

APPENDIX

THE JOINT INQUIRY IN COURT

THE JOINT INQUIRY IN COURT

On August 20, 2002, the Department of Justice (DOJ) filed a motion in *United States v. Moussaoui*, Crim. No. 01-455-A, in the Eastern District of Virginia, concerning potential disclosure in the Joint Inquiry's public hearings and reports of information provided by the Federal Bureau of Investigation (FBI) and other Executive Branch agencies about the Government's investigation of Zacarias Moussaoui. The relief sought by DOJ would have imposed significant limitations on the Joint Inquiry's ability to inform the public about the FBI's conduct of its Moussaoui investigation in the weeks leading up to September 11, 2001. For that reason, the Joint Inquiry appeared before Judge Leonie Brinkema, the presiding judge in the Moussaoui prosecution, to oppose DOJ's motion. The issue was finally resolved favorably for the Joint Inquiry in a court order on September 23, 2002 that effectively cleared the way for FBI testimony at the Joint Inquiry's public hearing the next day on the FBI's conduct of the Moussaoui investigation.

This portion of the Appendix briefly describes the issues that were presented and the orders that were issued in conjunction with the Moussaoui litigation. Although begun as a nonpublic, or "sealed" proceeding, the pleadings in the case were unsealed by the court and the orders were also filed on the public record.

At the outset of the Joint Inquiry, representatives of the Joint Inquiry and DOJ discussed procedures for access to FBI and DOJ information that would recognize the need for a thorough Congressional inquiry and yet avoid interfering with the Moussaoui case and other pending criminal prosecutions and investigations. On April 9, 2002, the Joint Inquiry Staff Director wrote to the Director of Central Intelligence -- with copies to the FBI and other Intelligence Community agencies -- to describe procedures for meeting this goal that were being adopted by the Joint Inquiry. These procedures included a commitment by the Joint Inquiry to consult with the Justice Department "before any information that is obtained from Intelligence Community records and that may constitute evidence in a criminal proceeding is made public."

Over the following weeks, it became clear that DOJ believed there were legal bars to the Joint Inquiry's public disclosure of materials about the FBI's Moussaoui investigation. As a result of these concerns, DOJ advised the Joint Inquiry in a May 31, 2002 letter that "the Department may have to oppose efforts to release publicly certain protected information prior to the trial, to the extent that it would impair the government's ability to present its case, infringe upon the defendant's right to a fair trial, or compromise the integrity of other investigations."

One bar, in DOJ's view, was a Protective Order in the Moussaoui case that had been prepared by DOJ and entered by the District Court on February 5, 2002. That Order provided, among other things, "that none of the discovery materials produced by the government to the defense shall be disseminated to the media by the government."

The other bar, in DOJ's view, was Eastern District of Virginia Local Criminal Rule 57. That Rule bars several categories of out-of-court statements by the prosecution or defense "which a reasonable person would expect to be further disseminated by any means of public communication," but also contains a specific proviso that nothing in it is intended to preclude "hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies."

In the next several months, as the date for the first public hearings approached, the Joint Inquiry sought to assure DOJ that its concerns could be accommodated by the Inquiry. A June 27, 2002 letter to the Attorney General from the leaders of the Joint Inquiry stated that the objective of the Inquiry's planned public hearing on the Moussaoui matter was "not to consider the guilt or innocence of Mr. Moussaoui, which is a matter for the Judicial Branch, but to examine the counterterrorist efforts of U.S. Government personnel and the organizations and authorities under which they operate." The letter also informed the Attorney General that the Offices of Senate Legal Counsel and House General Counsel had advised the Joint Inquiry that neither the Protective Order nor the Local Rule governed the public proceedings of Congress.

In July 2002, DOJ's Criminal Division asked for a further description of the subjects that would be addressed in the Joint Inquiry's public hearings, which were scheduled to begin in September. On August 5, 2002, the Joint Inquiry Staff Director wrote to the Assistant Attorney General for the Criminal Division and explained that the scope of the Inquiry's planned public examination of the Moussaoui matter would include "FBI activity concerning Zacarias Moussaoui from August 15, 2001, when an intelligence investigation was opened, through September 11, 2001."

On August 20, 2002, DOJ filed an "Expedited Motion of the United States for Clarification Regarding the Applicability of the Protective Order for Unclassified but Sensitive Material and Local Criminal Rule 57 to Information that May be Made Public in Congressional Proceedings." DOJ asked the District Court to order that "[t]he Protective Order and Local Rule would preclude the provision of information regarding 'The Moussaoui Investigation,' as described [in the Joint Inquiry letter of August 5], for public use" The Department also submitted an order, which the District Court granted, "to authorize the service of its Expedited Motion with its attachments on the representatives of the House and Senate Intelligence Committees who are involved in the Joint 9/11 Inquiry, and to enable these committees to reply to the motion and attend any scheduled hearing."

With the assistance of the Offices of Senate Legal Counsel and House General Counsel, the General Counsel of the Joint Inquiry filed a reply on behalf of the Joint Inquiry on August 26 and participated in the argument on August 29, 2002. The reply asked that the District Court deny DOJ's requested relief for three main reasons: "(1) the protective order does not govern testimony before Congress, nor does it govern the production of documents to Congress, the use of documents by it, or the issuance of its reports; (2) Local Criminal Rule 57 specifically does not preclude the holding of legislative hearings or the issuance of legislative reports, and (3) the proposed expansion of the order by the Department of Justice runs afoul of the separation of powers."

