The FBI's Handling of the Phoenix Electronic Communication and Investigation of Zacarias Moussaoui Prior to September 11, 2001
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September 24, 2002

Introduction

Mr. Chairmen, members of this Joint Committee, good morning. I appreciate the opportunity to appear before the Committees once again. At our last hearing, we discussed information the Intelligence Community had available prior to September 11, 2001 regarding the September 11 hijackers. Today, I will discuss:

- The July 10, 2001 electronic communication (EC) from the FBI's Phoenix field office to FBI headquarters," also known as the "Phoenix memo"; and

- The investigation, prior to September 11, 2001, of Zacarias Moussaoui.

As I mentioned in discussing our work concerning the September 11 hijackers, I want to again emphasize the significance of these areas when viewed collectively. Three areas were available in the same section at the Federal Bureau of Investigation's (FBI) headquarters in late August 2001. Two of these areas were addressed in the Director of Central Intelligence's (DCI) Counterterrorist Center (CTC) at approximately the same time. No one apparently saw the potential collective significance of this information, despite the increasing concerns throughout the summer of 2001 of an impending terrorist attack.

The Phoenix Electronic Communication

The Joint Inquiry Staff's interim statement to the Committees on September 18, 2002 discussed the indications of an impending terrorist detected by the Intelligence Community in the summer of 2001 and the warnings that intelligence resulted in. In that same timeframe, an FBI special agent in the FBI's Phoenix field officer generated a document that has been subsequently described in media reports as the "Phoenix memo." It is known within the FBI as the Phoenix Electronic Communication, or "Phoenix EC." "EC" is an FBI term of art. ECs are the primary type of document used by the FBI for internal communications. In this statement, we use the terms "Phoenix memo" and "Phoenix EC" interchangeably.

The Joint Inquiry Staff reviewed the Phoenix EC and its handling by FBI headquarters with the following questions in mind:

- What did the EC say?
- Why did the special agent write it?
- Who handled it within FBI headquarters and what reaction did it elicit?

- Does FBI headquarters' handling of the document illuminate any broader, systemic problems within the FBI?

Introduction

On July 10, 2001, a Special Agent (SA) in the FBI's Phoenix Division sent an EC to individuals in the Usama Bin Ladin Unit (UBLU) and the Radical Fundamentalist Unit (RFU) within the Counterterrorism Division at FBI headquarters and to several SAs on an International Terrorism squad in the New York Field Office. In the EC, the SA outlined his concerns that there was a coordinated effort underway by Usama Bin Ladin to send students to the United States for civil aviation-related training. He noted that there were an "inordinate number of individuals of investigative interest" attending this type of training in Arizona and speculated that this was part of an effort to establish a cadre of individuals in civil aviation, who would be in position to conduct terrorist activity in the future.

The EC contained a number of recommendations that the agent asked FBI headquarters to consider implementing. Apparently, the communication did not raise any alarms at FBI headquarters or in the New York office. In fact, New York personnel who reviewed the EC found it to be speculative and not particularly significant. New York already knew that many Middle Eastern flight students, including several associated with Bin Ladin, trained in the United States. They believed that Bin Ladin needed pilots to transport goods and personnel in Afghanistan, and, at the time, viewed pilots connected to Bin Ladin in that light. About a week after its receipt, headquarters personnel determined that no follow-up action was warranted on the Phoenix EC recommendations. No managers at FBI headquarters took part in that decision or even saw the communication before September 11, 2001. No one apparently considered the significance of the Phoenix EC in light of what else confronted the FBI counterterrorist team during the summer of 2001: the unprecedented increase in terrorist threat reporting, the investigation and arrest of Zacarias Moussaoui in August 2001, and the possible presence of Bin Ladin associates al-Mihdhar and al-Hazmi in the United States.

Our review of the circumstances surrounding the Phoenix memo reveals a number of weaknesses at the FBI that, if left uncorrected, will continue to undercut counterterrorist efforts. The FBI handling of the Phoenix EC is symptomatic of a focus on short-term operational priorities, often at the expense of long-term, strategic analysis. Throughout this review, we have found that the FBI's ability to handle strategic analytic products, such as the Phoenix EC, was, at best, limited prior to September 11, 2001. Inadequate information sharing within the FBI, particularly between the operational and analytic units, is also highlighted by our review of the Phoenix EC. Several of the addressees on the EC, especially at the supervisory level, did not receive it prior to September 11 due to limitations in the electronic dissemination system. Those limitations are consistent with the complaints we have repeatedly heard throughout this inquiry about the FBI's technology problems. Finally, the case-driven, law enforcement approach, while important and extremely productive in terms of the FBI's traditional mission, does not generally "incentivize" attention to big-picture, preventive analysis and strategy. This

is particularly true where there is no direct and immediate impact on an ongoing criminal prosecution.

