Millennium threat period, how often you may have sat down with the national security advisor, Sandy Berger, the President of the United States? The Clinton administration has a great deal of success during this time period deflecting or foiling Millennium plots. A great deal of this, in my humble opinion, my theory is because of this small group that is meeting at the top levels of government and pushing decisions down into the bureaucracy to get things done.

I want to know your recollection of this time period. How often were you meeting with the principals? How often were you meeting with the President? How involved were you in this? How involved were you with the FBI and the CIA?

MS. RENO: I spent a lot of time at the SIOC.

MR. ROEMER: The SIOC? If you'd explain.

MS. RENO: Somebody help me. (Laughter.)

MR. : (Laughs.) Secure --

MS. RENO: Strategic Information --

MS. GORELICK: -- Operations --

MR. : -- Operations Center.

MS. RENO: -- Operations Center. I would meet with them at the SIOC.

Let me stress, and I think it's important because people have dismissed what happened during that time by saying it was because of an alert Customs officer. I want to pay special commendation to the alert Customs officer. She was sharp and right on target, and it was an extremely -- it wasn't a lucky break. It was a great break by a good officer.

But it is so important to be able to capitalize on this, to follow through. You have a window. You have an opening to see what's happening, and it was extraordinary to sit in that command center and to see the results come in and to follow it. And then during the height of the crisis I literally sat at the Office of Intelligence Policy Review till the early hours of the morning to be prepared to sign it at the soonest time possible, to sign the FISA application. And to see the whole network and operation is an extraordinary experience, and something -- people told me when I came to Washington that there would be one area that would seem mysterious and would be new, and that was the intelligence function of the department.

You can't go to the university to really learn it; at least I haven't found the course that really teaches it. You've got to come in; you've got to be as prepared as you can to learn to find the good people that can make the difference, find the people that make the link. And sometimes, you've got to sit together. And so I can say, but George --

MR. ROEMER: And George, was that George Tenet, the director of the CIA?

MS. RENO: -- referring to Tenet -- what about this and what about that? And --

MR. ROEMER: Was Mr. Freeh in the room with you as well?

MS. RENO: Director Freeh would oftentimes be there. And the Bureau did a wonderful job, but you can't -- I think it's important for the principals to be involved because they can cut through to the hard issues, they can cut through the red tape, they -- it is very important.

MR. ROEMER: My time's just about run out. Just to clarify one point then. You think the decision made by the guard on the border to get Ressayre coming into our country to bomb the Los Angeles International Airport then was somehow related to the frenetic, active activity --

MS. RENO: No.

MR. ROEMER: -- of the principals meeting?

MS. RENO: No. I think she did that -- I mean, I think that was just good police work. And it was a lucky break for us. But you've got to capitalize on lucky breaks and understand better how -- what you can learn from them.

MR. ROEMER: So the fact that these principals are meeting does have an impact on bringing the CIA director, the FBI director and you and the President together to make decisions on a regulate basis.

Thank you very much.

MS. RENO: And you asked a question, how many times I met with the President. I don't know.

MR. KEAN: I just have one question. I agree with you, this intelligence business that I've been getting to learn is very mysterious. And nobody teaches it, I guess, outside of this town. But -- and the FBI to me is particularly frustrating, because everything -- I know, everybody tells me it has wonderful, wonderful agents, and I know some of them, and they are wonderful people, totally dedicated. And there are totally dedicated people throughout the agency. And yet the agency doesn't work very well, and hasn't worked very well for a long time. And you all tried to reform it, and now we have another effort of reform going on.

And I guess the big question: Everybody talks about the word "culture." Everyone says you've got to reform the culture of the FBI, otherwise it doesn't work -- it won't work in the new era we're now in. And I don't know how to change a culture, except that the present director is making a number of efforts. And the question comes, can any one man or one administration change a culture, or do they just wait you out, and when you leave, it goes back to being the same old agency that hadn't worked very well before? We can't afford that in this country. We can't afford to have an FBI that doesn't work.

And so do you think one man or one administration, or if we keep on with this reforms, that this agency is going to start to work?

MS. RENO: One of the ways you make it work is not to give up and not to change the boxes and shift things around so that we have to learn a whole new procedure and spend our time doing the procedure. It's -- I just -- I have great confidence in the director.

I think he has built on what others have done, what Louis, what Dale Watson, what Bob Bryant and countless agents have done. I think he knows what needs to be done. I think we should back him up and not give up.

And I think all of us who have been involved in the process care so much that it works, that we should our institutional knowledge, again in a thoughtful bipartisan way, to sit down and say, "This isn't politics in America. This is the national security. This is our nation's safety. Let's work together to come up with something that works."

MR. KEAN: Thank you.

Commissioner Lehman.

MR. LEHMAN: Thank you.

Welcome, General Reno. During the years that you were attorney general and before and after, right up till 9/11, there was an administration report issued every year called "Patterns of Global Terrorism." And in it, the counterterrorism policy was described as -- and I quote -- "to treat terrorists as criminals, to pursue them aggressively and to apply the rule of law."

Now during your tenure at Justice, in various documents that dealt with terrorism, your priorities were laid out, number one, to obtain the successful prosecution of terrorists and, number two, to protect the rights of personal privacy.

Were they accurate reflections of the priorities, or did the priorities shift as time went on?

MS. RENO: The priorities shifted as -- almost immediately. I think Director Freeh made clear that we have got to start talking about how we prevent it and how we deter it and how we intervene with it. And I think that has been the important step.

At the same time, it is important to understand what Director Freeh was saying: that one of the best ways to prevent it is to

get hold of the information, follow it and make the arrest before it happens.

MR. LEHMAN: But one of the problems of that perception -- because I'm well aware of the long lag between the changing of official propaganda, which continued right -- unchanged through three administrations, and the reality underlying it -- is that other parts of the government view it very differently. And I'd like to pursue, on a strictly unclassified basis, this issue of authorities to act, because we've spent a lot of time with the Pentagon and asking the question why we had eight years of -- following the '91 events and then the '93 events after that, to go after al Qaeda and Bin Ladin, and there was -- there were very, very few attempts.

And the recent book by Mr. Coll and the articles in the Washington Post and the book "Ghost Wars" quote senior officials in CIA and the Pentagon, and indeed in the NSC, that -- as follows -- and the reason -- and I don't want to go outside of public documents. But the reason I'm quoting them is that we got a lot of classified testimony that is not inconsistent with it.

(Reading.) Attorney General Reno and her Justice Department were deeply invested in law enforcement as the approach to terrorism. And this translated into, the Pentagon and CIA must make a good-faith effort to capture Osama for trial before targeting him as an individual.

Again, just asking your personal view and not based on any classified information, is that an accurate reflection of your view --

MS. RENO: I think he could be captured or killed.

MR. LEHMAN: Captured or killed.

MS. RENO: Mm-hmm.

MR. LEHMAN: This was translated by both agencies as having to mount a full-scale, good-faith, organizing logistics effort to capture him, and if he happened to get killed, fine, but you had to do that first.

Is that an accurate reflection of it?

MS. RENO: Again, my personal opinion was -- be that he could be captured or killed.

MR. LEHMAN: Roger that.

The other approach, apart from capturing or killing Osama, the Pentagon -- a number of senior Pentagon officials have written publicly, and I'll read from one of them. But again, it's not inconsistent with the classified testimony we have. And that is, quote -- talking to what they perceived as the Justice Department policies that we just talked about -- "If you declare terrorism a criminal activity, you take from the Defense Department any statutory authority to be the leader in responding."

Whenever the White House, and they're talking about Clarke here, proposed using Special Forces against terrorists, it found itself facing, quote, "a band of lawyers at Justice defending the turf." They would assert that the Pentagon lacked authority to use force, and, quote, "lawyers in the DOD would concur." They argued that we have no statutory authority because this is essentially a criminal matter.

Do you agree with that?

MS. RENO: I have not heard that before, sir.

MR. LEHMAN: Do you think that's a wrong interpretation and just making excuses by people who didn't want to go in -- put boots on the ground anyway?

MS. RENO: I don't know what their motivation would be.

MR. LEHMAN: Thank you very much.

MR. KEAN: Senator Kerrey.

MR. KERREY: Attorney General Reno, it's very nice to see you again. Thank you very much for coming and helping us try to figure this all out.

Later this afternoon, Cofer Black, who was the head of the CTC for I think a couple of years, I think framed his whole thing very well when he says, I'm -- he's going to say it and I'm going to say what he's going to say; which is, "I come here to tell you what we did, what we tried to do and what we failed to do." And it's in the last area that I'd like to focus some attention, because I see three big failures, mistakes, that were made both in the Clinton administration and in the Bush administration.

The first is the failure to give the Department of Defense a leading role in dealing with terrorism. It wasn't in PDD 62, and it wasn't changed until after 9/11.

The second had to do with allowing al Qaeda to come inside the United States. I understand after '98 we knew that they were part of an Islamic army intending -- and we saw on the 7th of August they had tremendous capability. We continued to allow them to come to the United States; we didn't put a full-scale effort on with consular offices and INS and FBI and all sorts of other people in the United States to try to prevent them from coming into the United States.

And the third is, I still can't get my head at the idea that we were not at a high state of alert at our airports on 11 September.

And I'd like to start with PDD 62, because I asked the same question to the President -- President Clinton and National Security Advisor Berger. Do you have any recollections of PDD 62 and why the military was not given primary authority to wage the war against terrorism?

MS. RENO: No, sir, I was not -- I'm not part of the Security Council, except if it's within my jurisdiction. And I don't recall that.

MR. KERREY: The PDD would not have been circulated through the attorney general's office?

MS. RENO: I think it was circulated through the attorney general's office with respect to legal issues.

MR. KERREY: Talk to me about the second, then. The second item is also equally perplexing. I mean, al Qaeda wasn't just a group of terrorists, they were part of an Islamic army called the Jihad Against the People of the United States of America.

Was there ever any discussions between you and the President, between you and the national security advisor, any internal discussions at all about saying, "We can't let this army inside the United States and we've got to make certain that we don't -- either through a consular office or INS or any other sort of point of weakness, allow them to penetrate our soil?"

MS. RENO: My conversations with Doris Meissner, Commissioner of INS, were that she focused on the issue of how we build the

database that gets the information with regards to terrorists. She found that working with the Joint Terrorism Task Forces and others were very important. But the problem was you had to get the information to her, and I think we failed there.

MR. KERREY: But it seems to me, though, it had to occur at a Cabinet meeting with the President saying, "Look, this is an army; we've got to figure out how to keep that army out of the United States." Did that ever occur at any Cabinet meeting?

MS. RENO: I don't recall any Cabinet meeting that addressed that.

MR. KERREY: Well, help me with the last one, then. I didn't have time earlier to follow up, so in some ways this is not fair because I'm treating you as if you're Director Freeh because --

MS. RENO: It's quite fair. Go right ahead.

MR. KERREY: -- I didn't like his answer. He basically hid behind the Gore report. I mean, we didn't need the recommendations of the Gore report to be at a higher state of alert than we were. I mean, we were -- we were at ease on the 11th of September; we were not prepared for a hijacking. How did that happen, in your mind? I mean, you had significant authorities over the FBI and, you know, this thing could have happened in 2000 as easily as 2001. What did we miss?

What happened that allowed us to be so relaxed on 11 September in our airports?

MS. RENO: I wasn't in office, so I can't --

MR. KERREY: No, no. I know. But we were just as relaxed as you were going out of office as we were on 11 September. I mean, this attack could have easily happened on your watch. I mean, we were just as vulnerable while your were attorney general as we were when John Ashcroft was attorney general.

MS. RENO: What I indicated to you and the Commission at the outset of this session were the issues that I think that we had to address at the Bureau. I gave my reasons for how they happened; what was necessary to address them; what had been done; what we could do to avoid it for the future. I think in the meantime -- and I would also stress something that's very important: I think people feel that because there is a strategy in place now, because there is a war, because we have come to a

war footing, that we are somehow or another -- we don't have to have the heightened sense of urgency that we saw during the millennium, for example. Somebody said we couldn't have sustained the millennium pace. But if the situation is such that the reports that I've seen -- and I have not been briefed on them; it's again what I've read in the papers -- you have got to be prepared in the best of circumstances and with the best of strategy for the people to meet who are the principals and work together to get the job done. And if it take night after night, our soldiers fight night after night and day after day, and we ought to be able to do it here.

MR. KERREY: Thank you.

MR. KEAN: Commissioner Ben-Veniste.

MR. BEN-VENISTE: Good afternoon, Attorney General Reno. Let me start out by making an observation that, with respect to my friend, Commissioner Lehman's questioning, that it is my understanding that the communication to CIA agents in the field with respect to kill or capture of Osama Bin Ladin was that they were told, pursuant to direction from the President, that they would be paid if they killed him or captured him, either way.

Let me ask you about millennium. After Ressay is captured by the alert Customs agent, Diana Dean, for whom we all owe a debt of gratitude, there was follow-up, as you have indicated. And Diana Dean, like Agent Jose Melendez, who testified before us in an earlier hearing and who alertly prevented the entry into the United States at the Orlando port of entry, the airport -- prevented Mohamed al Khatani, who we now believe was to be the 16th hijacker -- 20th hijacker, I'm sorry.

The work that was done after Ressay had been arrested by the alert customs agent was something which you had begun to discuss, and I would like you to have the opportunity to tell us about the cooperation among agencies in the follow-up and how that may have resulted in the roll up of operations in Brooklyn, in Boston and elsewhere.

MS. RENO: It was fascinating, Commissioner, to see how the pieces came together; working with authorities around the world, working with agents in New York, seeing how it came together; to see the exchange of information, to have people who trusted each other so that somebody from OIPR was talking to somebody at the CIA and another piece came together. People have talked about data as a -- like water coming out of a fire hydrant, and

sometimes it's just that one precious piece that can make the difference. But it all seems to just open a door so that you can observe how something like this could happen.

And it's based -- it was based on trust and the fact that the principals were there. They were exchanging information. They were sharing. I think that made an important difference. They were -- the principals were saying what about this. We need to get something translated. Well, get it to the Defense Department and they can get it translated. Cut through the red tape. Move it. I mean, we were in -- I put it to the equivalent of war. We do the best we can and the leaders should be there.

MR. BEN-VENISTE: Let me ask you whether, in your briefing of the incoming attorney general, you elaborated on the terrorist threat from al Qaeda within the United States. Being mindful of the Millennium threat that you had just talked about; the bridge and tunnel threat, which had been interdicted and interrupted by the FBI as Director Freeh had talked about; our unsuccessful attempt to prevent the first bombing of the World Trade Center; did you brief Director (sic) Ashcroft on the presence of al Qaeda cells in the United States and the potential of terrorist activity in this country?

MS. RENO: No, I didn't. I'd talk about it in terms of terrorism generally, threats to our national security generally, and the need to develop the capacity in the Bureau to collect the information, to manage it and to use it in the most organized way possible.

MR. BEN-VENISTE: And let me ask you --

MR. KEAN: Last question.

MR. BEN-VENISTE: -- a final question. You heard, perhaps, from Director Freeh -- there are others who have commented -- on the FISA court interpretation of the restrictions on the dissemination of information, and the fact that Director Freeh, a former federal judge, others in the Justice Department disagreed with the FISA court's narrow interpretation, which was ultimately overturned by the appellate court. Can you tell us why it was you did not seek to challenge the FISA court's interpretation during your term of office?

MS. RENO: We were in a situation where it seemed to me we had need for FISAs at every moment. We were getting the FISAs. We felt like we were doing it the right way.

We had, we thought, a good relationship with the court. And if we took an appeal, delay would occur, and we were worried about what effect it would have on the court.

MR. BEN-VENISTE: Could you not have taken an appeal on some matter of less urgency or to try to get a clarification?

MS. RENO: We looked sometimes for cases, but when you come to this crunch, it is usually the cases where you need the best facts to make the best law.

MR. BEN-VENISTE: Thank you, Ms. Reno.

MR. KEAN: Commissioner Fielding.

MR. FIELDING: General Reno, thank you for being here.

I'm very impressed -- I'm sure everybody's very impressed -- at the record that you've demonstrated of trying to acknowledge and fix issues within the FBI, as you perceived them, and tried to do from within, by trying to urge the director to deal with some of the deficiencies, as you saw them, and you just related those to us.

Did you ever advise the White House or the national security advisor or the President of those concerns about the Bureau and/or the director?

MS. RENO: When you say "concerns about the director," I had a good working relationship with the director. I mean, we might have disagreements, but concerns -- that's -- it was common knowledge that one of the problems was that the Bureau sometimes didn't know what it had and that it didn't share the information.

I think some of my frustration was urged on, if you will, by the National Security Council, and I told them what I was trying to do. I told them of the problems we had, the problems with respect to automation, and I don't recall ever briefing the President on it.

MR. FIELDING: Thank you. I'm also very interested in the effectiveness of transitions, because it seems to be -- especially when it's a transition between different parties, there's a short period of time -- in the most recent one, even a shorter period of time -- and especially in areas of national

security intelligence, there's a very vulnerable moment when the baton is handed off, in that period of time during a transition.

And I think this is something that I hope that we will be looking at carefully as a commission.

But in your dealings with the attorney general-designate or subsequently the attorney general, I was interested, you said that after he became attorney general, you met with him. Was that the first time you met with him to do any briefing or transitioning?

MS. RENO: I had called him when he -- I heard that he was nominated, offering to brief him. He said that he would wait till he got confirmed, and when he got confirmed, he'd call me.

MR. FIELDING: Okay. Now, during that meeting with him, did you ever express to him your concerns about the severe technology problems and deficits within the FBI?

MS. RENO: I expressed to him my concerns, and I gave him copies of the memorandum which outlined my concerns.

MR. FIELDING: And how about your concerns and the problems with "the wall," as we're calling it loosely, and legal authorities?

MS. RENO: With respect to "the wall," I told him that there was an issue with respect to -- arising out of the Wen Ho Lee report, the attorney general's task force report that Mr. Bellows conducted at my direction, and that there were concerns it was important that the July -- the 1995 memorandum be updated. And Deputy Attorney General Larry Thompson updated in, I believe, August. I told him that I had not made a decision, because we could not reach consensus within the department, and that it was important that they take a look at it as a follow-up. And I didn't want to make a decision that didn't have more consensus attached to it for the new Administration that might want to pursue a different course.

MR. FIELDING: And did you discuss with him any issues of the culture of the Bureau?

MS. RENO: I don't recall talking about the culture of the Bureau. I talked about the need to share, the need to develop the capacity to share and to organize the information in an effective manner.

MR. FIELDING: And was there any discussion about the personnel of the Bureau or any discussion about the retention or possible retention of Director Freeh?

MS. RENO: No.

MR. FIELDING: Okay. Thank you very much. Thank you, Mr. Chairman.

MR. KEAN: Commissioner Thompson.

MR. THOMPSON: Madame Attorney General, thank you for your testimony today. I think you were a bold and gutsy attorney general and stood up for what you believed and provided extraordinary leadership on many issues during your time. And I think the nation should be grateful for that.

MS. RENO: Thank you, Governor.

MR. THOMPSON: Two questions, if I might. In today's hearing and in past hearings, there seems to be an undercurrent or an assumption or maybe even something more specific or direct than that that there is some kind of reporting relationship or ought to be some kind of reporting relationship between the attorney general of the United States and the national security advisor or the director of the FBI and the national security advisor.

The director of the FBI reports to you, as the attorney general. Is that correct?

MS. RENO: That's correct.

MR. THOMPSON: And you, as a confirmed Cabinet official, report to the President. Is that correct?

MS. RENO: That's correct.

MR. THOMPSON: And while there are undoubtedly many appropriate occasions for you to confer with the national security advisor or members of the NSC staff -- and you did, and other attorneys general have as well, and other directors of the FBI has as well -- the national security advisor is not some sort of super AG or super director. Is that correct?

MS. RENO: That's correct.

MR. THOMPSON: In your prepared testimony on page 5 -- I think it's worth repeating this few lines and because you weren't able to do it in your opening remarks.

"There are simply no walls or restrictions on sharing the vast majority of counterterrorism information. There are no legal restrictions at all on the ability of the members of the intelligence community to share intelligence information with each other. With respect to sharing between intelligence investigators and criminal investigators, information learned as the result of a physical surveillance or from a confidential informant can be legally shared without restriction. While there were restrictions placed on information gathered by criminal investigators as the result of grand jury investigations or Title III wiretaps, in practice they did not prove to be a serious impediment since there was very little significant information that could not be shared."

If you were to have used those words in a legal opinion directed to the members of the intelligence community and specifically to the members of the FBI and the CIA, according to a lot of what we have heard in public or in private, and certainly according to a lot of assumptions reported in the press, the members of the intelligence community would have been astounded. Or am I wrong about that?

MS. RENO: I think some would have been astounded. I think it's, again, very important to understand, and I think I learned from this how important it is when you announce a policy, when you try to do something, that you make sure you train, you get feedback from people. And I think one of the things that I failed to do was to get feedback from them to understand exactly what their problems were with it, try to accommodate those interests, and proceed to ensure a full exchange of information.

MR. THOMPSON: In your answer to an earlier question you said that -- I think I'm quoting you correctly, and please correct me if I'm wrong -- that you did not say something like this or talk about this subject near the close of your administration because you had failed to achieve "consensus within the department" on the issue. What did you mean by that, and why would you, as the attorney general of the United States, have needed consensus within the department before you issued your interpretation of what the law did or did not demand?

MS. RENO: This obviously was a very sensitive issue, and to make a decision that I thought -- that might well -- that would

be binding -- obviously, they could change it. I should have great confidence, it seems to me, before delivering to the next Administration a decision. I chose to let the next Administration make the decision because -- no, you're right: I don't have to have consensus, but I've got to have a pretty clear idea of what's the right thing to do. Harry Truman said doing the right thing is easy; trying to figure out what it is is much more difficult -- (laughter) --

MR. THOMPSON: (Laughs.)

MS. RENO: -- and it was very difficult for me in that situation.

MR. THOMPSON: Thank you, General.

Thank you, Mr. Chairman.

MR. KEAN: Thank you.

I have one final question, just really a follow-up to Commissioner Fielding. You've been -- you're unique in a sense because you've been part of two transitions.