On August 29, the District Court entered an order that denied DOJ's motion. Stating that the Protective Order "is too complicated in its present form," the order directed the submission of a new Protective Order. The August 29 order also stated "that nothing in this Order is intended to affect the applicability of Local Rule 57 to the participants in this case."

The transcript of the August 29 hearing was released publicly on August 30. Representatives of DOJ and the Joint Inquiry discussed, but could not agree on, the import of the Court's ruling, particularly regarding the applicability of the Local Rule to the testimony of FBI witnesses at the public hearing. During the first week of September 2002, DOJ asked the Joint Inquiry to advise it regarding which of the documents that had been provided to the Joint Inquiry by the FBI were believed to be relevant to a public hearing concerning the Moussaoui investigation. On September 11, 2002, the Joint Inquiry's General Counsel provided DOJ with a list of documents that were substantially likely to be included in public questioning of FBI witnesses at public hearings.

On September 20, DOJ filed a "Renewed Expedited Motion of the United States for Clarification Regarding the Applicability of Local Criminal Rule 57 to Information to be Made Public in Congressional Proceedings." Focusing only on the Local Rule, the Department did not renew its earlier arguments about the applicability of the Protective Order to Congressional proceedings. The Department asked the District Court to enter an order that "Local Criminal Rule 57 applies to Department of Justice personnel who are testifying at public Congressional hearings, including but not limited to, all statements such personnel make in response to questions asked by Members and staff at such hearings."

Again assisted by the Offices of Senate Legal Counsel and House General Counsel, the Joint Inquiry General Counsel replied in writing that:

. . . the order sought by the United States would substantially shut down the opportunity of the full Congress and the public to understand the important issues involved in the FBI's handling of the Moussaoui investigation prior to September 11. The relief sought by the United States would, in effect, amount to an injunction blocking a proceeding of the Congress that no Court has ever issued.

On September 23, 2002, the District Court denied the DOJ motion, as follows:

The Joint Inquiry made clear in its August 5, 2002 letter to the Assistant Attorney General for the Criminal Division the limited parameters of the inquiry and has reiterated in its Reply that the Committees will not ask witnesses to comment about the merits of this case. Indeed, the questions are expected to focus on “what government officials heard, observed, reasoned, recommended, and acted on (or did not act on) prior to September 11.” [Quoting Joint Inquiry Reply.] The Committees are not interested in “expressions of current judgment from government witnesses about the defendant’s guilt or innocence or the government’s plans for presenting its case.” [Quoting Joint Inquiry Reply.] Given the ground rules articulated by the Joint Inquiry, FBI personnel should have no difficulty responding to Congress’ questions without violating Local Rule 57 or any other order of this Court. Accordingly, the Renewed Expedited Motion for Clarification is DENIED.

In accordance with its commitment to consult with the Department of Justice, the Joint Inquiry continued to allow DOJ to review and comment regarding the contents of staff statements related to the Moussaoui case and other matters. At the Joint Inquiry’s September 24 public hearing and the closed hearing that followed concerning the Moussaoui matter, the Joint Inquiry permitted a DOJ representative to attend with FBI witnesses for the purpose of advising whether any question called for an answer that might impair the Moussaoui prosecution. Thus, the Inquiry was able to proceed with a full public exposition of the issues raised in the Moussaoui investigation without impeding the due process and fair trial interests of Moussaoui and DOJ.

APPENDIX

**ACCESS LIMITATIONS
ENCOUNTERED
BY THE
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The Joint Inquiry received assurances from the White House, the Director of Central Intelligence and the heads of the Intelligence Community agencies that its access would be complete and unprecedented and that the agencies would “bend over backwards” and “be forward leaning” in response to requests for information made in the course of the Inquiry. While the major agencies in the Inquiry – CIA, FBI and NSA – provided substantial support and allowed access to large volumes of information, there were certain areas in which no access was allowed, and others where access was achieved only after extensive discussions and delays or under conditions that limited the scope of the Inquiry’s work.

Access Denied

-- The President’s Daily Brief (PDB): the White House determined, and the DCI and CIA agreed, that the Joint Inquiry could have no access to the contents of the PDB. Ultimately, this bar was extended to the point where CIA personnel were not allowed to be interviewed regarding the simple process by which the PDB is prepared. Although the Inquiry was inadvertently given access to fragments of some PDB items early on, this decision limited the Inquiry’s ability to determine systematically what Presidents Clinton and Bush, and their senior advisors, were being told by the Intelligence Community agencies, and when, regarding the nature of the threat to the United States from Usama Bin Ladin and al-Qa’ida. Despite the White House decision, the Joint Inquiry was advised by Intelligence Community representatives of the content of an August 2001 PDB item that is discussed in the report. This glimpse into that PDB indicated the importance of such access [—————]

[_____
_____] .*

-- Foreign Liaison Relationships: The DCI refused to allow the Joint Inquiry to have access to a series of reports that had been prepared within CTC regarding the strengths and weaknesses of the CIA's liaison relationships with a variety of foreign governments. This decision affected the Inquiry's ability to determine the extent to which some foreign governments had or had not cooperated and shared information with the United States in countering Bin Ladin and al-Qa'ida prior to September 11.