It seems every year, it takes every new administration that much longer to get its key personnel appointed and confirmed. It involves White House procedures, it involves requirements of the United States Senate, it involves financial disclosures. But every year the pile gets higher, and we're looking now at the Bush transition, between your administration and their Administration, when it took six months or more for some of their key personnel to really get into place.

You went through the earlier transition. Would you have any recommendations of any ways, particularly for key personnel such as in your department or in the national security area, to speed up these transitions so that administrations will be not left lacking key personnel at very important times for this country?

MS. RENO: I think it is absolutely critical that this nation sit down and come together and let the President of the United States, whoever he or she is, have the people that they think can best represent the interests of the Administration that has just been elected and that continues to serve during the entire four years. It is extremely frustrating to try to implement policy, to try to deal with these critical issues, to try to

understand all these problems and not have somebody that's confirmed.

MR. KEAN: General, thank you. Thank you very much for your testimony. Thank you for your service.

At this time the Commission will recess for one hour. Everybody should be back here, we'll start promptly at 1:30.

Wait a second. The chair's been asked to announce that the Capitol Police have asked that as you leave the room for lunch, please take all packages or bags with you because unattended items will disappear. They'll be confiscated.

Thank you.

PANEL THREE OF THE TENTH HEARING OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES RE: "LAW ENFORCEMENT AND THE INTELLIGENCE COMMUNITY" THOMAS H. KEAN, CHAIR; LEE H. HAMILTON, VICE CHAIR PHILIP ZELIKOW, EXECUTIVE DIRECTOR; CHRISTOPHER KOJM, DEPUTY STAFF DIRECTOR; AND BARBARA GREWE PRESENT STAFF STATEMENT: "THREATS AND RESPONSES IN 2001"

WITNESSES: J. COFER BLACK, FORMER DIRECTOR, CIA COUNTERTERRORISM CENTER; THOMAS J. PICKARD, FORMER ACTING FBI DIRECTOR

1:30 P.M. EDT, TUESDAY, APRIL 13, 2004

MR. KEAN: (Strikes gavel.) I'd like to reconvene, if I could reconvene this hearing. And once again, we are going to begin with a statement prepared by the Commission staff. It's entitled "Threats and Responses in 2001." Philip Zelikow, Chris Kojm and Barbara Grewe of the Commission staff are going to present it.

Mr. Zelikow.

MR. ZELIKOW: Members of the Commission, with your help, your staff has developed preliminary findings regarding awareness of the threat of terrorist attack in the months leading up to September 11th, 2001, and some aspects of the immediate response. This report reflects the results of our work so far.

We remain ready to revise our understanding as our work continues.

The staff statement represents the collective effort of a number of members of our staff. Barbara Grewe, Michael Jacobson, Thomas Eldridge and Susan Ginsburg did much of the work reflected in this statement.

We've built upon the substantial work carried out by the Joint Inquiry of the House and Senate Intelligence Committees. We've obtained excellent cooperation from the CIA, the FBI and the Office of Inspector General of the Department of Justice. They made significant material available for the preparation of this statement.

I'd like to draw you now to page 2 of the statement, beginning with the spring of 2001, and turn the floor over to Chris Kojm, my deputy.

MR. KOJM: In spring 2001, the level of reporting on terrorist threats and planned attacks began to increase dramatically, representing the most significant spike in activity since the millennium. At the end of March, the intelligence community disseminated a terrorist threat advisory indicating there was a heightened threat of Sunni extremist terrorist attacks against U.S. facilities, personnel and other interests in the coming weeks.

In April and May 2001, the drumbeat of reporting increased. Articles presented to top officials contained headlines such as, quote, "Bin Ladin Planning Multiple Operations," close quote; quote, "Bin Ladin Public Profile May Presage Attack," close quote; quote, "Bin Ladin Network's Plans Advancing," close quote.

By late May, there were reports of a hostage plot against Americans to force the release of prisoners, including Sheik Omar Abdel Rahman, "the blind sheik," who was serving a life sentence for his role in the 1993 plot to blow up sites in New York City. The reporting noted that the operatives may opt to hijack an aircraft or storm a U.S. embassy.

The reporting also mentioned that Abu Zubaydah was planning an attack and expected to carry out more if things went well.

The U.S. government redoubled efforts, ongoing since late 1999, to capture Abu Zubaydah. National Counterterrorism

Coordinator Clarke also called National Security Advisor Condoleezza Rice's attention to possible plots in Yemen and Italy and by an alleged cell in Canada that might be planning an attack against the United States.

Reports similar to these were made available to President Bush in morning meetings with DCI Tenet, usually attended by Vice President Cheney and National Security Advisor Rice, as well. None of these reports mentioned that the attacks might occur in the United States. At the end of May, Counterterrorism Center Chief Cofer Black told Rice that the current threat level was a 7 on a scale of 10, as compared to an 8 during the Millennium.

The threat reports surged again in June and July, reaching an even higher peak of urgency. A terrorist threat advisory in late June indicated that there was a high probability of near-term spectacular terrorist attacks resulting in numerous casualties. Headlines from intelligence reports were stark. Quote, "Bin Ladin threats are real," close quote. Quote, "Bin Ladin planning high-profile attacks," close quote. The intelligence reporting consistently described the upcoming attacks as occurring on a catastrophic level, indicating that they would cause the world to be in turmoil, consisting of possible multiple, but not necessarily simultaneous, attacks. A late June report stated that Bin Ladin operatives expect near-term attacks to have dramatic consequences of catastrophic proportion.

Rice told us Clarke and his Counterterrorism and Security Group were the nerve center in coordinating responses but that principals were also involved. In addition to his daily meetings with President Bush and weekly meetings to go over other issues with National Security Advisor Rice, Tenet continued his regular meetings with Secretary Powell and Secretary Rumsfeld. The foreign policy principals talked on the phone every day on a variety of subjects, including the threat.

The summer threat seemed to be focused on Saudi Arabia, Israel, Bahrain, Kuwait, Yemen and possibly Rome, but the danger could be anywhere, including a possible attack on the G-8 summit in Genoa, where air defense measures were taken.

Disruption operations were launched involving 20 countries. Several terrorist operatives were detained by foreign governments, possibly disrupting operations in the Gulf and Italy and perhaps averting attacks against two or three U.S. embassies. U.S. armed forces in at least six countries were

placed on higher alert. Units of the 5th Fleet were redeployed. Embassies were alerted. Vice President Cheney contacted Crown Prince Abdullah to get more Saudi help. DCI Tenet phoned or met with approximately 20 top security officials from other countries.

Deputy National Security Advisor Hadley apparently called European counterparts. Clarke worked with senior officials in the Gulf.

At Rice's request on July 5th, the CIA briefed Attorney General John Ashcroft on the al Qaeda threat, warning that a significant terrorist attack was imminent, and a strike could occur at any time. That same day officials from domestic agencies, including the Federal Aviation Administration, met with Clarke to discuss the current threat. Rice worked directly with Tenet on security issues for the G- 8 summit. In addition to the individual reports, on July 11th top officials received a summary recapitulating the mass of al Qaeda- related threat reporting on several continents. Tenet told us that in his world, quote, "the system was blinking red," close quote, and by late July it could not have been any worse. Tenet told us he felt that President Bush and other officials grasped the urgency of what they were being told.

On July 27th Clarke informed Rice and Hadley that the spike in signals intelligence about a near-term attack had stopped. He urged keeping readiness high during the August vacation period, warning that another report suggested an attack had just been postponed for a few months.

On August 3rd, the intelligence community issued a threat advisory warning that the threat of impending al Qaeda attacks would likely continue indefinitely. The advisory cited threats in the Arabian peninsula, Jordan, Israel and Europe, and suggested that al Qaeda was lying in wait and searching for gaps in security before moving forward with the planned attacks.

During the spring and summer of 2001 President Bush had occasionally asked his briefers whether any of the threats pointed to the United States. Reflecting on these questions, the CIA decided to write a briefing article summarizing its understanding of this danger. The article, which the President received on August 6th, is attached to the staff statement.

Despite the large number of threats received, there were no specifics regarding time, place, method or target. Disruption

efforts continued. An al Qaeda associate from North Africa connected to Abu Zubaydah was arrested in the United Arab Emirates on August 13th. He had apparently been planning an attack against the U.S. embassy in Paris. CIA analysts who have recently reviewed the threat search of the summer of 2001 told us they believe it may have been related to a separate stream of events. These threats may have been referring to the 9/11 attack, the planned assassination of Northern Alliance leader Ahmad Shah Massoud, or other operations.

In July 2001 the CSG alerted federal law enforcement agencies and asked the FAA to send out security advisories. Beginning on July 27th, the FAA issued several security directives to U.S. air carriers prior to September 11th. In addition, the FAA issued a number of general warnings about potential threats, primarily overseas, to civil aviation.

None of these warnings required the implementation of additional aviation security measures. They urged air carriers to be alert.

Although there was no credible evidence of an attack in the United States, Clarke told us, the CSG arranged for the CIA to brief senior intelligence and security officials from the domestic agencies. The head of counterterrorism at the FBI, Dale Watson, said he had many discussions about possible attacks with Cofer Black at the CIA. They had expected an attack on July 4th. Watson said he felt deeply that something was going to happen, but he told us the threat information was nebulous. He wished he had known more. He wished he had had, quote, "500 analysts looking at Osama Bin Ladin threat information instead of two." Close quote.

Rice and Hadley told us that before September 11th they did not feel they had the job of handling domestic security. They felt Clarke and the CSG were the National Security Council's bridge between foreign and domestic threats.

In late August working-level CIA and FBI officials realized that one or more al Qaeda operatives might be in the United States. We have found no evidence that this discovery was ever briefed to the CSG, to principals or to senior counterterrorism officials at the FBI or the CIA. Nor was the White House told about the arrest of Zacarias Moussaoui.

We investigated awareness of the terrorist threat within the Department of Justice and the FBI during the spring and summer

of 2001. Rice told us that she believed the FBI had tasked its 56 U.S. field offices to increase surveillance of suspected terrorists and to reach out to informants who might have information about terrorist plots. An NSC document at the time describes such a tasking having occurred in late June, although it does not indicate whether the tasking was generated by the NSC or the FBI.

At this point, we have found the following: On April 13th FBI headquarters alerted field offices to a heightened threat from al Qaeda against U.S. interests. The communication detailed the threats against U.S. interests abroad, but made no mention of any possible threat inside the United States. The field offices were asked to, quote, "task all resources, to include electronic databases and human sources, for any information pertaining to the current operational activities relating to Sunni extremism." Close quote.

On July 2nd the FBI Counterterrorism Division sent a message to federal agencies, and state and local law enforcement agencies, that summarized the information regarding threats against U.S. interests from Bin Ladin. The message reported that there was an increased volume of threat reporting, indicating a potential for attacks against U.S. targets abroad from groups aligned with, or sympathetic to, Osama Bin Ladin. It further stated, quote, "the FBI has no information indicating a credible threat of terrorist attack in the United States." Close quote. However, it went on to emphasize that the possibility of attack in the United States could not be discounted.

It also noted that the July 4th holiday might heighten the threats. The report asked the recipients to, quote, "exercise vigilance," close quote, and, quote, "report suspicious activities," close quote, to the FBI.

Acting FBI Director Thomas Pickard recently told us that during his summer telephone calls with special agents in charge of each FBI field office he mentioned to each the heightened threat, among other subjects. He also told us that he had a conference call with all Special Agents in Charge on July 19th, in which one of the items he mentioned was that they needed to have their Evidence Response Teams ready to move at a moment's notice in case they needed to respond to an attack.

We found in our field office visits last fall, however, that a number of FBI personnel, with the exception of those in the New York field office, did not recall a heightened sense of

threat from al Qaeda within the United States in summer 2001. For example, an International Terrorism Squad supervisor in the Washington field office told us that he was neither aware in summer 2001 of an increased threat, nor did his squad take any special steps or actions. The special agent in charge of the Miami field office told us he did not learn of the high level of threat until after September 11.

Pickard said in late June and through July he met with Attorney General Ashcroft once a week. He told us that although he initially briefed the attorney general regarding these threats, after two such briefings the attorney general told him he did not want to hear this information anymore. The Justice Department has informed us that Attorney General Ashcroft, his former deputy, and his chief of staff deny that the attorney general made any such statement to Pickard.

Ashcroft told us that he asked Pickard whether there was intelligence about attacks in the United States. Pickard said he replied that he could not assure Ashcroft that there would be no attacks in the United States, although the reports of threats were related to overseas targets. Ashcroft said he therefore assumed that the FBI was doing what it needed to do. He acknowledged that in retrospect, this was a dangerous assumption.

Prior to 9/11, neither Ashcroft nor his predecessors received a copy of the President's Daily Brief. After 9/11, Ashcroft began to receive portions of the brief that relate to counterterrorism.

MS. GREWE: It is in this context that we return to the story of Mihdhar and Hazmi. While top officials in Washington were receiving and reacting to various threat reports, we need to step further down in the bureaucracy to trace a now significant story of how particular al Qaeda associates were addressed by lower-level officials.

In Staff Statement No. 2, presented at our January hearing, we discussed the complex story of successes and failures in tracking and identifying hijackers Khalid al Mihdhar, Nawaf al Hazmi, Nawaf's brother Salem al Hazmi, and the *Cole* bomber, Khallad.

Those efforts had trailed off in January 2000. No one at CIA headquarters reacted to the March 2000 cable from Bangkok that someone named Nawaf al Hazmi had traveled to the United States.

But there were three episodes in 2001 when the CIA and/or the FBI had apparent opportunities to refocus on the significance of Hazmi and Mihdhar and reinvigorate the search for them. As in the 2000 story, the details are complex. We turn to the first episode, which is in January 2001, the identification of Khallad.

Almost one year after the original trail had been lost in Bangkok, the January 2000 rendezvous of suspected terrorists in Kuala Lumpur resurfaced. The FBI and the CIA learned from a conspirator in the *U.S.S. Cole* attack in Yemen that a person he knew as Khallad had helped direct the *Cole* bombing. One of the members of the FBI's investigative team in Yemen realized he had previously heard of Khallad from a joint FBI-CIA source who had said Khallad was close to Bin Ladin. Khallad was also linked to the East African bombings in 1998. The FBI agent obtained from a foreign government a photo of the person believed to have directed the *Cole* bombing. The joint source confirmed the man in that photograph was the same Khallad he had described.

In December 2000, based on some analysis of information associated with Khalid al Mihdhar, the CIA's Bin Ladin station speculated that Khallad and Khalid al Mihdhar might be one and the same. So, the CIA asked that a Kuala Lumpur surveillance photo of Mihdhar be shown to the joint source who had already identified an official photograph of Khallad.

In early January 2001 two photographs from the Kuala Lumpur meeting were shown to the joint source. One was a known photograph of Mihdhar; the other a photograph of an unknown subject. The joint source did not recognize Mihdhar, but he indicated he was 90 percent certain that the other individual was Khallad. This meant that Khallad and Mihdhar were two different people. But the fact that both had attended the meeting in Kuala Lumpur also meant there was a link between Khallad, a suspected leader in the *Cole* bombing, the Kuala Lumpur meeting, and Mihdhar. Despite this new information, we found no effort by the CIA to renew the long-abandoned search for Mihdhar or his travel companions. In addition, we found that the CIA did not notify the FBI of this identification until late August.

DCI Tenet and Cofer Black testified before the Joint Inquiry that the FBI had access to this information from the beginning. But based on extensive record, including documents that were not available to the CIA personnel who drafted that testimony, we conclude they were in error. The FBI's primary *Cole*

investigators had no knowledge of Khallad's possible participation in the Kuala Lumpur meeting until after the September 11 attacks.

This is an example of how day-to-day gaps in information sharing can emerge even in a situation of goodwill on all sides. The information was from a joint FBI-CIA source. The source spoke essentially no English. The FBI person on the scene overseas did not speak the languages the source spoke. Due to travel and security issues, the amount of time spent with the source was necessarily kept short. As a result, the CIA officer usually did not simultaneously translate either the questions or the answers for his accompanying FBI colleague and friend.

For interviews without such simultaneous translation, the FBI agent on the scene received copies of the reports that the CIA disseminated to other agencies, but he was not given access to the CIA's internal operational traffic that contained more detail. The information regarding the January 2001 identification of Khallad was only reported in operational traffic, to which the relevant FBI investigators did not have access.

The CIA officer does not recall this particular identification and thus cannot say why it was not shared with his FBI colleague. But he may have misunderstood the possible significance of the new identification.

Mihdhar left the United States in June 2000. It is possible that if in January 2001, agencies had resumed their search for him or placed him on the TIPOFF watchlist, they might have found him before or at the time Mihdhar applied for a new visa in June 2001 or they might have been alerted to him when he returned to the United States the following month. We cannot know.

The second opportunity is in the spring of 2001, looking again at Kuala Lumpur. By mid-May 2001, as the threat reports were surging again, a CIA official detailed to the International Terrorism Operations Section at the FBI wondered where the attacks might occur. We will call him John. John recalled the Kuala Lumpur travel of Mihdhar and his associates around the Millennium. He searched the CIA's databases for information regarding the travel. On May 15th, he and another official at CIA reexamined many of the old cables from early 2000, including the information that Mihdhar had a U.S. visa and that Hazmi had come to Los Angeles on January 15, 2000.

The CIA official who reviewed the cables took no action regarding these cables. She cannot recall this work. John, however, began a lengthy exchange with a CIA analyst to figure out what these cables meant. He recognized the relationship to the bombing case, and he was aware that someone had identified Khallad in one of the surveillance photographs from the Malaysia meetings. He concluded that something bad was definitely up. Despite the U.S. links evident in this traffic, John did not raise that aspect with his FBI counterparts. He was focused on Malaysia.

John's focus on the oversea target area might be understood from his description of the CIA as an agency that tended to play a zone defense. In contrast, he said, the FBI tends to play man-to-man. Desk officers at the CIA's Bin Ladin station did not have cases in the same sense as an FBI agent, who works something beginning to end. Thus, when the trail went cold after the Kuala Lumpur meeting in January 2000, the desk officer moved on to different things. By the time the March 2000 cable arrived with information that one of the travelers had flown to Los Angeles, the case officer was not responsible for following up on that information. While several individuals at the Ladin station opened the cable when it arrived in March 2000, it was no one's concern and no action was taken.

We discussed some of the management issues raised by this in January in Staff Statement No. 2. The CIA's zone defense concentrated on where, not who. Had its information been shared with the FBI, a combination of the CIA's zone defense and the FBI's man-to-man approach might have been far more productive.

The third opportunity is in August 2001, when the search for Hazmi and Mihdhar begins and fails. During the summer of 2001 John asked an FBI official detailed to the CIA to review all of the Kuala Lumpur materials one more time. We will call her Mary. He asked her to do the research in her free time. She began her work on July 24th. That day she found the cable reporting that Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application -- what was later discovered to be his first application -- listed New York as his destination. On August 21st she located the March 2000 cable that "noted with interest" that Hazmi had flown to Los Angeles in January 2000. She grasped the significance of this information.

Mary and an FBI analyst working the case, whom we will call Jane, promptly met with an INS representative at FBI

headquarters. On August 22nd INS told them that Mihdhar had entered the United States on January 15, 2000, and again on July 4th, 2001. Jane and Mary also learned that there was no record that Hazmi had left since January 2000, but they were not certain if he was still here and assumed that he had left with Mihdhar in June 2000. They decided that if Mihdhar was in the United States, he should be found.

They divided up the work. Mary asked the Bin Ladin station to draft a cable requesting that Mihdhar and Hazmi be put on the TIPOFF watchlist.

Jane took responsibility for the search effort inside the United States. As the information indicated that Mihdhar had last arrived in New York, and this was determined to be related to the Bin Ladin case in New York, she began drafting a lead for the FBI's New York field office.

She called an agent in New York to give him a heads-up on the matter, but her draft lead was not sent until August 28th. Her e-mail told the New York agent that she wanted to get him started on this as soon as possible, but she labeled the lead as "routine." A "routine" designation informs the receiving office it has 30 days to respond to the lead.

The agent who received the lead forwarded it to his squad supervisor. That same day the supervisor forwarded the lead to an intelligence agent to open an intelligence case. He also sent it to the *Cole* case agents and an agent who had spent significant time in Malaysia searching for another Khalid, Khalid Sheikh Mohamad.

The suggested goal of the investigation was to locate Mihdhar, determine his contacts and reasons for being in the United States, and possibly conduct an interview.

Before sending the lead, Jane had discussed it with John, the CIA official on detail to the FBI, and with the acting head of the FBI's Bin Ladin Unit. The discussion apparently was limited to whether the search should be classified as an intelligence investigation or as a criminal one, a legally important distinction for reasons we explained earlier today in Staff Statement Number 9. Neither of these individuals apparently disagreed with the analyst's proposed plan. No one apparently felt they needed to inform higher levels of management in either the FBI or the CIA about the case.

One of the *Cole* case agents read the lead with interest and contacted Jane to obtain more information. Jane took the position, however, that because the agent was a designated "criminal" agent, the "wall" kept him from participating in any search for Mihdhar. In fact, she felt he had to destroy his copy of the lead because it contained information she believed could not be shared with any criminal agents.

The Joint Inquiry covered the details of their heated exchanges, and we will not repeat them here.

The result was that criminal agents who were knowledgeable about the *Cole* and experienced with criminal investigative techniques, including finding suspects and possible criminal charges, were excluded from the search.

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except follow him onto the plane. We believe this is incorrect. Both Hazmi and Mihdhar could have been held for various immigration violations or as material witnesses in the *Cole* bombing case. Investigation or interrogation of these individuals and their travel and financial activities also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

Notably, the lead did not draw any connections between the threat reporting that had been coming in for months and the presence of two possible al Qaeda operatives in the United States.

Moreover, there is no evidence that the issue was substantively discussed at any level above a deputy chief of a section within the Counterterrorism Division at FBI headquarters. The search was assigned to one FBI agent for whom this was his very first counterterrorism lead. By the terms of the lead, he was given 30 days to open an intelligence case and make some unspecified efforts to locate Mihdhar. He started the process a week later. He checked local New York indices for criminal record and driver's license information and checked the hotel listed on Mihdhar's U.S. entry form. On September 11 the agent sent a lead to Los Angeles based on the fact that Mihdhar had initially arrived in Los Angeles in January 2000. Time had run out on the search.

We want to briefly mention two other incidents in the summer of 2001. The first, the Phoenix Memo.

The Phoenix Memo was investigated at length by the Joint Inquiry. We recap it briefly in the statement that's provided to you. I just want to mention now -- as its author told us, the Phoenix Memo was not an alert about suicide pilots. His worry was more about a Pan Am 103 scenario in which explosives were placed on an aircraft. The memo's references to aviation training were broad, including electronics and aircraft maintenance.

And lastly, Moussaoui. On August 15, 2001, the Minneapolis FBI field office initiated an intelligence investigation on Zacarias Moussaoui. He had entered the country on February 23, 2001, and began flight lessons at Airman Flight School in Oklahoma City. He began flight training at the Pan American flight training school in Minneapolis on August 13. Moussaoui had none of the usual qualifications for flight training on Pan Am's Boeing 747 flight simulators. Contrary to popular belief, Moussaoui did not say he was not interested in learning how to take off or land. Instead, he stood out because, with little knowledge of flying, he wanted to learn how to take off and land a Boeing 747.

The FBI agent who handled the case in conjunction with the INS representative on the Minneapolis Joint Terrorism Task Force suspected Moussaoui of wanting to hijack planes. Because Moussaoui was a French national who had overstayed his visa, he was detained by the INS.

The FBI agent sent a summary of his investigation to FBI headquarters on August 18. In his message he requested assistance from the FBI field office in Oklahoma City and from the FBI legal attaché in Paris. Each of these offices responded quickly. By August 24 the Minneapolis agent had also contacted a detailee from the FBI and a CIA analyst at the Counterterrorist Center about the case. DCI Tenet was briefed about the Moussaoui case. He told us that no connection to al Qaeda was apparent to him before 9/11.

Moussaoui had lived in London, so the Minneapolis agent also requested assistance from the legal attaché in London.

The legal attaché promptly prepared a written request of the British government for information concerning Moussaoui and hand-delivered the request on August 21st. He informed the British of developments in the case on September 4th. The case, although handled expeditiously at the American end, was not handled by the British as a priority amid a large number of

other terrorist-related inquiries. On September 11th, after the attacks, the legal attaché renewed his request for information.

After 9/11 the British government, in response to U.S. requests, supplied some basic biographical information about Moussaoui. The British government has informed us that it also tasked intelligence collection facilities for information potentially relating to Moussaoui. On September 13, the British received new, sensitive intelligence that Moussaoui had attended an al Qaeda training camp in Afghanistan. It passed this intelligence to the United States that same day.

Had this information been available in late August 2001, the Moussaoui case would almost certainly have received intense and much higher-level attention. Prior to 9/11, there was a continuing dispute between FBI agents in Minneapolis and supervisors at headquarters about whether evidence had been sufficient to seek a FISA warrant to search Moussaoui's computer hard drive and belongings. After 9/11, the FBI learned that Millennium terrorist Ressam, who was cooperating with investigators, could have recognized Moussaoui from the Afghan camps.

Either the British information or the Ressam identification would have broken that logjam. A maximum U.S. effort to investigate Moussaoui could conceivably have unearthed his connections to the Hamburg cell, though this might have required an extensive effort with help from foreign governments. The publicity about the threat also might have disrupted the plot, but this would have been a race against time.

MR. ZELIKOW: To close up, commissioners, the remainder of the statement covers three other topics, which we will not try to deliver orally here. The first of those is information issues. We itemize in our statement five information issues that are lessons that we have gathered from the story.

Second, we offer a preliminary finding on post-9/11 events. We offer our preliminary findings on the flights of Saudi nationals leaving the United States after 9/11, which has been a focus of some public attention.

And finally, as part of the issues of "Threat and Response in 2001," we describe some immigration law-enforcement initiatives that were undertaken by Attorney General Ashcroft with the FBI, and at times with other Cabinet departments, to try to disrupt terrorist activities using immigration laws after 9/11.

That material is available in our staff statements. And with that, we conclude.

(Pause for change of panel.)

MR. KEAN: We will now hear from a panel of two witnesses: Mr. Thomas Pickard, who served as acting director of the Federal Bureau of Investigation during 2001, and Ambassador Cofer Black, who served as director of the Counterterrorism Center at Central Intelligence Agency from 1999 until 2002.

Gentlemen, would you please rise and raise your right hand? Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

MR. PICKARD: I do.

MR. BLACK: I do.

MR. KEAN: Thank you. Please be seated.

Gentlemen, your prepared statements will be entered into the record in full, so we'd request that you summarize your opening statements. And I guess we'll begin with Mr. Pickard.

MR. PICKARD: Thank you, Governor.

I'm here today, at your invitation, to answer your questions as directly as I am able, based upon what I can recall.

Clearly, nothing I can say will ease the suffering of those who lost friends and loved ones on September 11th, nor can I ease the torment for all who witnessed the horrific events of that day.

Among the 3,000 who lost their lives that day were New York FBI agent Lenny Hatton and recently retired FBI agent John O'Neill, both of whom died trying to help the victims. Because of these tragic losses, I hope that I can contribute in some small way to helping America understand how this happened and what needs to be done to better protect us in the future.

I know many, including myself, who over and over relive the days prior to 9/11, searching both our memories and our actions for missed chances that may have averted 9/11.

I know of an individual who was in the World Trade Center on 9/11 and survived. This individual was tormented by the actions he, upon reflection, thought he should have taken. He told a number of people about his thoughts. Some months later, for this and probably other reasons, life became too difficult for him, and he took his life.

No one knows the torment this event must have given him to take this tragic step.

Those of us who were in the FBI at the time are no exception. No one knows how deeply many employees of the FBI are troubled by the haunting events leading up to that day.

In my view, the tragedy of 9/11 clearly demonstrates the high cost for the collective failure of the U.S. government to penetrate the inner-workings of al Qaeda or to deal with terrorism, as it was then and is now a war against the United States intended to inflict as many American casualties as possible. For many and very deep -- for many complex reasons, we did not develop the necessary intelligence, either through our own resources or through foreign resources, to sufficiently understand and react to their planning, communications, control and capacity to do us harm.

I was the acting director of the FBI in the summer of 2001. The intelligence and the experience I had available to me at the time were what I acted upon. As I recall, during the period January to September 2001, the FBI received over 1,000 threats. Many of these threats had great specificity and others were very general in nature. All were taken seriously, but the volume was daunting. The increase in the chatter was by far the most serious, but it was also the most difficult to deal with. There was no specificity as to what, where and when. We knew the who, but only that it was al Qaeda.

I had regular conversations with the director of CIA and his deputy, and the attorney general and his deputy about the threats we were receiving and to learn if there was anything more that would help us understand the fragmentary information we had. The only news I received was that the chatter subsided in August 2001. Further, I personally spoke both collectively and individually with each of the special agents in charge of the FBI's 56 field offices and with the assistant directors at FBI headquarters about what we knew and what we should be doing. Most of what I heard pointed overseas. For example, at the recommendation of the assistant director of New York and the

head of counterterrorism, I removed the agents from Yemen due to the threat level and the chatter.

During the summer we continued to pursue our investigations of the bombings of the African embassies and the *U.S.S. Cole*. These were not just investigations to bring people responsible to justice, but they were also giving us valuable intelligence on al Qaeda. These investigations did more than advance the prosecution of these matters; they provided some of the best intelligence the U.S. government possessed about al Qaeda.

Many of those arrested and brought back to the United States started to cooperate with the FBI. They provided us not only information about the bombings, but also became valuable resources in identifying al Qaeda members to U.S. intelligence. They gave us unique insights into al Qaeda's command and control. We also exploited their pocket letter, cell phones, calling cards, credit cards and hotel registrations to links to other members. The agents were tireless in pursuing these bits and pieces of information. The New York office of the FBI, the Joint Terrorism Task Force and the U.S. Attorneys office in the Southern District of New York had become very knowledgeable and adept at exploiting these investigations.

The FBI also had Foreign Intelligence Surveillance Act coverage on individuals in the United States, which has recently been discussed. This too gave us links to other possible members of al Qaeda. These investigations and coverages were the direct result of FBI investigations as well as coming from the United States and foreign intelligence communities.

None of what we knew or learned pointed to what was about to happen on 9/11. To the contrary, all of these steps were not enough, given what we had learned about the 19 hijackers since September 11.

The plot was hatched probably in Afghanistan, it was honed in Germany, and it was financed in the Middle East. Each of the hijackers were selected to ensure that he could come and go into the United States without attracting attention, not a difficult thing to do with our open and overwhelmed borders. They did not receive support knowingly from anyone in the United States, nor did they contact known al Qaeda sympathizers in the United States. They utilized publicly accessible Internet connections, prepaid calling cards to communicate and to escape detection by U.S. authorities.

These 19 acted flawlessly in their planning and execution. They successfully exploited every weakness, from our borders to our cockpit doors.

The members of al Qaeda are a formidable enemy. I have personally met with Ramzi Yousef, the mastermind of the 1993 World Trade Center attack. He is poised, articulate, well educated. He speaks English with a British accent, as well as six other languages. He has degrees in chemistry and electrical engineering. And in 1995, he utilized a laptop computer with an encryption program on it.

I have also led two separate teams overseas to return Eyad Ismael Najim, who drove the van into the World Trade Center in 1993, and Wali Khan, who was part of the Manila air plot, back to the United States to stand trial. Both were fairly well-educated, poised young men dedicated to a jihad in America.

I have used the word "enemy" to describe them because that's what they are. They are dedicated terrorists willing to even commit suicide for their beliefs. The camps in Afghanistan and elsewhere were graduating thousands like them, who are educated, committed and even computer savvy. Al Qaeda was turning out five times more graduates from their camps than the CIA and the FBI were graduating from their training schools. I could only utilize handcuffs on them. President Bush and the U.S. military gave them something more effective: bombs, bullets and bayonets.

Over the last week, I have interacted again with the men and women of the FBI. Director Mueller and his staff have a formidable challenge in preventing the next act of terrorism. Al Qaeda just has to get it right once, but the FBI will have to get it right every time.

I'd like to briefly touch on the issue of the walls, and I think it's summarized best by one of the New York agents who I knew.

And his quote was, "create enough walls and you build a maze." It hampered greatly our efforts to utilize the FISA process to penetrate these cells, and I would recommend to this commission that they add courts and judges outside Washington, D.C. to speed up the FISA process to help and make sure this works much more effectively.

Dick Clarke before this commission stated that he -- if he had known about these two individuals, al Mihdhar and al Nawazi,

he would have put them on "America's Most Wanted." If we knew what we knew now about them, I agree and I could have called John Walsh and he would have ran a special about them. However, on September 10th all we knew was that they were to be put on the visa watchlist and we should attempt to locate them. The FBI did not know whether they had departed the United States, and we certainly had no information -- none -- that they were here to carry out an act of terrorism.

In closing, I have met with or spoken by telephone to a number of FBI employees and some who have moved on from the FBI. Many have asked me to tell the families of the victims that each day the FBI family suffers with you the memory of 9/11.

I am now prepared to answer your questions, and later the families' questions after this hearing. I've made arrangements with the FBI to utilize those services after this meeting; not directly, but later.

I have not made myself available to the media or anyone else prior to the meeting with this commission because I believe you have a solemn, non-political responsibility to find out what happened on September 11 and to provide recommendations to protect America in the future.

Thank you, Mr. Chairman.

MR. KEAN: Thank you, Mr. Pickard.

Mr. Black, sir.

MR. BLACK: Good afternoon. My name's Cofer Black. From 1999 until 2002 I was the director of the DCI's counterterrorist center. We call my old unit the CTC. It is in that capacity that I am here today to testify. I promise to try and be brief in my opening remarks so we can get to your questions.

I'm here today to tell you and the American people what we did, what we tried to do, and where we fell short in order to help this commission and the nation understand what happened and encourage the kind of discussion that will help us avoid a similar tragedy in the future. And believe me, our enemies are still out there plotting to attack us and our allies in the war on terrorism. These attacks could take the form of spectaculars like 9/11 or could be smaller but still effective operations that are easier to mount, like what happened in Madrid.

I'm not here to testify as a part of a political process, or to create another political fire storm over some perceived allegation of negligence or inattention or error by somebody else. Too often in this election year the effort you are engaged in has revolved around what people in this country perceive as partisan issues. I do not want to engage in an exercise that reflects that kind of unproductive exchange. Frankly, what mattered to me and the men and women I led in the counterterrorist center did not depend on the flavor of the Administration, but rather was driven by what WE thought needed to get done and our attempts to protect American citizens, property and interests.

In order to understand the threats that emerged during 2001 and our response to those threats, I want to briefly provide some context. A lot of this activity is highly classified, so I will provide an overview.

I want to begin by describing our overall strategy. We have been systematically attempting to counter the terrorist threat since William Casey established CTC in 1986. Over the following 15 years we saw the nature of that threat evolve. Our approach to dealing with the threat has also evolved. By the time that I arrived in the summer of 1999 CTC was ready to take the next step in its evolution to embark on a new, more offensive strategy to deal with the terrorist problem. Our plan had a number of elements.

First, because terrorism is a global problem, we needed to build a global coalition to work with us to fight the threat. We set out to engage with every liaison service worldwide that was willing to work with us. In some cases we needed to build up the capabilities of those services, and we did.

Second, we worked to actively engage those services that have regional or semi-global capacity. Most importantly, we worked to develop our own operations to advance U.S. counterterrorism objectives by penetrating terrorist safe havens and collecting intelligence that would both inform policy and enable our own operations. Although this was our global strategy, the single issue that overwhelmingly occupied our attention was Osama Bin Ladin and al Qaeda. The plan we developed to deal with al Qaeda involved disrupting UBL operations. This depended heavily on developing sources of both human and technical intelligence that could give us insights into his plans at the tactical level. This is easy to say, but hard to accomplish.

Channeling and capturing UBL. This required us to know where UBL was, to develop capture teams, and to find a way to have these two streams of activities intersect at a specific time, all from a distance.

Psychological operations. Psychological operations are always hard to conduct and hard to measure. But we were trying to drive UBL to areas that might be easier for us to operate in at the same time that we are disrupting his operations.

One of our goals was to convince the Taliban that Osama Bin Ladin was a liability.

UBL's lieutenants. Al Qaeda is not a one-person show. At the same time we were pursuing UBL, we were also working to develop intelligence on his chief lieutenants in order to conduct operations against them.

Technical operations. In order to improve our intelligence collection, we were working with a variety of partners outside of CTC to develop innovative approaches to dealing with a denied area like Afghanistan.

We continued to refine our approach throughout 2000 and into 2001, pushing forward with those initiatives that seemed to have promise. But this was a hard and a long-term effort. There were no quick fixes short of invading Afghanistan, and that was determined not to be an option prior to 9/11.

Let me also set straight the record on the Predator. We were interested in a UAV program to improve our operations in Afghanistan as far back as 1999. While I had to live within my financial resources, CTC was interested in and pushed to develop Predator capabilities. I was convinced that we needed these capabilities and would be able to put them to good use. That said, wanting something does not translate into having it ready to deploy. There were very serious debates over how to proceed, and I object to any notion that CTC -- that I either did not want to develop the capability or that we tried to kill it.

2001 started out with many distinct terrorist threats that required our attention. Again, this is a highly classified area. I'll attempt to summarize what I can tell you.

CTC was: continuing to work with the FBI on the *U.S.S. Cole* attack; working to follow through on a major, multi-country takedown of terrorist cells in Southeast Asia; responding to a

hostage situation in Ecuador; dealing with another hostage crises in the Philippines.

Overshadowing all this was the rising volume of threat reporting. By the summer of 2001 we were seeing an increased amount of so-called "chatter" alluding to a massive terrorist strike. We were receiving this intelligence not only from our own sources, but also from liaison. Human intelligence was providing the same kinds of insights. Disruption efforts and detentions were also corroborating our concerns about a coming attack.

None of this, unfortunately, specified method, time or place. Where we had clues, it looked like planning was underway for an attack in the Middle East or Europe.

At the same time, we were working on two tracks -- to go after al Qaeda, and to disrupt the terrorist attacks.

In going after the organization, we were doing several things simultaneously. First, we had to penetrate the threat. To do this we needed to penetrate both the al Qaeda safe haven in Afghanistan and the organization itself to collect enhanced human and technical intelligence on its activities and to understand it well enough to conduct offensive operations against it.

Second, we had to look for opportunities to take down al Qaeda cells. With the intelligence we collected, we worked to create plans to disrupt or degrade al Qaeda. Make no mistake; this was a hard mission with a low probability for success in the near term.

Finally, we were developing new capabilities to enable us to penetrate and take down the organization. These ranged from Predator to developing new approaches for going after the Afghan safe haven by working with groups within the country and with any cooperative service in neighboring countries. A number of these initiatives were also included in the so-called December 2000 "Blue Sky" memo and in follow-on discussions in the CSG process that have been previously discussed by others and in your staff statements.

In order to disrupt, we approached almost two dozen cooperative services to go after Osama Bin Ladin-related targets worldwide. At best, we were hoping to delay any attack to buy ourselves more time to find out what was planned. We were

looking for every opportunity to go on the offensive against al Qaeda.

Where we did not have enough information, we warned. We produced CIA and community analysis that examined the heightened threat situation. Your staff statement this morning ran into titles of a number of these documents.

More broadly, I also want to emphasize that CTC and the intelligence community produced significant strategic analysis that examined the growing threat from international jihadist networks and al Qaeda. I believe that the record shows that the U.S. government understood the nature of the threat. This understanding was the result of a range of products we produced or contributed to, including: Personal interaction via participation in the Counterterrorism Security Group; periodic stand-back assessments on UBL and Sunni extremist-related topics; contributing to the annual "Patterns of Global Terrorism".

And outside the executive branch, activities such as the DCI's worldwide threat briefings, support for the Bremer Commission on terrorism, and briefings for the HPSCI terrorism subcommittee.

But ultimately, we were not able to stop what happened on 9/11, despite our actions and our warnings.

I promised to be brief, so I'll close with a final thought. What I've been largely talking about is what the Counterterrorism Center can and has done. But ultimately, what we at the agency do is deal with the symptoms of terrorism at a tactical level. As long as there are people who are not happy with their lot in life, as long as the United States is perceived to somehow be the cause of this unhappiness, there will be terrorism. No matter how many plots we uncover and disrupt, no matter how many terrorist organizations we degrade or destroy, another individual or group will rise to take their place.

Mr. Chairman, we need to remind the American public of this reality. Those like the families who have lived through the horrors of 9/11 will never forget, but I fear sometimes that the rest of the country is losing sight of the long and hard way ahead.

At the more strategic level, the only way to address terrorism is to deal with the issues that create terrorism, to resolve them where possible, and where that's not possible, to ensure that there is an alternative to violence. And that is not something that the counterterrorism center or CIA can do. That is a mission for the broader United States government.

Prior to this hearing I contacted former counterterrorism center colleagues at our headquarters here in Virginia and those that are overseas and now in harm's way. I asked them the question, what am I going to tell these people? It should not be my words alone, but it should be ours. And hauntingly, all of my CTC friends independently said exactly the same thing, they used the same words, and they said them in the same order. We are profoundly sorry. We did all we could. We did our best. And they said, Make them understand how few we were and what we had to deal with. The shortage of money and people seriously hurt our operations and analysis.

In CTC we heard our director's call. I've heard some people say this country wasn't at war. I want to tell you, Mr. Chairman, the counterterrorism center was at war, we conducted ourselves at war. And that's the way it is. We did the best we could under the law and with the resources provided and under our defined rules of engagement.

Appreciating this, I want to say it's my honor to take full responsibility for the counterterrorism center, for those men and women that served this country so well. I'm proud to do it.

I want to thank you for the opportunity to be here, for the opportunity to speak on behalf of all those who served in CTC. I want to thank you for the opportunity to support what even I am beginning to realize is the important work of this commission.

Thank you.

MR. KEAN: Thank you, ambassador.

Secretary Lehman.

MR. LEHMAN: Thank you, and welcome, Mr. Pickard, Mr. Black. The reason you're both here and the reason your testimony carries special weight with us is that both of you are career professionals, that both of you are seen as role models in your particular professional fields. And your prepared statements reflect that. And please understand that the questions I am

posing to you have nothing to do with the blame game or finger-pointing. Our high responsibility is to draw the right lessons and to make real achievable recommendations for change.

So that's what we need to find out.

Now let's start with the Presidential Daily Briefing that was just released at our request over the weekend. To me the most significant sentence in that PDB is that, after summarizing the history of the reporting from '98 forward, essentially, of growing alarm and threat in the intelligence community, the summary to the President was, quote, "We have not been able to corroborate some of the more sensational threat reporting," such as Bin Ladin wanting to hijack U.S. aircraft, et cetera. Well, the more sensational threat reporting was right. Why didn't the combined intelligence community -- why weren't they able to corroborate something as essential as that, Mr. Black?

MR. BLACK: Sir, looking at the PDB article, I would like reflect upon the time of that. Clearly this was a period of heightened threat. We had a global collection network out. We were receiving significant amounts of intelligence. It certainly was spiking, and all the indications that we had were clearly pointing at the Saudi Arabia peninsula, Saudi Arabia, to a lesser extent Israel and Europe. So the focus, the tactical focus of the threat was certainly in that area.

The strategic piece is that by Osama Bin Ladin's own words -- has stated he has a war against the United States, he wishes to strike the United States. In fact, he declared that American civilians should be considered as combatants. I think that PDB piece is basically a place marker that is a reminder to the principals that read these materials that, whereas the tactical intelligence is pointing to locations overseas, that is is good to be mindful of what his ultimate objective is, that it is to strike hard against the United States. And I think that's essentially the balance between the two, sir.

MR. LEHMAN: Thank you.

In the last paragraph, the presumably FBI sources report and tell the President that there are some 70 full field investigations going on. We previously had testimony from Mr. Berger that the -- in response to queries to the FBI on al Qaeda, the response was we got it covered. There have been reports, and we'll hear from that later -- hear from him later on, that Attorney General Ashcroft, when querying about the

terrorist threat, the FBI response was essentially we've got it covered. This PDB has the same tone. We're doing 70 field investigations on suspected al Qaeda personnel in the United States; we've got it covered.