-- Budget Information: Because a lack of resources was raised repeatedly by Intelligence Community representatives throughout the Inquiry, it became important to review the budget requests that had been made by the various agencies through the relevant years and to compare the treatment of those requests within the agencies from which they originated, within the Administration, and by Congress. While certain information was made available regarding agency and Congressional action, the Office of Management and Budget (OMB) and the White House prevented the agencies from sharing information regarding budget requests that were submitted by the agencies to OMB and the actions OMB took to increase or decrease those requests before they were submitted to Congress. This limited the Inquiry's ability to determine where in the budget process requests for additional counterterrorism resources were changed.

-- [Covert Action Programs]: Covert action was an important part of CIA's overall effort to counter the threat posed by Bin Ladin prior to September 11, 2001. [_____

_____]. The NSC denied the Joint Inquiry access to documents, thereby limiting its ability to inquire into this area].

* National Security Advisor Condoleeza Rice stated in a May 16, 2002 press briefing that, on August 6, 2001, the President's Daily Brief (PDB) included information about Bin Ladin's methods of operation from a historical perspective dating back to 1997. One of the methods was that Bin Ladin might choose to hijack an airliner in order to hold passengers hostage to gain release of one of their operatives. She stated, however, that the report did not contain specific warning information, but only a generalized warning, and did not contain information that al-Qa'ida was discussing a particular planned attack against a specific target at any specific time, place, or by any specific method.

-- NSC-Level Information: There were several areas of counterterrorism intelligence policy development where insight into discussions involving the DCI, CIA and other Intelligence Community officials, and personnel at the National Security Council and White House levels would have been helpful in determining why certain options and programs were or were not pursued in particular time frames. Access to most information that involved NSC-level discussions was blocked, however, by the White House. Even agency documents that were drafted in anticipation of NSC discussion were denied to the Inquiry as "pre-decisional." The Inquiry also was denied access to, or a briefing concerning, the findings and conclusions of the report of the National Security Presidential Directive-5 Commission on Intelligence Reform chaired by Lt.Gen. Brent Scowcroft.

-- Interview of the DCI: The Joint Inquiry attempted to schedule an interview of DCI George Tenet in order to solicit his recollections, understandings and opinions regarding a host of questions relating to policy, resource, organizational, authority, priorities, and other issues that had been developed during the Inquiry. Such an interview was at first delayed and then made conditional on further discussions with DCI staff. Ultimately, the DCI testified at length in closed and open sessions before the Joint Inquiry and the interview was denied on that basis.

-- [Interview of FBI Informant: On August 8, 2002, the FBI informed the Joint Inquiry that two of the hijackers had numerous contacts with a long time FBI counterterrorism informant. The Joint Inquiry made numerous requests to the FBI to interview the informant in an effort to resolve some of the inconsistencies in the informant's reporting and to better evaluate how effectively the FBI utilized the informant. The FBI, supported by the Attorney General and the Administration, refused to make the informant available for an interview or to serve a Congressional deposition notice and subpoena on the informant, whose whereabouts were known to the FBI at the time. The FBI also strongly objected to a Joint Inquiry interview of the informant, citing concerns about adverse impact on FBI efforts to recruit future informants. The Joint Inquiry instead agreed with a suggestion by FBI officials that, as an initial step, written

interrogatories be served on the informant. The FBI agreed to deliver those interrogatories to the informant for a written response. Soon after, the informant retained an attorney, who advised the Joint Inquiry that the informant would not respond to the interrogatories. The attorney also advised the Joint Inquiry that, if subpoenaed, the informant would be unwilling to testify without an immunity agreement. As a result, while the Joint Inquiry interviewed and received testimony from FBI personnel familiar with the information provided by the informant, it was denied the opportunity to discuss that information directly with the informant].

-- NSA Technical and Contractual Information: The Joint Inquiry sought to determine whether and how NSA is planning to cope with changing technology and requirements, and how it is equipped to manage the allocation of scarce resources for research and development in the counterterrorism area. Despite numerous requests for specific planning and other documents and briefings, NSA provided very limited responsive information in this area.

-- CIA and NSA Documents: CIA took the position that so-called "operational cables" from the field and certain other documents it deemed to be sensitive could be subject to Joint Inquiry review at CIA Headquarters, but that no copies could be brought to the Joint Inquiry's office. NSA adopted a similar position concerning its transcripts and disseminated intelligence reports and, ultimately, almost all other materials. This prevented the incorporation of the original documents in the Inquiry's central records where they could be drawn upon effectively for research and reference purposes. Both agencies did, however, allow verbatim notes to be made and removed to Inquiry offices. This consumed many hours and slowed the Inquiry's progress. Both agencies then agreed to allow copies to be removed from their premises if the Joint Inquiry agreed to allow them to be stored by the agencies at the end of the Inquiry, and even provided a draft of an agreement that would recognize this. When the Inquiry later agreed in principle and responded

with a revised draft, however, the agencies decided that such an agreement was no longer desirable and returned to their original positions.

-- Military Options: In order to evaluate allegations that the U.S. military was reluctant to become involved in the effort against Bin Ladin prior to September 11, and to assess the interplay between the CIA and the military in covert action and special operations relating to counterterrorism, the Joint Inquiry asked to review documents regarding 13 military options that had been reportedly prepared by the Joint Chiefs of Staff (JCS) in response to a White House request. The JCS Legal Counsel, supported by the Defense Department (DOD) General Counsel and the NSC, took the position that this request exceeded the scope of the Joint Inquiry's authority, but provided a summary briefing concerning the options.

Access Limited

-- Foreign Government Information at the FBI: The FBI allowed the Joint Inquiry to review information provided by foreign governments at the FBI, but would not allow the documents or verbatim notes to be carried to the Inquiry's offices. This limited and delayed the Inquiry's efforts to understand the level of cooperation displayed by the [————] and other governments in counterterrorism efforts prior to September 11.

-- Interview Policies: The Intelligence Community agencies insisted that agency representatives – usually legal or congressional affairs – be present to monitor all interviews of their personnel – present or former. The Inquiry took the position that agency monitors would be excluded where an agency employee, or Joint Inquiry personnel, decided that their presence would inhibit the full and frank discussion of any matter. Some of the agencies “pre-briefed” personnel who were to be interviewed by the Joint Inquiry, explaining to them what the agency position was on certain matters and urging the employees not to range too broadly in their responses. In one instance, after lengthy discussions with DOJ and FBI personnel, a former FBI agent was interviewed without monitors present at his request. On occasion, agency legal

representatives instructed individuals not to respond to questions that the monitors deemed would reveal pre-decisional matters or legal advice.

Access Delayed

-- Department of Justice (DOJ) Concerns: The Joint Inquiry agreed with DOJ's position that information sealed by court order or relating directly to Grand Jury proceedings, and evidence obtained by means of electronic surveillance conducted under 18 U.S.C. §2510, et seq., not be provided to the Inquiry. Some previously sealed information was, with the assistance of DOJ and by court order, eventually provided to the Inquiry. While this agreement was not inconsistent with the goals of the Inquiry, significant delays resulted in the first months of the Inquiry while Intelligence Community and other U.S. Government agencies waited for DOJ to develop an efficient process for review of all information requested by the Inquiry. Subsequently, DOJ took the position that FBI personnel who had been involved in the Moussaoui investigation or the September 11 investigation and who might be trial witnesses could not be interviewed by the Joint Inquiry about those matters. This issue was not resolved until the Congressional leaders of the Joint Inquiry met with the Attorney General and senior Department of Justice officials in early May and expressed their objections to the DOJ position. Other DOJ objections and concerns relating specifically to Joint Inquiry access to and use of information relating to the Moussaoui investigation were dealt with in federal court and are discussed in a separate section of this Appendix, entitled "The Joint Inquiry In Court."

-- The Third Agency Rule/Internal Reviews: The Intelligence Community initially took the position that any information from one agency that was found in the files of another agency could not be shared with the Joint Inquiry until the originating agency had been consulted and given its permission. This slowed the disclosure process significantly. Based on Inquiry objections, the Community first reduced the application of this procedural obstacle to only intelligence that

had not been disseminated in finished form, and finally agreed to provide the Inquiry with access and simultaneous notice to the originating agency. In addition, the agencies insisted on reviewing and redacting certain information from documents before they were provided to the Inquiry, further preventing timely responses to Inquiry requests. Finally, the agencies would not provide the Inquiry with electronic access to information, but insisted on providing paper copies of all information. This not only slowed production of the material, but also hindered the efficient review and utilization of this information by the Inquiry.

-- Interview of the Deputy National Security Advisor: The Joint Inquiry requested the opportunity to conduct an interview of the National Security Advisor to the President in May 2002 in order to obtain a better understanding of the development of counterterrorism policy in the Bush Administration before September 11, 2001. The NSC resisted this and suggested in June that the Deputy National Security Advisor be the subject instead and that written questions be provided instead of conducting an interview. The Joint Inquiry provided written questions in July but did not receive responses until November 2002.

Congress of the United States

Committee Sensitive

Washington, DC 20515

July 1, 2002

President George W. Bush
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

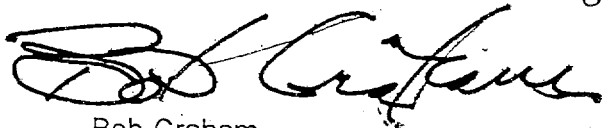
Dear Mr. President:

As you know, the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence is reviewing the performance of the Intelligence Community in connection with the attacks of September 11. Key aspects of this Inquiry include the organization and functions of the Community and whether legislative action is necessary to improve its ability to produce and share critical intelligence for counter-terrorism purposes. We are requesting that the draft report of the 2001 NSPD-5 Presidential Commission on Intelligence Reform chaired by General Brent Scowcroft be made available to the Joint Inquiry as it considers those issues. As you know, reports of the Commission's tentative findings have appeared in the media. Based on those reports, the findings appear to be highly relevant to the work of the Joint Inquiry.

If your staff has any questions or would like to discuss this request further, they should contact Eleanor Hill, the Joint 9/11 Inquiry Staff Director, at (202) 226-0911.

We appreciate your support for our effort and look forward to receiving the Commission report.