And our understanding is that this was, to put it nicely, a bit of an exaggeration, because 70 full-field investigations have the aura of being a major, massive "going to battle stations," where in fact it really referred to every single individual that was under investigation. So it was an exaggeration which gave a wrong perception at a time when the threat that we now know was really much further along. It seems kind of a back-handed, off-handed way to be telling the President of the United States of efforts that the Bureau was doing. Could you address that?

MR. PICKARD: Mr. Lehman, you're correct, with approximately 70 full-field investigations they focused on 70 individuals, give or take some.

But first off, I did not have access to the PDB. I had never seen the PDB until September 11th. So the FBI did not get to vet the article. I would find it a mischaracterization to say that anyone in the FBI said "we've got them covered." We only knew what we knew. The intelligence we had led us to these 70 individuals, and we worked on them as best we could.

As I said in my statement, it's a give and take between Cofer and myself back and forth as to picking up bits and pieces of information. Those 70 in the United States, they were partly a result of FBI investigations, but credit has to be given very greatly to the CIA for giving us the information and for the other members of the intelligence community that they provided us with information to direct us to look at these individuals. Otherwise, we're operating in a vacuum, where we don't know who to be on. We cannot, by any stretch, target any persons of a particular faith just because they belong to a faith. We're trying to identify people who are al Qaeda operatives who might give either some kind of support, whether it's financial or otherwise, to these individuals.

If I could elaborate on that for a minute, we know of al Qaeda operatives in the United States, Hamas, Hezbollah, the Provisional IRA has operatives in the United States that we have investigations on, we have Russian intelligence officers, North Korean, Cuban intelligence officers within the United States. We have investigations on them, trying to identify with whatever

means we have available, including FISA, what they're doing, and trying to catch them either in the act of espionage or prevent an act of terrorism.

As far as those 70 cases, two of them were indicted and convicted on the East Africa bombing, not for actions they took here in the United States but for what actions they took outside of the United States. But both of them were U.S. citizens.

We have another individual who was convicted of another criminal matter outside of terrorism. We also determined that some of these individuals, who our foreign intelligence and CIA identified to us, they left the United States, and we made the hand-off to the CIA to -- "Can you get with your foreign counterparts and watch these people? We think they are of interest, but they did not do anything here in the United States that would cause us alarm."

We had a number of them picked up on immigration charges because they had extended their visas. I could ask the FBI to provide you with a detailed listing. And I'd like to also caution that the number 70 is somewhat inaccurate. I don't know how that got into the PDB that way. But the actual number is inaccurate, and it's a classified number. I would not want Osama Bin Ladin to know how many we thought of his operatives were in the United States.

MR. LEHMAN: But to take you up on your mention of the prohibitions on investigating religious institutions, the Levy restrictions, and so forth --

MR. PICKARD: Educational institutions, too.

MR. LEHMAN: So you were not able to target schools, mosques and other sanctuaries?

MR. PICKARD: No, we were not.

MR. LEHMAN: As you know, very shortly after the September 11th attack, some of the commercial databases, like Axion, ISO, ChoicePoint, so forth, were queried, and nearly all of the 19 hijackers were very prominently covered with addresses, credit cards, locations, et cetera. Why did not the FBI make use of those commercial databases before 9/11?

MR. PICKARD: We were prohibited from utilizing a lot of those commercial databases by statutes and things like that. That was

one of benefits of the PATRIOT Act, as I understand it. I have not read the act and I'm not an attorney and don't want to start practicing.

MR. LEHMAN: Mr. Black, Mr. Clarke prominently, and other -- in fact, numerous other witnesses have alluded to the fact that in their belief, the Directorate of Operations in CIA, going back to the traumas of the post-Watergate era, had a deeply entrenched culture opposed to covert operations and certainly opposed to targeting individuals like Osama Bin Ladin for killing, to the point where one of our witnesses, under oath, told us that one of your senior associates in the agency had said that he would resign rather than carrying out an order that would target Osama.

Since we've heard it from more than one witness, is there a cultural problem in our Directorate of Operations in CIA?

MR. BLACK: I have no cultural problem whatsoever. Our mission is to engage with the -- close and engage with the enemy to produce intelligence. If you're talking about authorities, covert action authorities, I really do not want to go into that here. I'd be happy to do it in closed session.

Let me just underscore one point.

We operate under the law. Covert action authorities are communicated in a thing called the Memorandum of Notification. You have lawyers -- the National Security Council; you have lawyers in the Central Intelligence Agency. They have groups called Lawyers Groups; may I never be in such a group -- (laughter). And they hash over words. Words mean something in this country. And words are formed into orders for action and the Central Intelligence Agency conducts itself according to those orders under the law. And if you want to know what we are to do, you have the appropriate clearances. You can access and take a look at it. That's how we follow our instructions. What is written down in these Memorandums of Notification are orders to engage the target, and that's what we do, sir.

MR. LEHMAN: Did you -- without going into any classified information, did you believe that you had the authority to go after Osama personally, as opposed to in a capture operation?

MR. BLACK: Again, I will try and meet your needs in this, but I would really prefer to do much of this in a closed session. The constant theme, from the first of these MONs in this series

through, were very explicit, and that the objective, which was agreed to -- everyone in the Central Intelligence Agency, and all of our lawyers are unanimous, as reflected by the statements of the director of Central Intelligence and the deputy director of operations -- it was capture, was the objective.

MR. LEHMAN: Thank you. Good answer.

It leads to another question, which is the division of responsibilities for covert action between the Defense Department and the CIA. The Title 10, Title 50 distinctions.

From all of the testimony we've gathered and the evidence, this clearly was a point of disagreement and dysfunction, with fingers being pointed on each side at the other for not doing what they should be doing, or not having the capabilities that they should have. There have been proposals that are very active today that really recommend that CIA not be in these operations, these paramilitary operations; that instead the Title 50 kinds of operations be given to the Special Operations command with CIA participation, but that there be a unified command that is tasked with that kind of responsibility.

What do you think of that?

MR. BLACK: I'm all -- as an American, I'm all for what works. I think the record of the Central Intelligence Agency responding after 9/11 -- having the plan, surging into Afghanistan, setting it up for the warriors to win that battle with low loss of life, in a way that I think was highly efficient, as stated by the President of the United States -- I think, is an example of where the two can work together effectively.

I personally believe they can work together far more effectively. Anything that you can do to cement this relationship so it's even closer, particularly with the U.S. Army's Special Forces and the Central Intelligence Agency -- I personally believe that's our future.

In fact, in Afghanistan, we used to use personnel together. The civilians and the military are indistinguishable, and they all bring particular skills to the battlefield. And so I think that's an area of great growth. We have a lot of commonality, and it should be encouraged.

MR. LEHMAN: Thank you. I have one final question for both of you.

First, Mr. Pickard, we've spent a lot of time on the *Cole*. And you have addressed it very well and all of the benefits that have come out of the several hundred agents that were sent over there and the intelligence yield, although it certainly didn't interfere with 9/11, but it certainly has expanded our understanding of al Qaeda since.

But we've also had very consistent testimony that -- from very high sources that the fact that the Bureau was not able to complete its investigation or wanted to take so much time to meet all their evidentiary requirements that a final finding in which they were prepared to stand behind -- that al Qaeda did it -- came so late that it was well past the Clinton administration and well into the Bush administration, by which time some people thought it was too stale to react. And there -- well, it's -- we're having a hard time reconciling where everybody immediately in the community, throughout the community, the day after said, "It's Osama, and it's al Qaeda who did it." Yet there was not a willingness to go on record and formally say that until months and months after the fact.

Could you -- which many people have said was why we didn't retaliate and why we did not get any benefits from a deterrent attack of al Qaeda capabilities in Afghanistan. Could you both comment on that? First, Mr. Pickard.

MR. PICKARD: Yeah, I would like to comment on it. When the attacks happened, you know, in the African embassy bombings, I was actually in charge of the FBI that day because Director Freeh was out of town.

I dispatched our Washington field office because our standard operating procedure was if we didn't have any indication that a particular group was assigned to it our Washington field office would be dispatched to any bombings in Europe, the Middle East or Africa. For example, the Khobar Towers bombing; they were dispatched to that and became the office of origin on it.

When the *Cole* happened, we had learned a lot from the East Africa bombings. And as a result, almost immediately we lit up that it's got to be al Qaeda. In addition, after about three or four days there, the first agents on the scene, based upon the planning and preparation that they observed in their limited investigation to date, we were confident and we reported back to the attorney general that we firmly believed it was al Qaeda. But our caveat was we could not take that to a court of law and bring an indictment; we needed further investigation and things

like that. That's what happened in January. We were at the stage then, working with the Southern District of New York, that we could start to talk about specifically indicting al Qaeda for the *U.S.S. Cole*.

MR. LEHMAN: Thank you. Mr. Black.

MR. BLACK: Well, I believe it's -- I think it's very important to be accurate in these things. You want to provide your customer with the best information you have. Instinct, professional instinct is good. In the wake of the *Cole* we were able to pretty quickly determine that al Qaeda-associated people were involved in this. And I think by January we made what we described as the intelligence case, and the intelligence case -- distinct from the law enforcement case, CIA doing the intelligence case. And what we came up with -- yes -- as I recall, yes, these are al Qaeda-associated people that conducted this operation. The area that we felt we needed to explore more was proof that there was a clear command/control relationship between the leadership of al Qaeda -- Osama Bin Ladin or Khalid Sheikh Mohamed, someone like that -- that we could actually track to these individuals that actually executed the attack.

Now, were I working for you, I would say, you know, it looks pretty good that, pretty early on. This is al Qaeda, you know. Well, that's great. It's based primarily on the little information I have access to, professional experience. We collected more intelligence around the world. We went about it globally, comprehensively. You know, our confidence went up. But by January the intelligence case was pretty positive. But we were still looking for that positive link to Osama Bin Ladin command and control, and we actually did get that, I might point out, but that was something like a year, a year and a half later. So we could say to you absolutely this is proof positive of the intelligence case. Indications early on yes, but separate and distinct from the law enforcement case, which would be of such a quality that you could take into a U.S. court of law.

MR. LEHMAN: Thank you both for your frankness.

MR. KEAN: Congressman Roemer?

MR. ROEMER: Thank you, Mr. Chairman.

Welcome to both of you to the 9/11 Commission. You have both playfully insulted lawyers in the last 10 or 15 minutes. I'm not a lawyer -- (light laughter) -- I don't care. You've got six

lawyers following me in the questions; you might want to say something nice in the next 10 or 15 minutes. (Laughter.) Just a little bit of advice to you for the next few minutes.

You two are certainly squarely in the hot seat. We have staff statements and the Joint Inquiry report that has roundly and deeply systemically criticized the FBI and the CIA for their performances leading up to 9/11. They have cited problems in sharing communication, connecting the dots, overclassifying documents, and glitches and failures to protect the seams. I have a question for both of you to just go at maybe one of the problems.

I asked Director Freeh, Mr. Pickard, earlier about the active informant who had engaged two of the 19 hijackers, and he said, "Quite frankly, the FBI should have done better." Let me give you a case and get your response from it.

You have said in your remarks that that was the most chatter in the summer of 2001. When we have talked to some of the people that should have heard this serious chatter in your communication with them leading into the spring and the summer, when a BIG event was going to happen, an experienced terrorism supervisor in the Washington office six blocks from headquarters, six blocks away, says he was not aware of any heightened terrorist threat, his squad took no special action leading up to 9/11. A supervisor in the Miami field office, a Special Agent in Charge, said, this was inside-the-beltway-kind of thing, never heard of that chatter until after 9/11. What happened?

MR. PICKARD: Your staff has put together some of the communications we sent out. I was concerned making sure that we were at maximum capacity, maximum effort on that. I personally had a conference call with all 56 SACs and all the assistant directors on July 19th just to make sure that -- I know some people don't read everything that comes out. But just to reinforce that, I had all 56 SACs -- I can't account for the SAC in Miami as to whether he was actually on the call, but whoever was in charge of the office that day was on that call, because I did not get on it until they were all on it. During that call I reiterated the issue of the threat level and also to make sure they were at their maximum effort on that. I don't know --

MR. ROEMER: Do you recall your precise words that you recently told the 9/11 Commission on that conversation?

Your words to the 9/11 Commission were "Evidence Response Teams ready." Evidence response. That's reactive, that's not proactive saying here's the threat, here's what you need to do about it. You're saying, if we get hit, have the Evidence Response Teams ready.

That's what you told the 9/11 Commission staff.

MR. PICKARD: I also -- I had a very brief conversation with them about that. I was surprised at the brevity of it.

MR. ROEMER: Well, it sounds like it was pretty brief to the field offices as well -- response, not active threat.

MR. PICKARD: But I also had -- I spoke to each of the 56 SACs during the month of July, between July 9th and July 31st, each of them individually. I had them on the phone, secure conference call with the assistant directors from Counterterrorism, Dale Watson; Counterintelligence, Neil Gallagher; and the assistant director of the Criminal Division, Rubin Garcia. We discussed their performance, and in addition to that hour-and-a-half discussion of their performance in their field office and their commitment to the counterintelligence and counterterrorism efforts, we also discussed during that phone call the threat level. I don't know why the SAC in Miami did not get it. I spoke to him on July 18th.

MR. ROEMER: Six blocks away -- your supervisor six blocks away didn't get it.

MR. PICKARD: I spoke to the SACs. They should have been working that information down. I don't --

MR. ROEMER: So could you have done a better job, or are you just saying, "I don't know why they didn't hear it." Did you task them again after the 19th?

MR. PICKARD: I don't understand why they didn't hear it. I spoke to each of them individually, as I said. And in addition, I had the communications out to them. I don't know what more I could have done. Some people, I don't understand whether they can't recall it or not. But if you talk to -- for example, I know the staff, the New York office agents, they got it; they were always on top of it, and many of the other agents that I spoke to over the last week.

MR. ROEMER: When we -- as you read in the staff statement, when we tasked out to the field if all those offices were on high alert and doing their maximum effort, I think we got nine out of 10 back saying they weren't at maximum effort, they weren't at war footing.

Mr. Black, let me ask you; your folks did a very professional job following people into Kuala Lumpur to a meeting of known, suspected thugs, terrorists, murderers. Then, after the meeting of a couple of days in Kuala Lumpur, they leave, three of them leave and go to Bangkok. You failed to follow those three people.

To me that's like a sheriff in a local town finding some people on the border of Indiana that are suspected murderers, letting them go across the border in Michigan and not alerting anybody that they're on their way.

What happened? Where did we let down the guard here from Kuala Lumpur to Bangkok that then let two of these hijackers into the United States?

MR. BLACK: The activity covering these people in Kuala Lumpur was pretty comprehensive. We were concerned about their actions. We were able to conduct photography.

MR. ROEMER: I said you did a good job there.

MR. BLACK: (Off mike) -- later, so that was -- worked out pretty well.

What happened was that when the targets departed Kuala Lumpur and went to Bangkok -- that the advisory information -- the alert to the people down range into Bangkok did not arrive in time to put coverage upon the targets upon arrival; got there late. The targets went out into the community, and working with our friends locally, as a priority operational activity, we tried to find these people.

So we were looking for them in the interim and there -- the next sign of life that we identified of these targets, unfortunately, was that -- looking at, I think, airport departure cards, something like that, some physical evidence that they had departed. Then that information was reported cable traffic, which is another part of the story.

MR. ROEMER: So a couple months later you find out that they've departed Bangkok and are in the United States.

MR. BLACK: That's correct. With looking -- you know with these things, having a good partnership with our friends -- looking to try and find these people, we were able to find evidence of them. Bangkok, I'm sure you've been there. It's a big town. We found evidence that they had departed, and this information was communicated. That took place in March. So they had come and they had gone, with us being able to know that till we came up with the departure cards, and that was the status of it.

MR. ROEMER: Mr. Pickard, what's important for me to try to understand as well as -- in your role at the number two position at the FBI and acting director, I'm interested in knowing what you were telling the highest government officials, briefing them about the threat leading into the spring and summer of 2001. Did you ever have the opportunity to brief the President of the United States on counterterrorism issues?

MR. PICKARD: No, I did not.

MR. ROEMER: Did you ever ask to do that?

MR. PICKARD: No, I did not.

MR. ROEMER: Did you ever brief the Vice President of the United States on counterterrorism --

MR. PICKARD: Yes, I did.

MR. ROEMER: How many times did you brief the Vice President?

MR. PICKARD: I recall one time that he came over to FBI headquarters on March 16th. I believe he came another time, but I was not present. I did not personally do the briefing. Director Freeh and Assistant Director Watson did them.

MR. ROEMER: And did you brief the Vice President on an al Qaeda presence in the United States?

MR. PICKARD: Yes.

MR. ROEMER: And what was his reaction?

MR. PICKARD: He was surprised that al Qaeda was here in the United States, as was the attorney general. We told them we had coverage on them; and as I explained earlier, we also have Hamas, Hezbollah, many other terrorist groups. We also have intelligence agents from foreign countries here in the United States. With the laws and regulations we have, we try to utilize anything we can to thwart their efforts, but if they haven't crossed the line, if they haven't done something illegal, we don't have an opportunity to do anything with them.

MR. ROEMER: Did the Vice President task you with any kind of undertaking to do something about the al Qaeda presence?

MR. PICKARD: Not that I recall.

MR. ROEMER: Didn't ask you to arrest them? Didn't ask you how --

MR. PICKARD: The Vice President didn't --

MR. ROEMER: The Vice President --

MR. PICKARD: He had very few comments.

MR. ROEMER: And are you sure that that was the Vice President's reaction, according to what you said to the 9/11 Commission staff?

MR. PICKARD: I think you're referring to what the attorney general said.

MR. ROEMER: No, I know what -- I'm going to ask you about what the attorney general said.

MR. PICKARD: As I recall, the Vice President, at the end of the meeting, had three points. I recall the point about the computer systems of the FBI. I don't recall the other two.

MR. ROEMER: So he did say two or three things to you.

MR. PICKARD: Right.

MR. ROEMER: Did he follow up with you, in the spring and summer when the warning was getting bigger and bigger, about the al Qaeda presence, (that he was ?) worried about that?

MR. PICKARD: I believe he had another meeting with Director Freeh, but I was not at it.

MR. ROEMER: In the spring or the summer?

MR. PICKARD: In the spring. Director Freeh left -- retired from the FBI about June 22nd.

MR. ROEMER: Well, I'd certainly like to follow up with you a bit more on that particular topic as you recollect those three items.

Did you brief the national security advisor to the President, Dr. Rice, on counterterrorism?

MR. PICKARD: Shortly after Dr. Rice came in, Director Freeh and I went up and met with her and Steve Hadley and briefed her on both counterintelligence and counterterrorism issues.

MR. ROEMER: And how specific were you on counterterrorism issues? Did you generally brief her on counterterrorism? Was it specifically on al Qaeda and Bin Ladin?

MR. PICKARD: It wasn't specifically on them. It was the whole counterintelligence and counterterrorism program of the FBI.

MR. ROEMER: And this was in February 2001?

MR. PICKARD: I believe it was January 26th.

MR. ROEMER: January 26th is one of the meetings. I believe you also briefed her in February on Khobar Towers.

MR. PICKARD: That's correct.

MR. ROEMER: So you had two.

MR. PICKARD: Yeah. At least two.

MR. ROEMER: And did Bin Ladin come up in the second briefing?

MR. PICKARD: No, it didn't.

MR. ROEMER: Okay. You sure?

MR. PICKARD: Yes. It was specifically on Khobar Towers because we were running towards the end of the statute of limitations on it, which was June 25th.

MR. ROEMER: Okay. Well, again I'd like to talk to you about that in terms of your comments to the staff.

Did you brief the attorney general on terrorism?

MR. PICKARD: Yes, I did.

MR. ROEMER: And how many times did you brief him on terrorism?

MR. PICKARD: After Director Freeh left the FBI, the attorney general had me come in on June 22nd to meet with him, and he appointed me as the acting director of the FBI. And then on June 28th I had a meeting with the attorney general and deputy attorney general, and I believe his chief of staff was in parts of that meeting as well as Assistant Director Garcia from the FBI.

MR. ROEMER: So what would you guess, Mr. Pickard? How many times did you brief?

MR. PICKARD: At least three times.

MR. ROEMER: Three times. And what were the attorney general's priorities with respect to terrorism? Was it a top-tier priority for the attorney general?

MR. PICKARD: It was a top tier for the FBI. The attorney general on May 10th issued budget guidance for us, and I did not see that as the top item on his agenda.

MR. ROEMER: How -- did you take that to the attorney general, that you were concerned that that was not a top item for him? And was this the \$58 million that you're concerned about?

MR. PICKARD: No, that was later. This was the budget guidance that came out on May 10th. During the summer of 2001 the FBI submitted what I believe was our 2003 budget proposal. That proposal came back and the additional funds that we were looking for on counterterrorism were denied. I spoke to the attorney general briefly and asked him if I could appeal it, and he told me yes I could; put it in writing. I had our finance and counterterrorism people put together an appeal of that decision,

and then on September 12th I read the denial of that appeal from the attorney general.

MR. ROEMER: So you had a May 10th memo on the attorney general's priorities that you objected to, and then you had a meeting in August where you personally appealed to the attorney general and received a letter from him saying no to the increases that you received on what date?

MR. PICKARD: I received that on September 12th, that denial.

MR. ROEMER: So what does this say about counterterrorism as a priority for the attorney general? Do you think it was not the priority that you hoped it would be, commensurate with the FBI's?

MR. PICKARD: I only had the perspective to see it from my view, of the FBI. I don't know all that the attorney general had to look at with 100,000 employees of the Department of Justice.

MR. ROEMER: Thank you, Mr. Chairman.

MR. KEAN: I've just got a couple of questions.

During the summer of 2001 the Minneapolis office had Moussaoui detained, and they were concerned that he might be part of a larger plot. Were you aware of his detention and aware of his -- those concerns?

MR. PICKARD: No, I was not.

MR. KEAN: Were you aware of those concerns any time before September 11th?

MR. PICKARD: No, I was not.