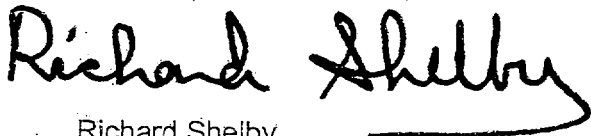
Sincerely,



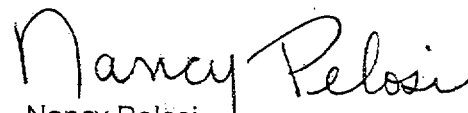
Bob Graham
Chairman
Senate Select Committee on
Intelligence



Porter Goss
Chairman
House Permanent Select
Committee on Intelligence



Richard Shelby
Vice Chairman
Senate Select Committee on
Intelligence



Nancy Pelosi
Ranking Democrat
House Permanent Select
Committee on Intelligence

Congress of the United States
Washington, DC 20515

Committee Sensitive

July 1, 2002

Mitchell E. Daniels, Jr.
Director
Executive Office of the President
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Daniels:

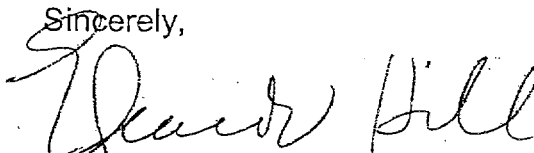
The Joint Inquiry Staff of the House and Senate Intelligence Committees seeks access to several Office of Management and Budget documents that are relevant to our ongoing inquiry. These documents have either been referred to in briefings or hearings before the Committees or during staff interviews of Intelligence Community personnel.

As you know, the Committees announced the scope of their joint inquiry in June, which focuses on the performance of the Intelligence Community in connection with the terrorist attacks of September 11th [enclosure (1)]. As part of that inquiry, we are reviewing the resources granted to the Intelligence Community during the course of its counter-terrorism efforts. Enclosure (2) is an initial list of requests.

Your assistance will facilitate the Joint Inquiry in key areas of interest to the House and Senate Intelligence Committees. Please do not hesitate to call me if there is anything I can do to expedite this request. I can be reached at (202) 226-0911. Please have your staff contact Daniel Byman at the same number with any specific questions regarding this request.

We appreciate your cooperation in this most important effort.

Sincerely,



Eleanor Hill
Director, Joint Inquiry Staff

Enclosures:

- (1) Initial Scope of the Joint Inquiry
- (2) List of requested documents

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Joint 9/11 Inquiry

**OMB Document Request
July 1, 2002**

- OMB guidance levels ("passback") for the Intelligence Community agencies, including the FBI, since 1986;
- Any "overguidance" requests from the Director of Central Intelligence or the heads of other members of the Intelligence Community related to terrorism since FY98;
- OMB National Security Crosscut Report to Congress for FY99-present;
- Documents from the OMB "Director's Review" on intelligence programs for the Fall of 1998, the Fall of 1999, and the Fall of 2000; and
- National Security Crosscut Data on counterterrorism for FY00 and FY01 requested by OMB from the various Intelligence Community agencies.

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Congress of the United States
Washington, DC 20515

PREAMBLE

To reduce the risk of future terrorist attacks; to honor the memories of the victims of the September 11 terrorist attacks by conducting a thorough search for facts to answer the many questions that their families and many Americans have raised; and to lay a basis for assessing the accountability of institutions and officials of government:

**THE SENATE SELECT COMMITTEE ON INTELLIGENCE
AND
HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE**

ADOPT THIS

INITIAL SCOPE OF JOINT INQUIRY

Pursuant to section 5(a)(1) of Senate Resolution 400, 94th Congress, Rule 6 of the Rules of Procedure of the Senate Select Committee on Intelligence, Rule XI(1)(b) of the Rules of the House of Representatives, and Rule 9 of the Rules of Procedure of the House Permanent Select Committee on Intelligence, the two Committees have authorized an investigation, to be conducted as a Joint Inquiry, into the Intelligence Community's activities before and after the September 11, 2001 terrorist attacks on the United States. The Committees have undertaken this Joint Inquiry pursuant to their responsibility to oversee and make continuing studies of the intelligence activities and programs of the United States Government and all other authority vested in the Committees.

The purpose of this Joint Inquiry is --

(a) to conduct an investigation into, and study of, all matters that may have any tendency to reveal the full facts about --

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

- (2) what the Intelligence Community knew prior to September 11 about the scope and nature of any possible attacks against the United States or United States interests by international terrorists, including by any of the hijackers or their associates, and what was done with that information;
 - (3) what the Intelligence Community has learned since the events of September 11 about the persons associated with those events, and whether any of that information suggests actions that could or should have been taken to learn of, or prevent, those events;
 - (4) whether any information developed before or after September 11 indicates systemic problems that may have impeded the Intelligence Community from learning of or preventing the attacks in advance, or that, if remedied, could help the Community identify and prevent such attacks in the future;
 - (5) how and to what degree the elements of the Intelligence Community have interacted with each other, as well as other parts of federal, state, and local governments with respect to identifying, tracking, assessing, and coping with international terrorist threats; as well as biological, chemical, radiological, or nuclear threats, whatever their source (such as the Anthrax attack of 2001).
 - (6) the ways in which the Intelligence Community's responses to past intelligence problems and challenges, whether or not related to international terrorism, have affected its counterterrorism efforts; and
 - (7) any other information that would enable the Joint Inquiry, and the Committees in the performance of their continuing responsibilities, to make such recommendations, including recommendations for new or amended legislation and any administrative or structural changes, or other actions, as they determine to be necessary or desirable to improve the ability of the Intelligence Community to learn of, and prevent, future international terrorist attacks; and
- (b) to fulfill the Constitutional oversight and informing functions of the Congress with regard to the matters examined in the Joint Inquiry.

Congress of the United States

Washington, DC 20515

~~Top Secret~~

- Committee Sensitive

July 8, 2002

Dr. Condoleezza Rice
Assistant to the President for National Security Affairs
National Security Council
The White House
Washington, DC 20504

Dear Dr. Rice:

The Joint Inquiry Staff of the House and Senate Intelligence Committees seeks access to several National Security Council (NSC) documents that are relevant to our ongoing inquiry. These documents have either been referred to in briefings or hearings before the Committees or during staff interviews of Intelligence Community personnel.