MR. KEAN: The New York office began searching for al Hazmi and al Mihdhar, knew that they were in the country and were searching for them that same summer. Were you aware of that?

MR. PICKARD: No, I was not before September 11th.

MR. KEAN: Do you think if those two matters from those different offices had been brought to your attention, do you think you might have thought a little differently about the plot or whether there was a plot, or you might have acted differently based on those pieces of information?

MR. PICKARD: I've thought long and hard about that, Governor. And it's a frightening thought to think that that could have been on my desk on September 10th, and would I have done something differently or not? And I can't answer that. I go back and forth on that constantly. It keeps me up at night, thinking: if I had that information, would I have had the intuitiveness to recognize, to go to the President, to do something different?

MR. KEAN: What bothers me is just the fact it didn't get to you --

MR. PICKARD: That --

MR. KEAN: -- you know, that something in the FBI stopped those very two important pieces of information, one from -- from different parts of the country, from rising to the kind of level where you might have seen them and might have acted on them.

MR. PICKARD: Governor, in defense of the employees there, they were getting -- one of unit chiefs -- at least 100 pieces of information a day. They were getting fed from a fire hydrant and trying to sort through those things.

I spoke recently with the individual who was in charge of the Minneapolis office, and he said -- I asked him. I said, "Why didn't you call me?" I said, "You know me." I send a -- once a year out an e-mail to all FBI employees to tell them to come to me with any issue that you have, whether it's investigative, administrative, your pay or some other problem. And I'd heard frequently from individuals who said, "I can't get a group on undercover operation through," or "I'm not getting my annual leave corrected," or whatever it might be. And my secretary used to kid me about it, because she'd print it out each night and say, "Here's your homework. Do it tonight and bring it back tomorrow morning" -- because I don't type.

Those things bothered me, but those employees working down in the Counterterrorism Division were working very hard. They were trying to do the best they could with the hundreds of pieces of information they could. And as we sit here with 20-20 hindsight, picking out three or four pieces of information, I think it is a disservice to them to recognize what pieces, in light of 9/11, were relevant.

MR. KEAN: "Hindsight" is a word we've used. We've all got to be careful to look at the world as it was before 9/11.

Ambassador Black, using hindsight now, if we were able to recognize the kind of tragedy that was going to happen, what would you have done differently? What did we do wrong?

MR. BLACK: Well, I'll tell you, I would start from the standpoint that when I started this job in 1999, I thought there was a good chance I was going to be sitting right here in front of you. And I was mentally prepared for it all along.

The enemy we're up against is one that I've been operating against since the early '90s.

I know these guys. I know what they want to do. I know how dedicated they are. And they were coming at us hard. And, you know, we did all that we could at our level to engage these guys to try and produce the kinds of intelligence, to kind of produce the kinds of leads. And the men and women that did this, governor, that served this country in war out front did a fantastic job, you know? So on the one side you have catastrophic failure, more than 3,000 people dead; no one's more bothered by this than us. But we engaged these targets. You'll never hear from us, Oh, you know, we didn't get it. "Oh, we got it, all right." We knew what we were up against. We gave it all we had. The big bottom line here -- you know, people come up with these grand ideas for improvement, you know: big computers, or whatever. The bottom line here, I got to tell you -- and I'll take part of the blame on this -- I kind of failed my people despite doing everything I could. We didn't have enough people to do the job, and we didn't have enough money by magnitudes. And I could give you comparisons you, like, wouldn't believe.

We used to talk about it in the counterterrorism center. You know, this goes into the '90s. I mean, this has been so hard-wired that, you know, by the time we get up in the recent past, I mean, this train is on this track and this is where it's going. Hell, I don't know if we ever COULD have got it off without some kind of catastrophe. I will tell you, you know, going back to the '90s, doing the terrorist target, the only way we ever got more money essentially was we would spend ahead of the curve and run out.

You know, people talk about the millennium threat? I can remember we were spending money on the millennium threat, went to the director. I said, "Mr. Tenet, you know, we're spending money here; we're not going to make it to the end of the fiscal year. We're going to be three months short. We're going to have to stop and -- you know, we won't be able to operate." He said -

- well, he sighed and he said, "Well, you know, do what's right for the country; blow it out." So we did. So we spent -- you know, after the money threat was over, we spend our time trying to the money to make up for that which we spent, OR -- and I'm just not going to go into the exact kind of language I used, which is very graphic. But unfortunately, when Americans get killed, it would translate into additional resources. It's a constant track: either you run out, or people die, when people die you get more money.

And, you know, it would have been better if we as a country had made the commitment to provide our counterterrorist warriors the resources and the numbers so they could do the best job they could. But what I want to leave you with -- I mean, that's all I want to leave with. The people that did this are heroes, and we didn't give them what they needed to fight and win. It's that simple. Thank you.

MR. KEAN: Senator Gorton.

MR. GORTON: Mr. Pickard, you answered some of these questions at the beginning of Commissioner Lehman's testimony, but I want to press you a little bit further on it.

In the now famous Presidential Daily Briefing of August 6th 2001, after a statement that the CIA had not been able corroborate some of the more sensational threat reporting, there is that single line, "The FBI is conducting approximately 70 full field investigations throughout the United States that it considers Bin Ladin-related."

Now, you quite rightly said that wasn't your sentence; you didn't write it. No one from the FBI wrote it. It was written by someone from the CIA after a conversation, a telephone conversation with someone at the FBI.

MR. PICKARD: That's correct.

MR. GORTON: Now, our staff says this about that statement: "The 70 full field investigations number was checked out by the Joint Inquiry and we looked at it too. It was indeed a number the Bureau used at the time. It was generously calculated to include all fundraising investigations around the country that might have a connection with UBL. It also counted each individual in an investigation as an individual full field investigation."

Now, was not Commissioner Lehman correct in saying the normal recipient of a statement like that would generally -- could easily take the interpretation -- "we've got it covered" -- that that's what that meant. That's one question.

The second question is, is this staff interpretation or investigation of what was meant by 70 full field investigations, correct, as far as you're concerned?

And my third question would be, had you been writing it up, would you have been more modest and more limited in what you claimed for the FBI?

MR. PICKARD: First off, to your issue of do we got it covered -- we could never say that. We only know --

MR. GORTON: No, I asked whether or not the recipient might well interpret the sentence that way?

MR. PICKARD: I would never -- especially with the experience I've had in counterintelligence and counterterrorism, you can never say you have it covered. You don't know what you don't know is the problem. You can only tell, based upon the intelligence you have, you have an understanding of where they're coming from, and things like that. But I don't think anybody can say -- it's only as good as the intelligence you have, just like 9/11; it was only as good as the intelligence we had, and we didn't have much.

I'm sorry. Your second -- whether these numbers are correct?

MR. GORTON: The second question is whether or not our staff characterization is correct.

MR. PICKARD: I only learned about this when the PDB was released within the last couple of days. And when I was at FBI headquarters yesterday, I asked could they explain to me the 70 cases, which I had no recollection of ever hearing about as an aggregative number. And they gave me a rundown on the 70, approximately, cases. And I have that that I could provide to your staff afterwards, but I could give you some of the highlights. That as I said before, two of them were indicted and convicted on the East Africa bombing. One was indicted and convicted on another criminal case. Six moved abroad and were passed off to the CIA. Four were deported for immigration violations. Two died, through no fault of the CIA.

MR. GORTON: (Laughs.)

MR. PICKARD: But they might claim credit for them.

Twelve of the investigations were closed because the individuals did not have any connections with terrorism, as we had initially suspected. That just gives you some kind of context.

MR. GORTON: Okay, that's 12 out of 70. Were a number of them simply fundraising investigations?

MR. KEAN: This is the last question, Senator.

MR. PICKARD: I'm sorry, but I do not know that. And the material they gave me yesterday does not expound on that. I'll be happy to ask Director Mueller --

MR. GORTON: Would you have characterized it a little bit differently if you had been reporting directly to the White House as a part of that PDB?

MR. PICKARD: I would not want anyone to think the statement that "we've got it covered" or anything like that. We only know what we know; we don't know what al Qaeda is. And the lack of penetration of al Qaeda, as I said in my opening statement -- we did not have great sources in al Qaeda, and that's evidenced by 9/11. We did not, as George Tenet said, steal the secret.

MR. KEAN: Governor Thompson.

MR. THOMPSON: Mr. Pickard, since its declassification last weekend, you've, I assume, read the PDB of August 6th?

MR. PICKARD: Yes, I have.

MR. THOMPSON: On the first page it says, "Al Qaeda members, including some who are U.S. citizens, have resided in or traveled to the U.S. for years, and the group apparently maintains a support structure that could aid attacks." But in fact, as we now know, the al Qaeda members who participated in September 11th didn't use any such support structure. Is that correct?

MR. PICKARD: That's my understanding. I left the FBI in November 2001. I don't know if any other information has been developed.

MR. THOMPSON: Well, just to make sure the record is clear, you said in your prepared statement, "They did not receive support knowingly from anyone in the United States, nor did they contact known al Qaeda sympathizers in the United States." Is that correct?

MR. PICKARD: That's correct.

MR. THOMPSON: At the bottom of the second page, it says "We have not been able to corroborate some of the more sensational threat reporting, such as that from a service in 1998" -- that's three years earlier -- "saying that Bin Ladin wanted to hijack a U.S. aircraft to gain the release of the blind sheik and other U.S.-held extremists."

As we now know, the attack on September 11th was not for the purpose of hijacking a U.S. aircraft to gain the release of any terrorists. Is that correct?

MR. PICKARD: That's correct.

MR. THOMPSON: Do you know the circumstances of the conversations between the CIA operative who prepared this PDB and an operative of the FBI who supplied some of the information?

MR. PICKARD: No, I do not.

MR. THOMPSON: You do not. Okay.

The *Cole*. When did the FBI come to the conclusion that al Qaeda was responsible for the *Cole*? Not Osama Bin Ladin, al Qaeda.

MR. PICKARD: I -- I -- I do not know.

MR. THOMPSON: Mr. Black?

MR. BLACK: Sir, I recall that there was a report entitled "The Intelligence Case", and I believe that was in January, the following January, making the intelligence case that al Qaeda operatives were involved, as I referred to earlier, but that the intelligence case was still lacking, and that at least the CIA, at least, was unable to prove linkage between these al Qaeda operatives in Yemen and Osama Bin Ladin in Afghanistan.

MR. THOMPSON: But the CIA knew during the course of the Clinton administration that al Qaeda operatives were involved in the *Cole*. Is that not right? Forget whether they could be linked to Osama Bin Ladin or not.

MR. BLACK: Excuse me. (Pause.)

I'm going to have to take this for the record. I just don't - - I just do not -- do not remember it. What I do remember about this is that the effort to collect intelligence, that it produced the analysis that al Qaeda operatives were involved in this. But the outstanding question I recall was that of command and control, which was resolved a substantial period later, where we were able to prove, even in the intelligence case, there's a direct link between Osama Bin Ladin and the *Cole* attack.

MR. THOMPSON: Once it was proved, was there any discussion in the Bush administration about retaliating against al Qaeda or the Taliban for their attack on the *Cole*?

MR. BLACK: I would not know if there was. I was not privy to that kind of discussion.

MR. THOMPSON: You never heard that.

MR. BLACK: I never heard of that, sir.

MR. THOMPSON: Mr. Pickard, did you ever hear that?

MR. PICKARD: I never heard that, either.

MR. THOMPSON: Thank you, Mr. Chairman.

MR. KEAN: Senator Kerrey?

MR. KERREY: Ambassador Black, are you familiar with the 1998 effort to change the overt policy of the United States towards Iraq at all? I mean, the Iraq --

MR. BLACK: No, sir. I'm --

MR. KERREY: -- the details of the Iraq Liberation Act?

MR. BLACK: No, I -- I only did terrorism. That's more than enough for me. Iraq is from in --

MR. KERREY: Well --

MR. BLACK: The way we were organized is something different.

MR. KERREY: The reason I say it is it's on my list of regrets. I mean, I -- not that I did that. I led the effort, President Clinton signed the legislation in -- on Halloween 1998. Basically, what it did was it said that our overt policy has to be the same as our covert policy.

And one of the things that -- the reason I say that is -- I sort of regret is that I didn't do the same with terrorism because it seems to me that when you say we were doing all we could, that we were at a state of war at the CTC, that the problem was on the overt side we weren't. And I wonder if you've seen the Delenda plan and the Blue Sky plan, or what Richard Clarke had in his 25 January memo, if you've seen those details, if you've given any thought to what would have happened if that had become the overt policy of the United States.

Now I'd preface that by saying I've just -- I get angrier and angrier listening to Secretary Cohen and Secretary Albright and National Security Advisor Berger and Secretary Rumsfeld leading up to a great confrontation with Dr. Rice that, you know, they all had different reasons why they couldn't take military action. And they would posit what I thought was a straw man -- we either had to have the Normandy invasion or it was cruise missiles when there are all kinds of options. You've quite correctly described the exciting collaboration between the special ops forces and --

MR. BLACK: And it is exciting. It's actually --

MR. KERREY: Yeah, it's very exciting. It was an alternative that was on the table. And I wonder if you're either seen the Delenda plan or the Blue Sky or what Clarke had in his 25 January memo, and if you have if you supported it and if you think that would have had an impact if it had been implemented in 1998?

I mean, I read -- Director Pickard's statement is a shocking statement; say al Qaeda was turning out five times more graduates from the camps than the FBI and CIA were graduating from their training schools. And then I hear Secretary Rumsfeld's testimony, saying well, we just -- we're bombing dirt -- you know, whatever it was, the targets weren't very damn good. But if we'd have denied them access to those camps

starting in 1998 it would have had a tremendous impact, it seems to me, in our effort against al Qaeda.

MR. BLACK: Well, if I could, I really think I should limit to myself. I was an intelligence officer, not a policymaker. Others make these kinds of decisions. You can only --

MR. KERREY: Well, that -- I was a policymaker not an intelligence officer, and that doesn't stop me from getting in your space. (Laughter.)

MR. BLACK: Okay, well, it should stop me. (Laughter.) First of all, I don't recall seeing the Delenda plan, but I do recall being a participant in originating the information for the Blue Sky memo, and we provided that to the National Security Council.

MR. KERREY: Let me ask you another one on the overt side. What if either, again, President Clinton or President Bush -- you know, pick your poison -- either one of them had said that al Qaeda's different than Hezbollah and al-Aqsa and Hamas; they're different in that they've declared war on us. So al Qaeda members are part of an Islamic army that are trying to get inside the United States. What if the overt policy had been to say we're going to deny them absolute access and send instructions to our consular office and our INS offices and the FBI and everybody, and they said, you know, we've got to turn this thing out. Would, for example, the Phoenix memo had a different impact?

MR. BLACK: Well --

MR. KERREY: If the policymakers -- again, pick your poison -- either President Clinton or President Bush had said in the overt space we're at war with al Qaeda; I may not need a congressional declaration of war -- that's too unpopular -- but at the very least I'm going to say al Qaeda's soldiers can't come into the United States of America?

MR. BLACK: Well, I think, Senator, say, from the early '90s if we had engaged this with a warrior ethos, we would not be in this situation today.

MR. KERREY: Let me ask you one last -- how in God's name did all this thing happen? I got to tell you, I hear battle stations and everything that we're doing, and at our airports we were at ease. We were stacked arms. We were not prepared for a hijacking. I mean, well, we didn't know all the conspiracy. A

hijacking surprised us. That's what Betty Ong said when they heard her voice, that the government and the FAA -- none of us were prepared for even a simple hijacking. How in God's name did that happen?

MR. BLACK: Am I meant to answer that, sir?

MR. KERREY: Yeah. If you can. If you can't, fine. I mean, I'm not sure I could if you were sitting up here.

MR. BLACK: Well, I mean, you know, I guess instinctively it says I don't know. But what I will say is that from my perspective that's why we tend to be a group of pretty paranoid people who don't get to sleep much --

MR. KERREY: (Laughs.)

MR. BLACK: -- when you know basically that if they get by you, then it's going to be a challenge for this country to respond. We've been living that way for a lot of years of our lives, and that's the way it is for us. Or that's the way it has been until, you know, the current situation we're in, where the resources and the rules of engagement and what we need --

MR. KERREY: I quoted you earlier, Mr. Ambassador, saying that -- I loved what you said: you know, here's what we did, here's what we tried and here's what we failed to get done. And I mean, put myself in that camp.

MR. BLACK: We could have used some help.

MR. KERREY: I've got a similar list --

MR. BLACK: We could have used some help, Senator.

MR. KERREY: (Laughs.) Thank you.

MR. BLACK: Mm-hmm.

MR. KEAN: Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman.

I don't want either of you to think that my questions are in any way trying to blame people who tried really hard and who quite evidently feel very bad about the things that didn't get done or things that weren't executed perfectly. But it's our job

to understand the efficacy of the things our government tried to do to protect the American people.

Let me start, Mr. Black, with one follow-up question to you.

Our staff statement talks about the CIA's zone defense, as opposed to man-to-man, to use the current basketball analogy. After al Hazmi and Mihdhar were followed by you out of Kuala Lumpur at the Kuala Lumpur meeting, and you lost them in Bangkok, it's our understanding that you knew that Mihdhar had a U.S. visa. And so my question is, why at that point was he not put on the TIPOFF watchlist?

MR. BLACK: Well, I would say that the -- that particular case should have been -- should have been. And unfortunately, ma'am, very often you'll find my answers going back to -- primarily influenced by not enough people and not enough resources. You get these people racing around, playing essentially professional racquetball and trying to keep up with all of these facts. In fact, I would say that there were multiple opportunities where we could have watchlisted.

MS. GORELICK: Yes, I just gave you one.

MR. BLACK: There was one, but I mean, it goes back to in the UAE, when we first came up with copies of the passport and the picture. And I would just like to say that having spoken to some of the people involved with this, you know, they truly believe that this information was passed to the FBI way back in January of '01. And you know, they thought they had done it, and they acted as if they did --

MS. GORELICK: Quite apart from the FBI -- I mean, I wanted to take the FBI --

MR. BLACK: Sure. Yes.

MS. GORELICK: I purposely asked this question to take the FBI out of the equation.

MR. BLACK: Yeah. Yeah. Yes.

MS. GORELICK: What we saw, quite frankly, was a geographical focus; that once the -- these guys, these operatives, got out of a particular geography, they disappeared, and back home here we didn't effectuate the hand-off. And so -- I do want to move on -

MR. BLACK: Yes.

MS. GORELICK: -- but it's my understanding that we had an opportunity then -- and we had others -- to put these two operatives, whom we had identified, on the TIPOFF watchlist as early as early 2000. Is that right?

MR. BLACK: Yes, ma'am, it is.

MS. GORELICK: Now, Mr. Pickard, I want to return to the questions that my now-absent colleague Mr. Roemer was asking you about the communications with the field. And you indicated that in this period of high threat in July, you had -- as part of your annual performance review, you talked with the SACs, among other things, about terrorism. And you also indicated that you had a conference call on July 19th in which you discussed, again, a number of other things, but mentioned the terrorist threat. And so we are trying to understand what the nature of that conversation was and how it was received.

MR. PICKARD: The July 19th --

MS. GORELICK: Yes. Now what -- I think the way you answered Commissioner Roemer -- I don't want to put words in your mouth -- was that what, you know, these guys -- people who were receiving this information have so much coming in to them that really sifting what is important is difficult. And I want to drill down on the Minneapolis example, because you indicated that you called the SAC and you said, "Why didn't you pick up the phone and call me?"

What the people who were working on the Moussaoui case told us was that they were desperate to get the attention of headquarters. This is after your two conversations with the SACs -- desperate.

MR. PICKARD: Right.

MS. GORELICK: And they went to the SAC, and they said "Would you please call Mike Rolince," the International Terrorism Section chief in headquarters, and the SAC wouldn't do it.

So this is not an issue of sifting, this is an issue of disconnect, I think, between the headquarters and the field.

And I would like you, if you can, to square up that behavior with the conversations you think you had with him.

MR. PICKARD: On July 19th, I had all 56 SACs on the phone, and I discussed four topics. First off, I discussed with them Back to Basics. It was a program that I had instituted with the Inspection Division based upon the problems the FBI had with the Timothy McVeigh documents to make sure that the employees of the FBI understood how pieces of evidence were to be handled, how they were to get in our files, and to make sure we did not have a recurrence of the Timothy McVeigh.

The second thing I talked to them about was our new director, Director Robert Mueller. I told them that I had a conversation with him, that he was enthusiastic about the job. The employees of the FBI were looking for who is the new leader who is going to take us into the 21st century. And there was quite a bit of excitement in the interim between Director Freeh and Director Mueller as to who's going to be our new boss; everybody wants to know who they work for, and things like that. So I talked to them about my conversation with Director Mueller and his enthusiasm for the job.

The next topic I talked about was there was concern expressed by the SACs to me. They felt I should be getting out in front of the media talking about the good things about the FBI and things like that. I told them I was not going to do that. I wanted them to get back to putting the "I" back in "FBI" for "investigations" and that would increase our presence and increase our stature and things like that.

And then finally, I told them about the threat level. I told them about -- that the chatter was still at a high level. I didn't have any further information about the chatter level, but I expected that at any time we could have a terrorist incident and they would be responding somewhere in the world, wherever it might be.

They pulled the records yesterday. The conversation lasted approximately 35 minutes. I've given you a two-minute synopsis of that. I can't recall with a lot more specificity what happened there.

I don't understand why, but I think -- if I could talk to you. On the afternoon of September 11th, we had reports all over the map. We had situations where we thought the Department of State had been bombed. We thought bombs were going off. We thought the Sears Tower was evacuated, and things like that.

I called all 56 SACs again, first off to get an evaluation of where we stood, what was happening, where we needed resources deployed to, what we could do, and what we could also get back to the director so that if he had meetings with the President -- and he had a number of conversations and meetings with the President that day, Director Mueller -- I wanted to have the best information we had.

I also asked them, at this time is there anything in our files, anybody who came into our offices, anybody -- anything that, in light of what happened this morning, September 11, that we need to know about, that we need to capitalize on to see whether we can prevent any future plots? At that time we were worried that is al Qaeda going to do something else tomorrow? What is going to be the next thing we're going to get hit with?