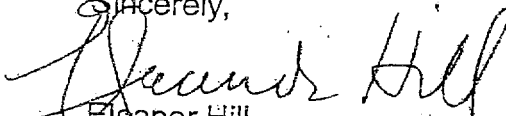
As you know, the Committees announced the scope of their Joint Inquiry in June, which focuses on the performance of the U.S. Intelligence Community in connection with the terrorist attacks of September 11th [enclosure (1)]. In keeping with that guidance, the Joint Inquiry Staff is reviewing the U.S. Government response to international terrorism as part of its examination of the Intelligence Community's performance. As part of that effort, it is important that we review the policy guidance the Intelligence Community received from the National Security Council, including covert action instructions.

Enclosure (2) is forwarded as an initial list of requests. This list focuses primarily on covert action and the use of force against al-Qa'ida.

Your assistance will facilitate the Joint Inquiry in key areas of interest to the House and Senate Intelligence Committees. Please do not hesitate to contact me if there is anything I can do to expedite this request. I can be reached at (202) 226-0911. Please have your staff contact Daniel Byman with any specific questions regarding this request.

We appreciate your continued cooperation in this most important effort.

Sincerely,



Eleanor Hill

Director, Joint Inquiry Staff

Enclosures:

- (1) Initial Scope of the Joint Inquiry
- (2) List of requested documents

~~Top Secret~~
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- Committee Sensitive

Joint 9/11 Inquiry

NSC Document Request
July 1, 2002

- Minutes, memoranda, or other documents prepared in connection with Principals' meetings concerning proposals for covert action against terrorism between 1998 and September 11, 2001, particularly with regard to al-Qa'ida or Usama bin Ladin;
- Memoranda or other documents related to any requests the NSC made to the CIA for covert action options from 1996 to September 11, 2001, [REDACTED]
[REDACTED]
- The NSC policy options paper, prepared by Richard Clarke's office during Spring 2001, which proposed a change in U.S. policy regarding [REDACTED]
[REDACTED]
- Memoranda, documents, or other records related to requests the NSC made to the Department of Defense and/or the Joint Chiefs of Staff regarding possible military options against al-Qa'ida from 1994 to September 11, 2001, including military strikes and [REDACTED]; and
- The after-action report on the Millennium prepared by the National Coordinator for Counterterrorism's office.

Congress of the United States
Washington, DC 20515

PREAMBLE

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The purpose of this Joint Inquiry is --

(a) to conduct an investigation into, and study of, all matters that may have any tendency to reveal the full facts about --

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

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

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

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

(5) how and to what degree the elements of the Intelligence Community have interacted with each other, as well as other parts of federal, state, and local governments with respect to identifying, tracking, assessing, and coping with international terrorist threats; as well as biological, chemical, radiological, or nuclear threats, whatever their source (such as the Anthrax attack of 2001).

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

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

(b) to fulfill the Constitutional oversight and informing functions of the Congress with regard to the matters examined in the Joint Inquiry.

Congress of the United States
Washington, D.C.

~~Top Secret~~ - Committee Sensitive

July 31, 2002

Dr. Stephen Hadley
Deputy Assistant to the President for National Security Affairs
National Security Council
The White House
Washington, DC 20504

Dear Mr. Hadley:

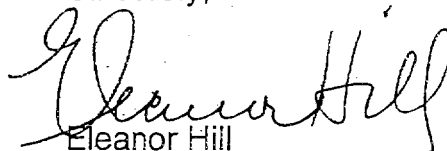
The Joint Inquiry is examining the performance of the U.S. Intelligence Community in connection with the terrorist attacks of September 11, 2001. Per our discussions with John Bellinger, I ask that you submit a written response for inclusion in the record of the ongoing Joint Inquiry of the House and Senate Intelligence Committees. Your assistance will make an important contribution to our effort.

Attached is an initial list of questions that cover your time at the National Security Council. After we receive your answers, our staff seeks to interview you to discuss any remaining issues.

Your assistance will facilitate the Joint Inquiry in key areas of interest to the House and Senate Intelligence Committees. Please do not hesitate to call me if there is anything I can do to expedite this request. I can be reached at (202) 226-0911. For any specific questions regarding this request, please have your staff contact Daniel Byman at the same number.

We appreciate your cooperation in this most important effort.

Sincerely,



Eleanor Hill
Director, Joint Inquiry Staff

Enclosure:
List of questions

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Committee Sensitive

Proposed Questions for Deputy National Security Advisor Hadley

Terrorism as a Policy Priority

1. During your time as Deputy National Security Advisor, what priorities did you establish for U.S. intelligence priorities and where did terrorism fit in? How did this change from the priorities of the Clinton administration?
2. How were these priorities conveyed to the Intelligence Community? Did the Intelligence Community propose any changes in priority with regard to counterterrorism or al-Qa'ida? What were they?
3. Prior to September 11, who at the National Security Council and the U.S. government played a leading role in setting counterterrorism policy? Who else was involved in this process? Please describe the process, the participants, and the fora.
4. Prior to September 11, did Congress support the NSC's counterterrorism efforts? Did Congress oppose NSC priorities related to terrorism in any way? Please provide details of both, as appropriate.
5. Was Richard Clarke, the National Coordinator for Counterterrorism, included all in Principals' meetings related to terrorism after January 2002? If not, why not? How was it determined who would be involved in such meetings? What was his role in counterterrorism policy and intelligence prioritization after January 2002?
6. During the transition from the Clinton administration, did former National Security Adviser Sandy Berger or other senior Clinton NSC officials provide any advice, information, warning, or guidance requiring policy, priorities, or threats from al-Qa'ida and Bin Ladin? If so, what was the advice, information, warning, or guidance?
7. Prior to September 11, was the Administration engaged in a review of counterterrorism policy? What issues were identified for change? What stage were plans in? What changes in the role of the Intelligence Community, if any, were planned? What happened to the review after the September 11 attacks?
8. When the new Administration came into office, was it aware that Usama bin Ladin had declared war on the United States in 1998? Who provided this information, and how was it provided? What was the impact of that fact on the

Administration's national security priorities? How did it affect the Intelligence Community's posture?

9. Prior to September 11, did the President or other senior officials in the administration make any public statements or give any speeches on the subject of the threat of terrorism, or Usama bin Ladin's terrorist network in particular? If so, please make copies available to the Joint Inquiry Staff.

Resources

1. Prior to September 11, did the Intelligence Community come to the new Administration with any requests for additional counterterrorism resources, e.g., additional funding? Who made the request, and what was the nature of the proposal?

2. Did the Intelligence Community ask the Administration for more resources to fight Usama bin Ladin and al-Qa'ida? Who made this request?

3. Did the Intelligence Community ever cite a lack of resources as the basis for not acting? If so, provide details and the NSC response.

4. When the DCI, Director of NSA, and FBI Director requested more counterterrorism resources, what was the stated justification for their requests?

5. What was the NSC's response to each specific Intelligence Community request for any increases in resources for counterterrorism? For al-Qa'ida?

Agency responsiveness and support for policy makers

1. What specific strengths did you observe in intelligence collection, analysis, and reporting on Bin Ladin, al-Qaeda or terrorism in general prior to September 11? What specific weaknesses? Please provide specific examples of each.

2. What was the quality of intelligence received by the NSC? Did the NSC make any efforts to improve this quality?

3. With respect to Intelligence Community counterterrorism efforts prior to September 11, how responsive were the CIA, the FBI, NSA, and DIA?

- Did they provide the President and the National Security Council with the information needed to make informed decisions?
- Did the agencies use their authority aggressively? Did they cite limits or a lack of authority as a basis for no action?
- Did they shift resources appropriately in response to NSC direction?

- Did the NSC provide any specific tasking to Intelligence Community agencies to which they did not respond? Please provide specific examples.

Threat to the homeland

1. Prior to September 11, including especially spring/summer 2001, what information did the Intelligence Community provide to the National Security Council, orally or in writing, indicating the possibility of terrorist attacks inside the United States?
2. Prior to September 11, what information did the Intelligence Community provide to the National Security Council on al-Qa'ida activities and infrastructure inside the United States?
3. Prior to September 11, did the National Security Council ever consider alerting the American people to the internal threat from al-Qaeda? What happened?
4. Did the National Security Council ever consider enhancing U.S. border controls, e.g., by strengthening watchlist programs, alerting the FAA or the airlines, or inspecting cargo containers on a larger scale? If so, what happened?
5. Prior to September 11, what was the National Security Council's view regarding how well postured the FBI was with respect to combating terrorist groups inside the United States? What steps were taken to improve the FBI, if any?
6. Prior to September 11, did the Intelligence Community provide the NSC with any information regarding the possibility that al-Qa'ida members would use airplanes as weapons or hijack airplanes in the United States? What did the NSC do in response to this information?

Foreign governments

1. Prior to September 11, which foreign governments were most and least helpful regarding counterterrorism? How were they helpful or not helpful in each case?
2. Prior to September 11, were the governments of Saudi Arabia and Pakistan supportive of U.S. counterterrorism efforts? How responsive were European allies? What priority was counterterrorism cooperation in Saudi Arabia relative to military operations against Iraq, the Middle East peace negotiations, and other concerns?

3. Did Intelligence Community agencies ask for NSC assistance in getting foreign governments to take action against terrorist cells? Did the NSC take any specific actions to support the Intelligence Community? What did the NSC do? Did the NSC ask or instruct the State Department or the Department of Defense to assist the Intelligence Community in this regard?
4. Prior to September 11, was there any discussion of increasing information sharing and/or counterterrorism cooperation with the Sudan?

Use of Force/Overt and Covert

1. Prior to September 11, did the National Security Council consider the use of military force against al-Qa'ida in Afghanistan? How? In what form? Why was it not pursued? Was there sufficient intelligence to support military options? Was there tasking to gain further intelligence to support military operations?
2. Prior to September 11, did the National Security Council issue any tasking to the CIA or the U.S. military to develop plans involving the covert or overt use of force?
3. Prior to September 11, did the National Security Council ever review the CIA's authorities to conduct covert action against Bin Ladin or al-Qa'ida? What problems were identified regarding existing authorities, [redacted] [redacted]? Were there any proposals to change those authorities before September 11th? What steps were taken?
4. Prior to September 11, was the *unarmed* Predator flown in Afghanistan after the Bush Administration came into office? Were proposals made to the NSC to fly it? Which participants favored flying it? If it was not flown, why not?
5. Did the National Security Council support the development of the *armed* Predator? Did any administration official try to expedite the process? Were any discussions held on this issue at the NSC? Who participated?
6. Did you consider [redacted]? Why or why not? What impact did you expect?
7. Why was there no military response to the attack on the *USS Cole*? Was this considered?