When I asked that, immediately I was told about the Minneapolis arrest of Moussaoui. That was about 3:00 in September 11. Later that day, I found out about the Phoenix memo, and then a couple of days later the agents in New York, when we started identifying the hijackers, they called in and said: We were looking for Mihdhar and al Nawazi (sic); we didn't realize that they were involved in a plot.

So --

MS. GORELICK: Mr. Chairman, could I have one follow-up question, please?

MR. KEAN: Very brief.

MS. GORELICK: Very brief.

MR. KEAN: We're running a little late.

MS. GORELICK: I'm sorry. But I was silent all morning.
(Laughter.)

MR. PICKARD : Doesn't she get extra time? (Laughter.)

MS. GORELICK: When you found out that Director Tenet had been briefed in August about an Islamic extremist learning to fly, which was your case, and he knew about it in August and you didn't until after September 11th, how did you feel about that? And how did you feel about the efficacy of the conversations you had with your subordinates in July?

MR. PICKARD: I was very disappointed that, something that would go up to the DCI, that I wouldn't hear about. But that was because we had a joint terrorism task force in Minneapolis. The officer from the CIA who was working on that task force pushed that up through their chain. The FBI did not push it up.

MS. GORELICK: Thank you.

MR. PICKARD: I also had a conversation with Director Tenet, and he did not bring it up to me, though, either, on August 27th.

MS. GORELICK: Thank you.

MR. KEAN: Commissioner Fielding.

MR. FIELDING: Thank you, Mr. Chairman.

Ambassador Black, you said earlier that it's important to you to be accurate with your customers. And surely the most important customer for intelligence information would be the President of the United States. And we've had this dialogue today about the PDB of August. And I'm curious, what steps do you have in place or that are taken to make sure of the accuracy of information that your people receive from outside of the CIA?

MR. BLACK: There's an elaborate vetting process. Information is received, raw intelligence is received, it comes in to personnel that review it, that do the analysis function. And there are those that write articles for numerous publications, including the PDB. This particular employee was home-based in the Directorate of Intelligence and was serving in the Counterterrorism Center.

So the raw reports are received, we attempt to estimate the needs of our customer, and write products that meet their needs.

MR. FIELDING: But what do you do to check the accuracy of the information that comes from outside of your own ambit?

MR. BLACK: Questions are asked. I believe -- I have not spoken to the author of this particular piece. But I understand that this officer was in contact with the FBI. In this instance I think the assumption would be that the FBI would have confidence in the information that it provided.

MR. FIELDING: I just have one more technical question for you.

MR. BLACK: Yes, sir.

MR. FIELDING: CTC. Is it part of CIA, or is it part of DCI?

MR. BLACK: Yes, sir. It's called the counterterrorism center.

MR. FIELDING: Yes.

MR. BLACK: And as the former director of the counterterrorism center I reported to the director of Central Intelligence, but also to the deputy director for operations on a dotted line as well as a dotted line to the deputy director of intelligence. That --

MR. FIELDING: (Inaudible) -- government organizations --

MR. BLACK: -- it's one of these unfortunate jobs where you have lots of bosses, and you get lots of advice.

MR. FIELDING: Okay. I understand.

Now, you've also spoken about the resources very eloquently, and -- your lack of resources, I guess. If you didn't have enough resources, did you ask Director Tenet to allocate or reallocate funds from lower priorities?

MR. BLACK: Yes. He was aware of our resource needs. And he did -- we were the first among equals of all his highest priorities. He did shift resources to us. In fact, when I arrived in the counterterrorism center, I believe that the -- we'd had a plus-up of approximately a hundred personnel. We regularly discussed this. We were the recipient of significant support in comparison to the type of support that he was able to provide to other units, my point here being is that the director of Central Intelligence did a heroic job with what was available, and certainly in comparison to the other competing interests. My point here is that, I think as we've discussed today, is that this is a very large, formidable target, and that we needed to devote more resources to it than the base of the Central Intelligence Agency had.

MR. FIELDING: I understand that this isn't your final decision, but from where you're sitting --

MR. BLACK: Yes.

MR. FIELDING: -- is the problem in the intelligence community, is the problem in the OMB, or is the problem in Congress, as far as limited funding?

MR. BLACK: I think, from my perspective, it would be all of the above and probably more.

MR. FIELDING: Mr. Pickard, the time that now-Director Mueller took over from you and you were the acting director -- did you brief him?

MR. PICKARD: During the summer of 2001, I called Director Mueller, first off to congratulate him on being appointed the director and offering my support, and told him I'd serve in whatever capacity he wanted me to. I also advised him that I would be retiring by the end of the year.

I asked him for what kind of briefings he would want, because he was going to not report till September. And as has been reported in the press, he was having some surgery. He asked that I not brief him on any kind of classified material, because he did not feel he would be able to securely maintain it that summer.

When he reported in on September 4th and was sworn in by the attorney general, that whole week I had set up a series of briefings on classified information for him and also emergency procedures, everything from in the event of nuclear war to how to call up the Hostage Rescue Team and other things like that, that the director, I felt, needed to know as soon as possible upon his arrival.

MR. FIELDING: I see the red light is on, but just may I ask you: Is there a written record of the briefings, or are there written agendas or things like that that you could supply to the Commission and its staff for studying to see what you covered?

MR. PICKARD: Yeah. I did not participate in those briefings with the director. The assistant directors of each of the divisions, Counterintelligence and Counterterrorism, did those briefings. And I will ask the FBI to see if they can find those briefings.

MR. FIELDING: And just as an aside, I noted that you were the sixth deputy director in eight years, and then you left at the end of that. That must be a tough job.

MR. PICKARD: Well, I'm proud to say I held the record. I lasted two years.

MR. FIELDING: Thank you, sir.

Thank you, Mr. Chairman.

MR. HAMILTON: Final questions will be by Commissioner Ben-Veniste.

MR. BEN-VENISTE: Good afternoon, gentlemen.

Mr. Pickard, on January 21st, you met -- of this year you met with our staff. Is that correct?

MR. PICKARD: Right. That's correct.

MR. BEN-VENISTE: And according to our staff report, you told them that in June 2001 you met with Attorney General Ashcroft, and he told you that you would be the acting FBI director.

MR. PICKARD: That's correct.

MR. BEN-VENISTE: You had some seven or eight meetings with the attorney general?

MR. PICKARD: Somewhere in that number. I have the exact number, but I don't know the total.

MR. BEN-VENISTE: And according to the statement that our staff took from you, you said that you would start each meeting discussing either counterterrorism or counterintelligence. At the same time, the threat level was going up and was very high. Mr. Watson had come to you and said that the CIA was very concerned that there would be an attack.

You said that you told the attorney general this fact repeatedly in these meetings. Is that correct?

MR. PICKARD: I told him at least on two occasions.

MR. BEN-VENISTE: And you told the staff, according to this statement, that Mr. Ashcroft told you that he did not want to hear about this anymore. Is that correct?

MR. PICKARD: That is correct.

MR. BEN-VENISTE: Now let me ask you about this PDB. You never vetted the PDB. You never saw the PDB. You never knew that it was going to be produced. Correct?

MR. PICKARD: That's correct.

MR. BEN-VENISTE: And it would appear that the author or the individual at CIA that edited this PDB, by entitling the PDB "Bin Ladin Determined to Strike in the United States," wanted to get the President's attention because most of the threat reporting seemed to be that the heightened alert reflected the potential for a threat overseas, and that this was perhaps the same syndrome as the white van in the sniper case that we saw, where everybody is looking in one direction for one thing but not looking in the other direction where something might occur. Condoleezza Rice said that when she saw this PDB it was certainly not reassuring, and quite clearly we know whether the information was right, wrong or in the middle somewhere this author was prescient; the attack came in the United States.

Now my question to you, sir, is that if you had the information that the President of the United States was requesting what information the FBI had up to that moment about the potentiality for a strike by Bin Ladin in the United States, would you not have pulsed the FBI to determine from every FBI agent in this country what information they had at that moment that might indicate the possibility of a terrorist attack here?

MR. PICKARD: Yes, I would have.

MR. BEN-VENISTE: And you learned on September 11th three things, if I understand your testimony. Number one, you learned about Moussaoui. Number two, you learned about the Phoenix memo. Number three, you learned about two of the hijackers who were in the United States who the FBI was looking for. Had you learned that information soon after August the 6th, was there not a possibility that you could have utilized that information, connected the information, put it together with what you already knew, and taken some action?

MR. PICKARD: I don't know. Moussaoui was arrested on August 15th. The information about the other two hijackers came to the FBI's attention I believe August 23rd and later on on August 27th. To bring these three diverse pieces of information together absent the afternoon of September 11th -- I don't know, with all the information the FBI collects, whether we would have had the ability to hone in specifically on those three items.

MR. BEN-VENISTE: Certainly if you knew that the President of the United States was asking --

MR. PICKARD: I was not informed that the President was asking.

MR. BEN-VENISTE: I understand that, sir. But if you had known, would you not have -- I think you've answered my question. You would have pulsed the FBI.

Let me ask you this. Did the President or the attorney general of the United States ever ask to meet with you following August 6th?

MR. PICKARD: No. There was a policy that I was not to go to the White House unless the attorney general or the deputy attorney general or someone from the Department of Justice, either I had informed them or they went with me. And that was as a result of the Travelgate scandal where the FBI was asked for information by the White House.

MR. BEN-VENISTE: The request never came. And finally, with respect, Mr. Black, to the kill-or-capture answer that you gave earlier to Secretary Lehman, are you confident that you saw all of the instructions signed by President Clinton, as of late 1998, before you took up your duties at the CT Center in mid-1999?

MR. BLACK: All of the -- all of the memorandums of notification --

MR. BEN-VENISTE: Yes.

MR. BLACK: -- were retained by our lawyers, and I did have access to them and to --

MR. BEN-VENISTE: Are you confident that you saw all of them? Because, sir, you are mistaken with respect to your answer.

MR. BLACK: Well, I don't know the universe of what you're talking -- I don't know what necessarily "all the ones." I know the ones that were available to me. Put it that way.

MR. BEN-VENISTE: The problem was that the one that we are referring to here was not made available to us until very recently. It was in the Clinton archived materials and was held very closely.

MR. BLACK: Yeah. I don't know what you're referring to, so I would have to see it to confirm that I was aware of it. So I don't know, sir.

MR. KEAN: Okay, gentlemen, thank you very much. We appreciate your government service, and your attendance here and your help with our commission today.

Thank you very much.

MR. PICKARD: Thank you.

PANEL FOUR OF THE TENTH HEARING OF THE NATIONAL COMMISSION ON
TERRORIST ATTACKS UPON THE UNITED STATES RE: "LAW ENFORCEMENT
AND THE INTELLIGENCE COMMUNITY" THOMAS H. KEAN, CHAIR; LEE H.
HAMILTON, VICE CHAIR

WITNESS: ATTORNEY GENERAL OF THE UNITED STATES JOHN ASHCROFT

3:55 P.M. EDT, TUESDAY, APRIL 13, 2004

MR. KEAN: We now hear from our final witness today, the Honorable John Ashcroft, attorney general of the United States. Would you please rise, sir, and raise your right hand?

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

ATTY GEN. ASHCROFT: I do.

MR. KEAN: Please be seated, sir.

I also recognize Solicitor General Ted Olson and recognize it's not easy for you to be here today, sir, and thank you very much for coming.

Mr. Attorney General, your prepared statement will be entered into the record in full. And if you could summarize your opening remarks, we'd appreciate it.

ATTY GEN. ASHCROFT: Mr. Chairman, thank you.

It is with great sorrow that I join this commission today in reflection on September 11th, 2001. Even today, 31 months after the attacks, I struggle to learn the lessons of that day without being overwhelmed by the losses of that day. I feel sorrow for the loss of life, sorrow for the loss of promise, sorrow for the loss of innocence, sorrow for the loss suffered by a nation that is forever scarred. My sorrow for the victims of September 11th is equaled only by my rage at their killer. Osama Bin Ladin is to blame for my anger. I blame his hatred for our values, his perversion of a faith, his idolatry of death. It was his hand that took the lives of nearly 3,000 innocents on September 11th. It is his face that is the face of evil.

September 11th revealed not just our enemy's capacity for murder, but our fellow Americans' thirst for justice. The men and women of the Justice Department have embraced the cause of our times: that is, the protection of the lives and liberties of Americans. Working within the Constitution we fight any battle, shoulder any burden, no matter personal or political what the cost, to prevent additional terrorist attacks. And for the time being, al Qaeda's slaughter has ceased on America's soil.

We've been aggressive, we've been tough, and we've suffered no small amount of criticism for being tough and our tough tactics. We accept this criticism for what it is: the price we are privileged to pay for our liberty.

Had I known a terrorist attack on the United States was imminent in 2001 I would have unloaded our full arsenal of weaponry against it, despite the inevitable criticism. The Justice Department's warriors, our agents and our prosecutors, would have been unleashed. Every tough tactic we had deployed since the attacks would have been deployed before the attacks.

But the simple fact of September 11th is this: we did not know an attack was coming because for nearly a decade our government had blinded itself to its enemies. Our agents were

isolated by government-imposed walls, handcuffed by government-imposed restrictions, and starved for basic information technology. The old national intelligence system in place on September 11th was destined to fail.

This commission can serve a noble purpose. Your responsibility is to examine the root causes of September 11th and to help the United States prevent another terrorist attack. Your duty is solemn and sobering.

But I, too, have a duty today. I've sworn to tell the whole truth, and I intend to fulfill this obligation. Today I will testify to four central issues which have not been developed fully in the Commission's work and which deserve your attention.

First, this commission has debated the nature of covert action authorities directed at Osama Bin Ladin prior to 2001. In February 2001, shortly after becoming attorney general, I reviewed these authorities. Let me be clear: my thorough review revealed no covert action program to kill Bin Ladin.

There was a covert action program to capture Bin Ladin for criminal prosecution, but even this program was crippled by a snarled web of requirements, restrictions and regulations that prevented decisive action by our men and women in the field when they most needed clear, understandable guidance, and our agents and operatives were given instead the language of lawyers. Even if they could have penetrated Bin Ladin's training camp, they would have needed a battery of attorneys to approve the capture. With unclear guidance, our covert action team's risk of injury may have exceeded the risk to Osama Bin Ladin.

On March the 7th, 2001 I met with National Security Advisor Condoleezza Rice. I recommended that the covert action authorities be clarified and be expanded to allow for decisive, lethal action. We should end the failed capture policy, I said. We should find and kill Bin Ladin.

I recall that Dr. Rice agreed and gave Director Tenet the responsibility for drafting, clarifying and expanding the new authorities.

My second point today goes to the heart of this Commission's duty to uncover the facts. The single greatest structural cause for the September 11th problem was the wall that segregated or separated criminal investigators and intelligence agents.

Government erected this wall, government buttressed this wall, and before September 11th, government was blinded by this wall.

In 1995 the Justice Department embraced flawed legal reasoning, imposing a series of restrictions on the FBI that went beyond what the law required. The 1995 guidelines and the procedures developed around them imposed draconian barriers -- barriers between the law enforcement and intelligence communities. The wall effectively excluded prosecutors from intelligence investigations. The wall left intelligence agents afraid to talk with criminal prosecutors or agents. In 1995 the Justice Department designed a system that was destined to fail.

In the days before September 11th, the wall specifically impeded the investigation of Zacarias Moussaoui, the investigation of Khalid al Mihdhar and of Nawaf al Hazmi. After the FBI arrested Moussaoui, agents became suspicious of his interest in commercial aircraft and sought approval for a criminal search warrant to search his computer. The warrant was rejected because FBI officials feared breaching the wall.

When the CIA finally told the FBI that al Mihdhar and al Hazmi were in the country in late August, agents in New York searched for the suspects. But because of the wall, FBI headquarters refused to allow criminal investigators who knew the most about recent al Qaeda attacks to join the hunt for suspected terrorists. At that time, a frustrated FBI investigator wrote headquarters -- and I'm quoting -- "Whatever has happened to this, someday somebody -- someone will die, and wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems. Let's hope the National Security Law Unit will stand behind their decision then, especially since the biggest threat to us, UBL, is getting the most protection."

FBI headquarters responded -- and I quote -- "We're all frustrated with this issue. These are the rules. NSLU does not make them up."

But somebody did make these rules. Somebody built this wall. The basic architecture for the wall in the 1995 guidelines was contained in a classified memorandum entitled "Instructions for Separation of Certain Foreign Counterintelligence and Criminal Investigations." The memorandum ordered FBI Director Louis Freeh and others, quote, "we believe that it is prudent to establish a set of instructions that will more clearly separate the

counterintelligence investigation from the more limited but continued criminal investigations.

These procedures, the memo went on to say, which go beyond what is legally required, will prevent any risk of creating an unwarranted appearance that FISA is being used to avoid procedural safeguards which would apply in a criminal investigation.

This memorandum laid the foundation for a wall separating the criminal and intelligence investigations, as a matter of fact established the wall following the 1993 World Trade Center attack, which at the time was the largest international terrorism attack on American soil, the largest prior to September 11th.

Although you understand the debilitating impacts of the wall, I cannot imagine that the Commission knew about this memorandum. So I have had it declassified for you and the public to review. Full disclosure compels me to inform you that the author of this memorandum is a member of the Commission.

By 2000, the Justice Department was so addicted to the wall, it actually opposed legislation to lower the wall. Finally, the USA PATRIOT Act tore down this wall between our intelligence and law enforcement personnel in 2001. And when the PATRIOT Act was challenged, the FISA Court of Review upheld the law, ruling that the 1995 guidelines were required by neither the Constitution nor the law.

The third issue I'd like to raise with the Commission this afternoon is another limitation government placed on our ability to connect the dots of the terrorist threat prior to September 11, and it was the lack of support for information technology at the FBI. After I became attorney general in February 2001, it became clear that the FBI's computer technology and information management was in terrible shape. The Bureau essentially had 42 separate information systems, none of which were connected. Agents lacked access to even the most basic Internet technology.

These problems didn't just hamper interagency communication, they hindered information sharing in the Justice Department, the intelligence community and communication with state and local law enforcement. It's no wonder, given the state of this technology, that the Phoenix memo warning that terrorists may be training in commercial aviation was lost in the antique computers at the Washington headquarters.

Yet for year after year, the FBI was denied funds requested for its information technology. Over eight years, the Bureau was denied nearly 800 million (dollars) of its information technology funding requests. To put this \$800 million shortfall in perspective, the Trilogy program, which is now revolutionizing the computer system at the Bureau -- the data and information sharing at the Bureau, has cost 580 million (dollars).

On September 11, 2001, the FBI's annual technology budget under the prior administration was actually \$36 million less than the last Bush budget eight years before. The FBI's information infrastructure had been starved, and by September 11th it was collapsing from budgetary neglect.

When the Hanssen and McVeigh failures fully exposed this neglect and its cost to national security, I ordered four independent external reviews of the FBI's information infrastructure under the coordination of Deputy Attorney General Larry Thompson. I'm pleased that Larry is here in the audience today. And my first two budgets, both proposed before 9/11, requested a 50 percent increase for FBI information technology.

Finally, the Commission should study carefully the National Security Council plan to disrupt the al Qaeda network in the U.S. that our government failed to implement fully 17 months before September 11. This NSC Millennium after-action review declares that the United States barely missed major terrorist attacks in 1999, and cites luck as playing a major role. Among the many vulnerabilities in homeland defenses identified, the Justice Department surveillance and FBI -- pardon me -- FISA operations were specifically criticized in the after-action assessment of the Millennium approach. They were criticized for what were identified as glaring weaknesses. It is clear from the review that actions taken in the Millennium period should not be the operating model for the U.S. government.

In March of 2000, the review warns the prior administration of a substantial al Qaeda network and affiliated foreign-terrorist presence within the U.S. capable of supporting additional terrorist attacks here. Furthermore, fully 17 months before the September 11th attacks, the review recommends disrupting the al Qaeda network and terrorist presence here using immigration violations, minor criminal infractions, tougher visa and stronger border controls.

Now, these are the same aggressive, often-criticized law enforcement tactics that we have unleashed for 31 months to stop another al Qaeda attack. These are the same tough tactics we deployed to catch al Marri who was sent here by al Qaeda on September 10th, 2001 to facilitate a second wave of terrorist attacks on Americans.

Now, despite the warnings and the clear vulnerabilities identified by the NSC in 2000, no new disruption strategy to attack the al Qaeda network within the United States was deployed. It was ignored in the Justice Department's five-year counterterrorism strategy.

I did not see this highly classified review before September 11th. It was not among the 30 items upon which my predecessors briefed me in transition. It was not advanced as a disruption strategy to me during the summer threat period by the NSC staff, the staff which had wrote the review more than a year earlier.

I certainly cannot say why the blueprint for security was not followed in the year 2000. I do know from my personal experience that those who take the kind of tough measures called for in the plan will feel the heat. I've been there; I've done that. So the sense of urgency simply may not have overcome concern about the outcry and criticism which follows such tough tactics.

I am aware that the issues I have raised this afternoon involve at times painful introspection for this commission and for the nation.

I have spoken out today not to add to the nation's considerable stock of pain, but to heal our wounds. This commission's heavy burden to probe the causes of September 11th demand that the record be complete. Our nation's heavy burden to learn from the mistakes of the past demands that this commission seeks the whole truth. May this commission be successful in its mission, and may we learn well the lessons from history.

I thank the members of the Commission for their service and for the opportunity to be here and testify today.

MR. KEAN: Thank you very much, general.

Questioning today will be led by Governor Thompson.

MR. THOMPSON: General, does a member of your staff have the copy of this declassified memorandum about the walls? And if so, could we have it?

ATTY GEN. ASHCROFT: I believe the memorandum is available, and we'd be glad to provide it to the Commission.

MR. THOMPSON: Okay. While they're searching for that, let me ask some questions. And let's start with this walls business.

Let me read you one paragraph from the prepared statement of your predecessor, General Reno, that I asked her about this morning, and then ask for your comment on it. She said:

"There are simply no walls or restrictions on sharing the vast majority of counterterrorism information. There are no legal restrictions at all on the ability of members of the intelligence community to share intelligence information with each other. With respect to sharing between intelligence investigators and criminal investigators, information learned as a result of the physical surveillance or from a confidential informant can be legally shared without restriction. While there were restrictions placed on information gathered by criminal investigators as a result of grand jury investigations or Title 3 wire taps, in practice they did not prove to be a serious impediment, since there was very little significant information that could not be shared."