Recommendations

1. What recommendations would you make to improve the intelligence community's performance?

Congress of the United States
Washington, D.C.

~~Top Secret~~

August 12, 2002

Mr. John Bellinger
Senior Associate Counsel to the President &
National Security Council Legal Advisor
The White House
Washington, DC 20504

Dear John:

We have been engaged, for several weeks now, in a discussion regarding Joint Inquiry Staff (JIS) access to a variety of types of documents and information relating to the President's Daily Brief (PDB). Rather than continuing to rely on periodic oral exchanges, I thought it would be helpful to describe in writing the specific areas of JIS interest in this regard and to solicit your written response as to each in order to illuminate the JIS and the relevant Intelligence Community personnel who must implement your instructions.

First, the JIS seeks access to information relating to the process by which the PDB is created. This would include questions such as: By whom is it prepared? How? When? What standards are applied? What source quality is required? With whom and how is it coordinated? How are analytic disagreements handled? What is its relation to the Senior Executive Intelligence Brief and other intelligence publications? By what means is it presented to the President? Who else reads it? Etc.

In addition, the JIS would like to know the specific genesis of the August 2001 PDB item relating to Usama Bin Ladin (UBL) and terrorism threats to the United States. As I have told you, we have received very different versions of how this item came to be published. This is especially significant in light of the timing and content of that particular item in reference to the September 11 attacks and the substantial public interest in how well the Intelligence Community was serving the President at the time. Thus, we believe it important to establish a clear and complete record in that regard, and suggest that the National Security Council (NSC) should share that goal.

Finally, as I have told you, I believe there is a significant case to be made that the JIS should be provided with special access in some form to the complete record of the numbers and contents of any PDB items regarding UBL, al-Qa'ida, and the terrorism threat to U. S. interests that appeared from January 1998 – the year the Director of Central Intelligence declared we were at war with UBL – to September 11, 2001. Again, the public has a compelling interest in the circumstances in understanding how well the Intelligence Community was performing its principle function of advising the President and the NSC of threats to U.S. national security. There must be a way to recognize and

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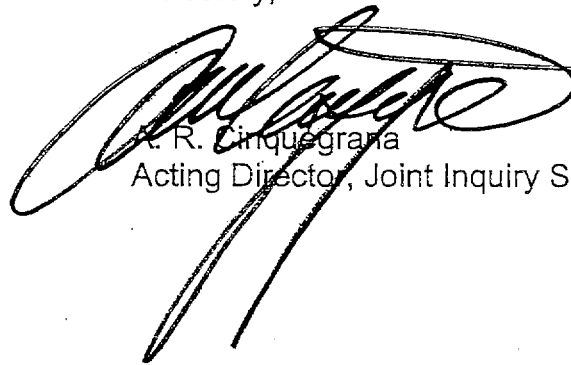
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Mr. John Bellinger
August 12, 2002
Page 2

accommodate this interest without waiving the Executive's prerogatives in this regard in other circumstances. In the absence of such access, we will have no choice but to extrapolate the number and content of PDB items on these subjects from the items that appeared on these subjects in the Senior Executive Intelligence Brief and other lower level intelligence products during the same period. This may result, however, in dangerously skewed and misleading conclusions regarding what the President was being told about the threat during the months preceding the September 11 attacks.

I appreciate your efforts on behalf of the JIS in the weeks and months since we began this effort. Please let me have your response by August 26, 2002.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. R. Cinquegrana', written over a horizontal line.

A. R. Cinquegrana
Acting Director, Joint Inquiry Staff

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Congress of the United States
Washington, D.C.

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August 12, 2002

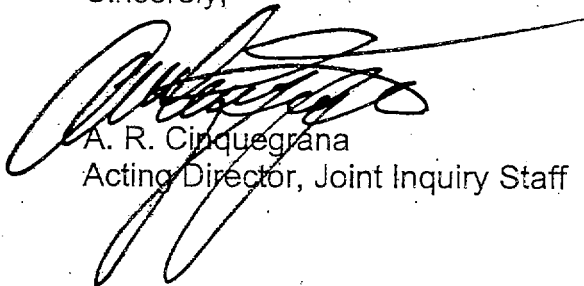
Mr. John Bellinger
Senior Associate Counsel to the President &
National Security Council Legal Advisor
The White House
Washington, DC 20504

Dear John:

As I have explained, the Central Intelligence Agency continues to deny Joint Inquiry Staff (JIS) access to a broad range of documents and information relating to covert action, "National Security Council (NSC) programs," etc., on the grounds that these materials relate to NSC proceedings and are thereby precluded from JIS access by virtue of NSC instructions. Based on my discussions with you, my understanding is that the only documents and information the NSC intends to have withheld from the JIS relate to direct advice to, and discussions with, the President. In order to clarify this access issue in a timely and definitive manner, I request your written response as soon as possible regarding whether my understanding is correct. Only in this way, I believe, will we be able to break this particular logjam with the Agency.

I would appreciate your response before August 23, 2002. Thanks very much for your continued cooperation and assistance in this regard.

Sincerely,



A. R. Cinquegrana
Acting Director, Joint Inquiry Staff

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