When you took office, sir, in 2001, was that your understanding of the wall?

ATTY GEN. ASHCROFT: No, I believe that the understanding of the wall that was prevalent in the Justice Department and among attorneys was that individuals who shared information from a criminal file or from an intelligence file to a criminal file might be subject to serious discipline. And the memorandum of which I spoke, which was crafted in 1995, specifically indicated that it was based on an understanding at that time held that the law would not countenance certain exchanges. I believe it was a mistaken impression of the law which was later corrected by the rulings of the FISA Court of Appeals. But if you'll look through the history of what happened, just in the cases surrounding 9/11, time after time you find individuals being advised by their superiors that they could not or should not be involved in activity because such involvement would breach the wall. I cited both the Mihdhar and Hazmi cases together with the Moussaoui case, each case where advice was given to individuals who wanted

to be more active in their pursuit of individuals, that they should restrain themselves in their pursuits because of the wall.

So it's my clear belief that the wall itself developed this culture which restrained in a substantial way the exchange of information in the intelligence and law enforcement communities. The Bellows Report, which was part of some recommendations following the Wen Ho Lee case, indicated that it was part of the culture at the FBI that if one made a mistake and shared information that was later deemed to be inappropriate, it was called a "career-ender" -- so that the risk of a person sharing information improperly was at least known in the culture of the law enforcement community to be a very substantial risk, and that individuals should shy away from sharing.

Now, let me just say that when we enacted the PATRIOT Act, we did so believing that this culture needed to have a clear signal that the wall did not, and should not, inhibit this kind of cooperation. The PATRIOT Act did take down the wall. Later on, one of the courts, the FISA court, reasserted that the wall was not really effectively lowered by the PATRIOT Act, and I made a decision to appeal that decision. The appeal from the lower FISA court's ruling is what finally established the legal principle that the wall, as a matter of fact, is of little or no effect now.

MR. THOMPSON: General, we've heard testimony today which is at best confusing and at worst conflicting, and which I think will probably, to the American public at least, who may or may not understand the federal budgeting procedures, prove to be distressful.

Can you lay out in timelines, if you can, what budget requests were made by the FBI to you and for what purposes, and what actions were either taken by you to grant or deny them, or taken by OMB after your decision on budgetary requests for the FBI?

And then, secondly, if you would, and can, contrast them with similar requests of the FBI and similar actions by the attorney general during prior administrations.

ATTY GEN. ASHCROFT: Well, first of all, it's important to note that the budget under which we were operating on September 11th was a budget established by the prior administration. No budget of the Bush administration was in place on September

11th, and none had finally been enacted or put in place. So the proposals for subsequent years, which were developed and were in place, were under construction. But they were not the budgets that were controlling activity on September 11th or at any time prior thereto.

As it relates to the counterterrorism effort, the 2002 budget -- we were operating under the 2001 budget on 9/11. The 2002 budget proposed by President Bush had the largest counterterrorism increase in five years. The 2003 budget which we proposed was a 13 percent increase over the last Clinton budget, the 2001 budget, which was the budget under which we were operating at the time of 9/11. Now over time, obviously after 9/11, there were amendments to the budget process, and there were increases, and so that we ended up with substantially larger increases for terrorism than we had previously had.

I would just indicate in the budgeting process that the label of counterterrorism should not be controlling when assessing whether or not items were important to the development of a defense for our national security interests vis-à-vis counterterrorism, counterintelligence or other things that challenge the United States. For example, the information technology budget at the FBI is very important. An organization that is an intelligence organization, investigation organization needs to have an architecture of information that provides for information sharing and information communication so that the information regarding IT should be included in budgets.

Now, as it relates to information technology, the agency had been -- the FBI, for example, had been starved for years. The last Clinton administration budget was \$36 million lower than the last budget of the first Bush administration eight years earlier. So that when you came to the ability to run information and to exchange it and process it, you were working with 1980s-type equipment.

After 9/11, the cooperation on the budget was significant to provide serious assistance not only in counterterrorism but as it related to information technology, as well. I think Director Mueller has stated that we have worked in lockstep to meet the needs of the FBI. And its progress toward an integrated architecture of information sharing is substantial and significant and, frankly, is gratifying. I'm glad that they've been able to make the progress they have.

MR. THOMPSON: Acting Director Pickard testified this afternoon that he briefed you twice on al Qaeda and Osama Bin Ladin, and when he sought to do so again, you told him you didn't need to hear from him again. Can you comment on that, please?

ATTY GEN. ASHCROFT: First of all, Acting Director Pickard and I had more than two meetings. We had regular meetings. Secondly, I did never speak to him saying that I did not want to hear about terrorism. I care greatly about the safety and security of the American people and was very interested in terrorism, and specifically interrogated him about threats to the American people, and domestic threats in particular.

One of the first items which came to my attention, which I mentioned in my opening remarks, was the question of whether we wanted to capture or find and kill Bin Ladin. I carried that immediately to the national security advisor and expressed myself in that matter. Together with the Vice President of the United States, we got a briefing at FBI headquarters regarding terrorism, and I asked the question, "Why can't we arrest these people?" because I believe an aggressive arrest and prosecution model is the way to disrupt terrorism. These are things about which I care deeply.

When the Senate Appropriations Committee met on May the 9th in the summer of 2001, I told the committee that my number-one priority was the attack against terror; that we would protect Americans from terror; and I wrote later to them a confirming letter saying that we had no higher priority.

These are the kinds of things that I did in order to communicate very clearly my interest in making sure that we would be prepared against terror. In addition, when we went for the largest increase in counterterrorism budgeting before 9/11, in the last five years, that signaled a priority in that respect. And when we, for the next year, had a 13-percent higher counterterrorism budget than was provided in the last year of the Clinton administration, it was also a signal that counterterrorism was a matter of great concern to us and that we would treat it seriously.

MR. THOMPSON: After you took office, did you ever hear or participate in any discussions in the Bush administration about responding to the attack on the Cole, which took place late in the Clinton administration, since it was now apparent, at some time in 2001, that not only was al Qaeda responsible for the

attack on the *Cole*, but that Osama Bin Ladin directed it? Was there ever any such consideration given in the Bush administration to responding to the attack on the *Cole* with a military strike?

ATTY GEN. ASHCROFT: Well, I was briefed by the CIA on a number of occasions, as well as by the FBI, and I did ask about the *Cole*. As you know, our FBI personnel were on the scene within almost hours after the event, and they developed a preliminary understanding that individuals conducting the attack were associated with al Qaeda. But the ability to come to a conclusion to build the nexus back from those actually involved in the attack to those who were command-and-control figures in al Qaeda was not established until -- and I'm not sure of the date. I think it must have been late in the summer or early in the fall of 2001.

So my briefings through the summer during the elevated threat period, and the like, and my briefings that were earlier in the year, for instance at the FBI, communicated this believed nexus in terms of the operational involvement of individuals associated with al Qaeda but they did not have a clear, considered, provable understanding of whether the command and control of senior al Qaeda officials was really involved.

MR. THOMPSON: What provisions of the PATRIOT Act that are due to expire next year or sunset next year do you deem to be of greatest importance for reenactment? And are there additions or subsequent amendments to the PATRIOT Act that you think should be considered by the Congress next year?

ATTY GEN. ASHCROFT: Well, the PATRIOT Act, one of its most important contributions was to help us to tear down the wall. The multi-point wiretap is very important. It extended --

MR. THOMPSON: That's the roving wiretap authority?

ATTY GEN. ASHCROFT: Roving wiretap. This is something that had been available in the criminal law since 1986 regarding what was drug dealers and organized criminals. Our ability to use a roving wiretap is important.

Our ability to have national search warrants so that we don't have to -- for individuals who are mobile -- get new search warrants. The pen register trap and trace for e-mail is a very important thing.

These provisions of the PATRIOT Act are important to national security. And for this country to begin to forget that national security requires a robust capacity for law enforcement would be a major tragedy.

There are some things that I think could be added that would be helpful to us. The "material support for terror" statute could be clarified so as to make sure that individuals who are involved in contributing their services are actually providing material support.

The presumption against bail for terrorists. For serious drug offenders and violent criminals we have a presumption against bail in the law, and for a number of offenses. But there's no presumption against bail -- not meaning that there couldn't be bail granted, but meaning that there ought to be a presumption that a person involved in serious -- with serious charges of terrorism be restrained.

I believe that we should accord to terrorist investigators administrative subpoena power for certain kinds of business records. There are 335 different administrative subpoena authorities in the country regarding everything from nursing home fraud to a variety of other criminal or federal violations, whether they be healthcare fraud or crimes related to children.

I believe if those authorities work against individuals in those areas, that we should have them as tools in our fight against terror.

The death penalty, which is not automatic obviously and shouldn't be automatic, but we should have an availability of the death penalty in certain terrorism crimes resulting in death. Currently we have some terrorism crimes that may well result in death that wouldn't be punishable by the death penalty, and I think that's one of those areas where we would be well served to expand the authority of our government to act against terror.

MR. THOMPSON: General, one last question before the chairman gavels me down. I see his eye on the red light and so is mine.

Sometimes in this country we prey -- we fall victim to the notion of fighting the last war, and my guess is Osama Bin Ladin and al Qaeda are not going to fight the last war; they're going to fight a new war, perhaps, in the future. We've responded with greatly increased security precautions to the hijackings that

took place on September 11th, but who in the government -- who in the Bush administration is worrying about the next war and other means that al Qaeda may use to attack us -- or other groups -- Hezbollah, Hamas, other groups -- on our soil, on other portions of our infrastructure besides aircraft and airports? Our food supply, our water supply, our oil pipelines, our railroads, our chemical factories, who's worrying about that and how are they worrying about that, and what assurance do the American people have that somebody is indeed worrying about the next war?

ATTY. GEN. ASHCROFT: Well, frankly, there are a number of us who are worrying about the next war, and we understand that al Qaeda is very likely to change its method of operation and its style or avoid detection. And it's something when -- we have to understand the nature of this enemy that we face. It's an enemy that is not stupid. This is not some garden-variety criminal who is robbing a 7-11. They plan well. They undertake actions that last for years. They seek to inflict mass casualties. They have -- we understand that they might seek to use a different style of individual, individuals who would come from different countries.

It's clear that they -- we know that they have interest in poisons, that they have interest in toxicity, in evil chemistry and evil biology as well as the interest which they have had in explosives. We've seen a wide variety of explosives used around the world in the proliferation of terrorism that has followed 9/11.

It's not been used here, and we're grateful that we've been successful in keeping it from happening here. But this Administration has tasked every quadrant of the Administration to be alert. In Agriculture, I know very much the concerns of Secretary Veneman, I know in Transportation the concerns of Secretary Mineta. I know in Energy the kinds of concerns that have been expressed by Secretary Abraham, and the list could go on completely. I guess I would say that we need to continue to do everything possible. We look around the world and we see that even in cultures that are very attuned and very focused on disrupting terrorism, that they are not always successful. And so we have to be at the highest level of readiness and anticipation.

MR. THOMPSON: Thank you, general.

Thank you, Mr. Chairman.

MR. KEAN: Commissioner Ben-Veniste.

MR. BEN-VENISTE: Good afternoon, General Ashcroft. I want to say hello to Larry Thompson, and to Mr. Olson my renewed condolences.

I believe in your statement, General Ashcroft, with respect to the failed capture policy of the prior administration, that you may be incorrect. I don't believe that you have seen the MON that we have recently received as of last week which had not been previously made available to us. And I will leave that for others to discuss. We've got to tiptoe around it for obvious national security and classification reasons. But you may be enlightened by reviewing that document.

Let me ask you about the August 6th PDB memorandum, sir. It is correct, is it not, that you did not receive that document contemporaneously.

ATTY GEN. ASHCROFT: I did not receive that document in the August 2001 time frame.

MR. BEN-VENISTE: When was the first you had seen it?

ATTY GEN. ASHCROFT: I think I saw that in the last several days.

MR. BEN-VENISTE: And so, unlike in the previous administration, the attorney general of the United States in the Bush administration was not a recipient of the PDB memorandum. Is that correct?

ATTY GEN. ASHCROFT: Not prior to 9/11.

MR. BEN-VENISTE: Nine-eleven.

ATTY GEN. ASHCROFT: Yeah.

MR. BEN-VENISTE: That has changed since?

ATTY GEN. ASHCROFT: I am involved regularly with the briefing of the President in regard to terrorist threats, and I accompany the director of the FBI to a morning briefing with the President, which briefing is attended by the director of the CIA and other officials, including director of Homeland Security.

And I think you're familiar with that. I need not --

MR. BEN-VENISTE: Yes, I am, sir. If you'd put yourself back in time to August, early August of 2001, aside from not receiving the PDB, were you made aware from any source that the President of the United States had requested a briefing with respect to the potential for an attack by Bin Ladin in the United States?

ATTY GEN. ASHCROFT: This was the kind of information I was asking when I was briefed by the CIA and when I was briefed by the FBI.

MR. BEN-VENISTE: But --

ATTY GEN. ASHCROFT: I was not aware that the President of the United States had made a request in that respect.

MR. BEN-VENISTE: Now had you been aware, would you not have made sure that the President received a comprehensive report from the FBI?

ATTY GEN. ASHCROFT: Any time the President would ask for the -- for information from the FBI, it would have been my intention to provide the President with a comprehensive report from the FBI. We are not into giving the President less than comprehensive responses.

MR. BEN-VENISTE: I understand that, sir.

ATTY GEN. ASHCROFT: And had the President asked the FBI for information and I'd been aware of it -- and I would have expected to have been aware of it -- I would have encouraged the FBI to be comprehensive.

MR. BEN-VENISTE: Now we received some very, very interesting information from acting Director Pickard just a few moments ago. Mr. Pickard testified that as of the afternoon of September 11th, 2001, he received three things that he did not know before. Number one, he received the Phoenix memorandum. Number two, he received information about the Moussaoui arrest and the detailed background that I won't go into now, about who Moussaoui was and what we knew about why he was in the United States. And he received information that the FBI was looking for Mihdhar and al Hazmi, two of the individuals who, it turned out, participated in the 9/11 catastrophe.

Now given that fact and given the fact that, as I understand it from our prior meeting, you also did not know any of that

information prior to 9/11, is it not possible, sir, that were you to have pulsed the FBI and directed the FBI to push up any information that it might have had, that that information might have been made available to you, to Mr. Clarke, to others, contemporaneous in August and prior to 9/11?

ATTY GEN. ASHCROFT: I think it's pretty clear that I was pulsing the FBI. I asked them regularly in my briefings with them if there were any evidence regarding threats domestically. And the kind of conduct by the FBI was the kind of thing that I would have expected them to be involved in as a result of that kind of request on my part. When you look at their conduct in asking twice in April for information relating to Sunni extremism, working the conference of the special agents in charge, when you relate to the telephone calls provided, made by the individuals, when you look at the INLETS, you get the kind of activity on the part of the organization that is designed to respond to leadership that is saying, "Is there any information about a threat?" And you would expect, having conducted that kind of pulsing, that if there were information, that it would be made available.

MR. BEN-VENISTE: Well, obviously, we know it wasn't made available. So the question is, were you familiar with the dysfunctionality of the FBI, as a result either of your first months in office or as a result of your great experience in Washington, in the United States Senate and elsewhere --

ATTY GEN. ASHCROFT: Do you want to repeat that part about the great experience that I had in the United States Senate? And "elsewhere" will have to be referring to something else, because I spent my previous time as a colleague of the gentleman on your left there, who was the governor in the neighboring state to me.

MR. BEN-VENISTE: I see.

ATTY GEN. ASHCROFT: I stood in the shadow of a man known as "Big Jim Thompson."

MR. BEN-VENISTE: Well --

ATTY GEN. ASHCROFT: Let's go back to your --

MR. BEN-VENISTE: So I take that back and I take your point that you were not well-versed, then, in the ways of Washington, and particularly with respect to the problems of the FBI in connection with disseminating information. The statement that

we've heard time and again is that the FBI didn't know what it didn't know, but it also didn't know what it did know.

ATTY GEN. ASHCROFT: Well, if I might comment on that, in my opening remarks I talked about the fact that I had demanded four separate independent reviews regarding the information systems at the FBI, so that I was aware of the challenges.

The first of those challenges was revealed to me when on the day of my going to Justice Department as attorney general, Louis Freeh pulled me aside and said, oh, by the way, we've got a real problem with a penetration of the FBI. We believe the individual involved to be Robert Hanssen. And access to our information systems that compromises the national integrity was revealed. That was a signal to me that we had serious problems.

Later on I came to an understanding when we were preparing to deal with the second largest terrorist attack in the United States, which was that undertaken by Timothy McVeigh, which resulted in the death of about 170 people, that in his trial we had failed to comply with a court order and we had not delivered -- the FBI had not delivered about 3,000 documents, most of which were duplicates but were the subject of a court order. So I had to delay -- I had to delay the execution to make sure we had an innocent system as well as a guilty defendant in the case.

Additionally, I became concerned about the integrity of our information technology system when it was revealed that about 300 laptop computers were unaccounted for, and for well over 200 of them the inspector general of the FBI, whom I asked to investigate the matter, said it couldn't be determined whether they were lost or stolen, and raised the specter of national security issues.

So I understood there were problems. But I also understood that when we went to agents and when we asked them specific questions about issues related to national security that we should expect them to respond, and could expect them to respond. The FBI is populated with well-meaning, hard-working individuals and they, I think, need to be understood for that, and to be credited for that.

MR. BEN-VENISTE: I agree with you, sir. The problem was in the communication of information, which did not reach those who might have made a difference.

Let me ask you, as my time is expiring, one question which has been frequently put to members of this commission. Probably all of us have heard this one way or another and the -- we are mindful that part of the problem with the Warren Commission's work on the Kennedy assassination was the failure to address certain theories that were extant, and questions, and much of the work was done behind closed doors. So I would like to provide you with the opportunity to answer one question that has come up repeatedly.

At some point in the spring or summer of 2001, around the time of this heightened threat alert, you apparently began to use a private chartered jet plane, changing from your use of commercial aircraft on grounds, our staff is informed, of an FBI threat assessment.

And indeed, as you told us, on September 11th itself you were on a chartered jet at the time of the attack. Can you supply the detail, sir, on -- regarding the threat which caused you to change from commercial to private, leased jet?

ATTY. GEN. ASHCROFT: I'm very pleased to address this issue.

MR. BEN-VENISTE: Thank you.

ATTY. GEN. ASHCROFT: Let me just indicate to you that I never ceased to use commercial aircraft for my personal travel. My wife traveled to Germany and back in August. My wife and I traveled to Washington, D.C. on the 3rd of September, before the 17th -- before the 11th attack, on commercial aircraft. I have exclusively traveled on commercial aircraft for my personal travel, continued through the year 2000, through the entirety of the threat period to the nation.

The assessment made by the security team in the Department of Justice was made early in the year. It was not related to a terrorism threat as a threat to the nation. It was related to an assessment of the security for the attorney general given his responsibilities and the job that he undertakes, and it related to the maintenance of arms and other things by individuals who travel with the attorney general. And it was their assessment that we would be best served to use government aircraft. These were not private, chartered jet aircraft; these were aircraft of the United States government. And it was on such an aircraft that I was on my way to an event in Milwaukee on the morning of September the 11th.

MR. BEN-VENISTE: Well, I'm pleased to have been able to give you the opportunity to clarify that issue for all who have written to this commission and communicated in other ways about their questions about that, sir.

Let me also give you the opportunity to respond to Mr. Pickard's testimony just a little while ago about a statement which he claims that you made with respect to priorities. And in that regard, it is correct, is it not -- because we have looked at the May 10th, 2001 guidance for preparing fiscal year 2003 budgets in which you indicate your priorities. There are five goals -- strategic goals laid out there.

It does not appear that terrorism was one of them. Is that correct?

ATTY GEN. ASHCROFT: Let -- let me make an explanation here, because I think -- I welcome as well this opportunity.

On the day preceding, on May the 9th, I met with the Senate Appropriations Committee and was asked about my priorities. I said my number one priority was to protect the people of the United States against terrorism.

The Department of Justice, required by the Congress to have a strategic plan, followed that plan. The plan was developed in the year 2000 by my predecessor and had a set of strategic goals. They're listed here early in the book, and they're similar to the goals. They are, as a matter of fact, the goals which were used in large measure for the May 10th memorandum. And they cite some additional goals to terrorism. There's no question about that.

Let me just go, because our time is limited, let me --

MR. BEN-VENISTE: Yes. I'm sorry. Did you say in the prior plan there were citations to counterterrorism?

ATTY GEN. ASHCROFT: Well, there was no major goal of counterterrorism, but under -- let's not sell Ms. Reno short. Under the first --

MR. BEN-VENISTE: She's not short.

ATTY GEN. ASHCROFT: Pardon?

MR. BEN-VENISTE: I can testify, she's not short. (Laughter.)

ATTY GEN. ASHCROFT: Well, I won't make any personal comment.

MR. BEN-VENISTE: I'm short. (Laughter.)

ATTY GEN. ASHCROFT: But we -- and under the Keep America Safe By Enforcing Federal Criminal Laws she did have deter and detect terrorist incidents, and this is the kind of -- let me just cut to the chase here to see where we were. Let our money do the talking.

In the budgets proposed prior to September 11th, the total CT increases were 72 percent greater than the total increases for drugs and gun prosecutions combined. Now, those were the other issues that were listed as priorities of the department. What we had was a combined total of increases of \$683.1 million for drugs and gun prosecutions.

We had a combined counterterrorism-related budget increase of one billion, one hundred and seventy-five-point-two million dollars -- 72 percent higher for counterterrorism-related items than for items related to the other priorities which we had stated -- drug interdiction and the prosecution of gun criminals.

Now, I don't mean to discount those priorities. Thousands of people die on our streets as a result of gun crimes. And we're very grateful for our record there. But let the record be clear that when it comes to where the appropriation was, that we had a \$1.175 billion increase for counterterrorism in those first two budgets, a .683 billion or \$683 million increase on drugs and guns.

MR. KEAN: Senator Gorton.

MR. BEN-VENISTE: Thank you, General.

MR. GORTON: Mr. Attorney General, in your written statement you have four issues that you discuss. The first one is your criticism of the lack of aggressive enough authorities for decisive action against Osama Bin Ladin. And you state that on March 7, 2001, you recommended that those authorities be expanded to allow for decisive lethal action.

To the best of your knowledge, between that date and September 11th 2001, were those authorities expanded in any respect whatsoever?

ATTY GEN. ASHCROFT: It's my understanding that an assignment was made by the national security advisor to the director of the Central Intelligence Agency to work on that, and that a judgment was reached that rather than a specific change, that any change should be made as part of an integrated new set of directives.

MR. GORTON: I take that as an answer in the negative.

Your second issue is a severe criticism of the 1995 guidelines that, as you say, imposed draconian barriers to communications between law enforcement and the intelligence committees (sic) -- the so-called wall.

I don't find that in the eight months before September 11th, 2001 that you changed those guidelines. In fact, I have here a memorandum dated August 6th, from Larry Thompson, the fifth line of which reads, "The 1995 procedures remain in effect today."

If that wall was so disabling, why was it not destroyed during the course of those eight months?

ATTY GEN. ASHCROFT: The August 6th memorandum of Deputy Attorney General Larry Thompson made possible significantly more information-sharing by mandating that those individuals involved in intelligence investigations who came across information relating to a felony federal offense immediately provide notice of that felony federal offense to people on the criminal side of the house.

It was a step in the direction of disabling the wall. It was a step in the direction of lowering the wall, providing for greater communication.

MR. GORTON: But it was after August 6, 2001, that Moussaoui was picked up and the decision was made in the FBI that you couldn't get a warrant to search his computer. So those changes must not have been very significant.

ATTY GEN. ASHCROFT: I missed your question, Commissioner.

MR. GORTON: Well, you know, you say as a part of your criticism of the 1995 guidelines, after the FBI arrested Moussaoui, agents became suspicious of his interest in commercial aircraft and sought approval for a criminal warrant to search his computer. The warrant was rejected because FBI officials feared breaching the wall, yet that was after these changes that you say were significant on August 6th.

ATTY GEN. ASHCROFT: Let me explain to you what I believe was the rationale of the FBI at that time. The FBI feared that if they went forward with a criminal warrant, that later, in the event that a FISA warrant was needed, because a track had been chosen which was a criminal track rather than an intelligence track, that they would not be able to access the information they would otherwise want through a FISA. So the FBI, mistakenly believing that you had to choose one way or the other because of the wall, decided to deny the criminal warrant in order to protect the option later on for a FISA.

Now, the Moussaoui case reflects not a federal felony offense that would be covered under the authority of the memorandum sent forward by the deputy attorney general. The Moussaoui case involved an immigration violation, and he was detained on the basis of that violation and in conjunction with what was considered suspicious behavior, but not in conjunction with what provided the basis for evidence of a federal felony.

MR. GORTON: And finally, the fourth -- the third of your issues has to do with the computer authority, and which obviously you did take very, very positive action very early.

But the fourth that refers to the millennium after-action review and its recommendations about disrupting the al Qaeda network -- and as you point out, full seven -- fully 17 months before September 11th, the review makes these recommendations. Nine of those months were in the Clinton administration. Eight of them were in yours. Did you make any changes reflecting that millennium after-action review in your time as attorney general, before 9/11?

ATTY GEN. ASHCROFT: This is a report which was not briefed to me or briefed to other individuals. It was a report which is a classified report.

MR. GORTON: So you didn't know of its existence?

ATTY GEN. ASHCROFT: No, it turns out, when I learned of its existence, these are the very things we did following September the 11th. We began to address suspicious situations by being very aggressive in charging criminal violations, in charging immigration violations. We began to be very aggressive in our work at the border. We -- and these are the kinds of recommendations that were involved in the report, which was simply not made available --

MR. GORTON: Attorney General Ashcroft, there is no question about how aggressive you were in that period of time, and I think it highly admirable. But the Administration of which you're a part didn't take any of those actions before 9/11.

ATTY GEN. ASHCROFT: That's exactly correct. And this report would have recommended and signaled to us that this was the way that we might consider acting. And as a matter of fact, the report signaled that it would be appropriate and perhaps necessary. It signaled a significant risk that those involved in the after-action assessments of the millennium plot believed would merit us being more aggressive.

MR. GORTON: Thank you, Mr. Attorney General.

Thank you, Mr. Chairman.

MR. KEAN: Commissioner Fielding.

MR. FIELDING: Thank you, Mr. Chairman.

Mr. Attorney General, thank you for being here. Thank you for all the assistance you provided to our commission and also thank you for all your years of public service.

You said in your prepared statement this afternoon that in discussing the debate on the nature of the covert action authorities, that in February 2001, shortly after becoming attorney general, you reviewed those authorities. And your thorough review revealed no covert action program to kill Bin Ladin. Is that correct?

ATTY GEN. ASHCROFT: I believe that the covert action plan I reviewed was to capture Bin Ladin. And if he were to be killed, it would only be in the eventual circumstance that there was some kind of inability to capture that resulted in a threat being -- that required some kind of self-defense measure.

MR. FIELDING: Well, what briefings did you seek in February to review this whole situation?

ATTY. GEN. ASHCROFT: Well, I was part of the consideration of the strategy regarding Osama Bin Ladin to the extent that it related to the treatment and the pursuit of Osama Bin Ladin himself. So this was one of the responsibilities I had.

MR. FIELDING: Now -- I'm sorry, sir -- what briefings did you receive? What were your sources of information when you were making this review of authorities? Did you -- were you briefed by the -- Director Tenet?

ATTY. GEN. ASHCROFT: I'm not sure exactly where all the information came from that I was privy to at that time. We were very confident that this individual had been involved in very serious acts against the United States, in the embassy bombings and the like, and we felt that we had a relative assurance that he was involved in the Cole attack. We knew the Khobar Towers was what we considered to be Iranian Hezbollah, so it was a different group, but in my judgment just knowing about the embassy bombings, the loss of life there, we all understood that a fatwa had been issued regarding his desire to kill Americans.

MR. FIELDING: Now I appreciate that, General. Excuse me for interrupting you, but we're playing with a clock here. But what I'm trying to determine is, did you review MONs, for instance? Did your staff provide you with documents so that you could review the existing authorities?

ATTY. GEN. ASHCROFT: I believe they did.

MR. FIELDING: Is there -- did you request documents from agencies? Did you request documents from the CIA?

ATTY. GEN. ASHCROFT: I'm not capable of telling you exactly how all the information was assembled. I just remember that these -- having made the assessment of the information, I was struck by the fact that I believed that it was so complex and convoluted that it would be paralytic, and that we owed people in the field clear direction, and that the direction should be to find and kill Bin Ladin and not to try and capture him.

MR. FIELDING: Did your staff prepare a briefing for you? Is there any written documentation of the process that you went through to make this evaluation?

ATTY. GEN. ASHCROFT: I'm not in a position to remember whether or not they did at this time.

MR. FIELDING: We would request that you check that. And the reason I'm asking is, I must advise you that we have received recent information in regard to MONs that -- which I believe may alter your evaluation of existing authorities in February of 2001.

ATTY GEN. ASHCROFT: Well, I -- I took that seriously when Commissioner Ben-Veniste mentioned it to me. I've made a note of it. And unless I am missing a bet big time, my staff has made a note of it, and we'll work to understand that more thoroughly.

MR. FIELDING: Well, thank you, sir, because we would otherwise want to review this with you in closed session, because it's obviously very highly classified, unless there's an opportunity to have this declassified, so that we can supplement our staff's statements as well. So thank you. We'd appreciate your cooperation in that regard.

And thank you, Mr. Chairman.

MR. KEAN: Thank you, commissioner.

Congressman Roemer.

MR. ROEMER: Thank you, Mr. Chairman.

Welcome, general. Thank you for your time here and your fulsome testimony. I want to turn to page three of your testimony and where you're talking about being aggressive and doing something about Osama Bin Ladin. You -- you certainly think Osama Bin Ladin is somewhere overseas, correct?

ATTY GEN. ASHCROFT: I don't know where he is --

MR. ROEMER: Know where he is.

ATTY GEN. ASHCROFT: I don't believe he's in the United States of America --

MR. ROEMER: You don't believe he's in the United States, and you want to go get him. And you go to the national security advisor to the President, and you say, Let's find a way to get him.

ATTY GEN. ASHCROFT: I -- I -- I said that we should find and kill him, that should be the objective of our government.

MR. ROEMER: So, you're being aggressive. You're certainly trying to focus on the threat of Bin Ladin. Let me ask you a question about al Qaeda.

With the *U.S.S. Cole*, we lose 17 sailors. The Clinton administration gets a preliminary judgment in December of 2000

that says, well, we can't quite associate this with command and control of Osama Bin Ladin, but these are definitely al Qaeda operatives. You, I believe, your Administration gets a briefing in January. Same type of briefing: this is al Qaeda. Why don't you take this on the offensive like you do Osama Bin Ladin and say, We are going to go get al Qaeda, they can't do this to our military, to our sailors, to our people?

ATTY GEN. ASHCROFT: Well, Commissioner, I didn't get the briefing in January. As you may remember, I was one of the late confirmed -- individuals confirmed --

MR. ROEMER: When do you understand this, then? You're certainly in March meeting with Condi Rice to do something about this. Why don't you do something about al Qaeda?

ATTY GEN. ASHCROFT: Very frankly, we didn't get confirmation that the -- as I explained earlier, that the command and control of al Qaeda might be involved in this matter until substantially later.

MR. ROEMER: Can you remember when?

ATTY GEN. ASHCROFT: I believe it was either late in the summer or the fall of 2001 when the final determination was made, and that was a time after which I believe we brought criminal charges, although obviously those are not resolved.

MR. ROEMER: A law enforcement --

ATTY GEN. ASHCROFT: There is -- and it is a totally different world than -- the executive responsibilities, in regard to presidential orders and directives, are different than --

MR. ROEMER: But why not go after al Qaeda? Why not militarily go after al Qaeda, rather than a law enforcement type of activity?

ATTY GEN. ASHCROFT: Well, first of all, let us make it clear that it's not either/or. The mere fact that we would go after al Qaeda doesn't mean that we wouldn't also pursue, and have the option of criminal remedies as well. The Justice Department has done that and continued to do that even against individuals who might be involved in al Qaeda or in more war-like settings.

If you're asking me why the Administration didn't make a judgment, I believe that the Administration, while it understood

that there were ties to al Qaeda by those who were involved in the *Cole* bombing, that the kind of information that would support a different judgment was not existent until substantially later.

MR. ROEMER: But again, you're asking for a final conclusion rather than a preliminary judgment that said al Qaeda is responsible. Al Qaeda did this. Al Qaeda killed our sailors. Why have to wait six, eight months down the line to say this is a particular individual, Osama Bin Ladin?

ATTY GEN. ASHCROFT: I don't understand your question, sir. I believe that before we --

MR. ROEMER: This is not just a terrorism fight against Osama Bin Ladin.

It's al Qaeda. It's jihadists. It's the conveyor belts producing people that want to kill us in Afghanistan. So my question is, why not go after broadly that group of people rather than one single individual?

ATTY GEN. ASHCROFT: Well, I believe that's eventually what we did. But obviously, it's not a decision we made, and we didn't have the kind of information or predicate upon which to make that decision earlier. Whether or not we should have absent that predicate is a policy judgment that certainly wasn't mine to make.

MR. ROEMER: Thank you, sir.

MR. KEAN: Senator Kerrey.

MR. KERREY: Attorney General Ashcroft, very nice to see you. I'm glad you're on the mend.

ATTY GEN. ASHCROFT: Well, I'm coming back, to the gratification of some and mortification of others. (Laughter.)

MR. KERREY: Well, I'm going to get into the mortification piece here in a minute. (Laughter.)

ATTY GEN. ASHCROFT: You're going to what? Help the mortifiers?

MR. KERREY: (Laughs.) No, no, no.

A couple of statements just for your information. In the -- I think '95 and '96, it was, Senator Specter and I, after learning of significant computer and communication inadequacies in the FBI, asked one of our staff to go over and do an evaluation of what the FBI -- that was a fast five minutes.

ATTY GEN. ASHCROFT: When you're having fun.

MR. KERREY: Yeah. And came back and recommended that we authorize and appropriate several million dollars to do some evaluation. And I've got to say it was a very unhappy experience. And I say that because there were a lot of us who simply didn't think the FBI could do it. It was sort of like the IRS. You remember the whole IRS restructuring effort. That actually began with the IRS lousing up a several-billion-dollar computer investment. So I just ask you to look at that.

ATTY GEN. ASHCROFT: If I might comment on that, one of the real contributions of Louis Freeh as director of the FBI was that he began to reach outside the FBI in order to get help. And the FBI had been an insular agency of very capable people, but they really began to be injured by their own talent. They really thought they could do everything on their own. And Robert Dies was the first of the known experts to me to come to the FBI from IBM to begin to say: Here's the way a modern information architecture should look and here's what should be done.

So you were prophetic in saying that it needs something other than just the old agent corps.

MR. KERREY: Same thing with IRS. Until Rossotti got there, nobody really trusted they could get the job done.

ATTY GEN. ASHCROFT: And I think what we're doing now, we're beginning to use software and other things that are developed outside and beginning to accept expertise from outside the Bureau that's very, very helpful to us. And the commercial world has things like link analysis, and the like, that they use commercially that can be very helpful to us in investigations and also connecting the dots when we want to organize intelligence.

MR. KERREY: The second thing I wanted to say -- and I need -- this is just -- I need your help on this because I was not in the Congress when the PATRIOT Act passed. And you know me well enough to know that anything that you have to put the word

"PATRIOT" on in order to get people to vote for it, I'm inclined to vote against it just on that basis. (Chuckles.)

ATTY GEN. ASHCROFT: I do know you, yeah.

MR. KERREY: And in this case, now looking at it -- the only thing I've heard about it, by the way, so this is a mortification area, I've heard a lot of my former Democratic colleagues giving fervent speeches against the Patriot Act. They all voted for it -- (laughing) -- but they're giving speeches against it! It's a weird situation.

ATTY GEN. ASHCROFT: That's not weird, that's rather usual.

MR. KERREY: (Laughs.) Anyway, I am concerned that Section 218 could end up like RICO being used -- you know, it starts off against organized crime but ends up -- you know, abortion protests, using against business. It really has a life of its own beyond.

And I don't need a comment now, General Ashcroft, just that and Section 215, I need some help -- I've got some questions about it, and I trust that you can help with me with an open mind try to figure out where we need to preserve the PATRIOT Act and where we may have some provisions in there that we actually don't need.

I mean, just generally, I'm very nervous about giving government too much power, frankly, in the long term. I don't need to lecture you on that, but I get nervous about giving the government too much power. And it seems like the PATRIOT Act gave the government an awful lot of power over American citizens.

ATTY GEN. ASHCROFT: Let me just comment that in large measure, the PATRIOT Act extended powers in the fight against terror that were already well-understood powers in the fight against drugs and organized crime, so that we weren't treading down new constitutional territory. The multi-point wiretap or the roving wiretap had been in existence for 14 years and 15 years.

And the ability, for instance, to subpoena business records from grand juries had been in existence for a long time. Now, the FISA provisions that relate to it are different from grand juries. A grand jury, frankly, operates with a U.S. Attorney or an Assistant U.S. Attorney reaching over on a stack of forms and

filling it out and taking it out and serving it. It's never seen by a judge unless someone resists it or protests it. Under FISA, you can't have an order without first seeing the federal judge, or unless it's an emergency order, and then it has to be brought before a judge within 72 hours. There's a lot of safeguards here.

I'd like to talk to you about it.

MR. KERREY: I --

ATTY GEN. ASHCROFT: It is important to our national security.

MR. KERREY: Also, staff has asked and I appreciate if we could get some documentation that shows what the detain-and-clear policy did for counterterrorism, for intelligence, for law enforcement. I mean, I guess 768 detainees -- and that's been a very controversial thing. And if you can give us some documentation of what the counterintelligence --

ATTY GEN. ASHCROFT: Yeah, I'd love to -- I'll comment on that. We did not detain anyone that was not in violation. So people who were detained were violators of the law.

And our history has been that when you detain people for immigration violations or you charge them, if you don't detain them, they go. They just evaporate. Eighty-five percent of all people charged with violations, if they are finally adjudicated guilty, if you haven't detained them, they just merge into the culture. Ninety-three percent of the people who come from terror-sponsoring states have a record of absconding. So they go into the culture.

We couldn't afford to have a situation like that with individuals who were detained in conjunction with the massive investigation following 9/11. We had to hold them, we did, and frankly, that's one of the ways that we picked up a fellow named al-Marri, who first got -- who was sent here on September the 10th to be a facilitator of follow-on attacks. We first had him on immigration charges, then on criminal charges. We eventually -- he has become an enemy combatant and is now being held --

MR. KERREY: I appreciate that. Your staff was nodding like mad when I asked for the documentation, so --

ATTY GEN. ASHCROFT: Okay. Let them --

MR. KERREY: Yeah. Thank you.

MR. KEAN: Commissioner Gorelick.

MS. GORELICK: Thank you, Mr. Chairman.

You said in response to -- I think it was Commissioner Ben-Veniste's question -- that you indeed were -- had been struck from the list of senior executives in the Administration who got the Presidential Daily Brief. I think you said you did not get it. And that is curious, I think, given Dr. Rice's testimony that the domestic aspect of our national security was largely in the Department of Justice and FBI bailiwick.

You, when you were interviewed by our staff with regard to the adequacy of the FBI's response to the intelligence that was coming out in the summer of '01, said that you accepted the FBI's assurance that the threats were overseas and sort of assumed that things must be in hand, and that whatever they were doing was adequate to respond. And then you said, I think quite candidly, that this was a dangerous assumption to make.

Now here is my question. You did not get the Presidential Daily Brief, but you did get the Senior Executive Intelligence Brief that was provided to the next rung of the government.

Is that -- is that correct? You got that daily?

ATTY GEN. ASHCROFT: The SEIB --

MS. GORELICK: The SEIB..

ATTY GEN. ASHCROFT: -- was available to me.

MS. GORELICK: On August 7th, 2001 a SEIB that reflected much of, although it was not identical to, much of the content of the August 6th presidential daily brief came out. And I would like to ask you if you remember seeing a document headed "Terrorism: Bin Ladin Determined To Strike In The United States" in the SEIB.

ATTY GEN. ASHCROFT: I do not remember seeing that. I was in -- I believe I was in Chicago at American -- speaking at the American Bar Association meeting, I believe, at the time. So I do not have a recollection of seeing that.

MS. GORELICK: Did you staff regularly brief you on the intelligence when you returned?

ATTY GEN. ASHCROFT: I was briefed. And items of interest were noted for me from time-to-time by my staff.

MS. GORELICK: Would -- would something like this, which is a memorandum that is going out to your colleagues, hundreds of your colleagues in the government, saying that Bin Ladin is determined to strike in the United States, been an item of significance that you would think would have been briefed to you?

ATTY GEN. ASHCROFT: These items had been briefed to me. They had been briefed to me by the FBI, they had been briefed to me by the CIA. The Administration asked me to get briefings when appropriate in regard to these measures. I remember Ms. Rice, for example, early in July during the threat period and the heightened and elevated threat, asking me if I would receive a briefing from the CIA because she thought it important. It's that kind of briefing that I received early. The CIA -- we have reconstructed it from the slides they used -- talked a lot about the threat overseas. And we obviously were aware of the historical information that Osama Bin Ladin had issued statements years before, much of which is in the SEIB and was in the August 6th PDB, which I have now read. And -- but we inquired of the CIA and the FBI, are there domestic threats that require -- is there any evidence of domestic threat, and they both said no. I might add that for the CIA, I inquired of them, are there things we can do additionally by way of FISA to assist you in making sure that we have all the information necessary to be aware of those threats?

And they assured me that if they needed additional help they would ask for it.

MS. GORELICK: So you were aware in August -- in early August -- by at least early August of '01 that, in addition to the fatwas and the statements of intention by Bin Ladin, that there was evidence that he intended to strike in the United States. Is that correct?

ATTY. GEN. ASHCROFT: I don't know if, in addition to the fatwas and his statement of intention, we were aware that he had stated his intention, of the historical items mentioned in the SEIB and I believe also mentioned in the PDB. We were aware that those kinds of historical references had been made, and it was

with that in mind in conjunction with our understanding of what he had done in terms of the bombings in Nairobi and Dar es Salaam that we understood him to be very -- a serious individual and that we should take him seriously.

MS. GORELICK: As a result of your awareness of this domestic threat, did you review with Acting Director Pickard the specific actions that he had taken to ensure that information in the possession of agents of the FBI across America relating to Bin Ladin's threats, his capacity, his ability to strike us, activities that might be going on in the United States that that information would be flowing up to you?

ATTY. GEN. ASHCROFT: I queried the director on numbers of occasions about threats in the United States that would require our attention. I expected those queries to result in the kind of activity which we saw in the FBI across the summer not only in the face-to-face inquires at the SAC meetings, but in the telephone inquiries and in the communications -- through the electronic communications as well as the INLETS, which shared those awarenesses with the rest of the law enforcement community in the country. We viewed INLETS as a force multiplier because we got away from just the 12,000 FBI agents to the 700,000 or so law enforcement officials in the country, and we wanted those to be pulsed as well.

MS. GORELICK: Do you know if any of the INLETS actually produced any information to the FBI?

ATTY. GEN. ASHCROFT: I do not know, and would not be expecting to know what 700,000 or so law enforcement officials might be saying to the people in the FBI Joint Terrorism Task Forces around the country. And all -- I'm sure they were saying lots of things, but obviously I wouldn't be aware of those.

MS. GORELICK: Thank you very much.

MR. KEAN: Thank you, Commissioner.

Attorney General, thank you very, very much for your appearance, for your help. You've helped our work and we appreciate it.

ATTY GEN. ASHCROFT: Thank you.

MR. KEAN: Thank you.

The hearing will now be adjourned till 9:00 tomorrow morning.

END.