In that context, the Joint Inquiry Staff found that the Phoenix memo was not the first time the FBI had confronted concerns about Middle Eastern individuals studying aviation topics in the United States. In 1998, the FBI's chief pilot in Oklahoma City drafted a memo expressing concern about the number of Middle Eastern flight students there and his belief that they could be planning a terrorist attack. Also in 1998, the FBI had received reporting that a terrorist organization planned to bring students to the United States to study aviation and that a member of that organization had frequently expressed an intention to target civil aviation in the United States. Yet another terrorist organization, in 1999, allegedly wanted to do the same thing, triggering a request from FBI headquarters to 24 field offices to investigate and determine the level of the threat. To date, our review has found that the field offices conducted little to no investigation in response to that request.

Our inquiry found that, given the lack of information sharing across units in FBI headquarters, personnel who saw the Phoenix memo had no knowledge of any of these prior instances involving other terrorist groups. Since the prior reporting did not directly relate to al-Qa'ida, they were unable to evaluate the Phoenix EC in the context of what was known about likely terrorist strategies favored by other, similar groups. As terrorist groups increasingly associate with and support each other, information sharing and overarching strategic analysis is critical to success in counterterrorist efforts. This is particularly important to the FBI's efforts here in the United States, where the members of the various groups tend to associate with each other.

Finally, while the Phoenix EC does not include by name any of the hijackers involved in the September 11, 2001 attacks, our review confirmed that the FBI now believes that one of the individuals named in the EC was connected to Hani Hanjour, who is now believed to have piloted American Flight 77. The individual named in the EC has been connected both through witness statements and flight school records to Hanjour. This individual first came to the attention of the FBI in 1999, but when the FBI went to investigate him, they determined that he had left the United States, and an investigation was not opened. The FBI was apparently unaware that he had returned to the United States in the summer of 2001 and may have been associating with Hanjour and several other Islamic extremists. These issues will be discussed at greater length in subsequent sections.

Summary of the Phoenix EC

In an interview with the Joint Inquiry Staff, the special agent in Phoenix who wrote the EC said that he first became concerned about aviation-related terrorism in the early 1990s. He was working on two cases in which Libyans with suspected terrorist ties were working for U.S. aviation companies. One of these individuals had a Masters degree in a technical field, yet was working in menial jobs at the airport as a skycap and then a baggage handler. The other individual was working as a technical avionics officer

for a domestic airline and was charged with overseeing the complete overhaul of aircraft and with checking for structural integrity. In addition, several Bin Ladin operatives had lived and traveled to the Phoenix area in the past, one of whom was Wadih El-Hage, a Bin Ladin lieutenant convicted for his role in the 1998 embassy bombings. He had lived in the Tucson area for several years in the 1980s. The Phoenix SA believes that El-Hage established a Usama Bin Ladin support network in Arizona while he was living there and that this network is still in place.

The agent stated that the idea of possible terrorists having easy access to aircraft conjured up visions of Pan Am 103. The Phoenix agent told the Joint Inquiry Staff that, in authoring the EC, he never imagined terrorists using airplanes as was done on September 11. His primary concern was that Islamic extremists, studying everything from aviation security to flying, could be learning how to hijack or destroy aircraft and to evade airport security.

In April 2000, the agent interviewed the individual who was the subject of the Phoenix EC. When he interviews young foreign nationals they usually tend to be at least somewhat intimidated in their first contact with the FBI. By contrast, this individual told the agent directly that he considered the U.S. government and military legitimate targets of Islam. In looking around the individual's apartment, the agent noticed a poster of Bin Ladin and another poster of wounded Chechnyan mujaheddin fighters. He was also concerned by the fact that this individual was from a poor Middle Eastern country and had been studying a non-aviation related subject prior to his arrival in the United States.

The agent also described for us another incident that increased his suspicion about Middle Eastern flight students in the Phoenix area. During a physical surveillance of the subject of the Phoenix EC, the agent determined that he was using a vehicle registered to another individual. In 1999, the owner of the car and an associate of his were detained for trying to gain access to the cockpit of a commercial airliner on a domestic flight. They told the FBI that they thought the cockpit was the bathroom and they accused the FBI of racism. They were released after an investigation, the FBI closed the case, and the two were not prosecuted. A year later, the individual's name was added to the State Department's watchlist after intelligence information was received indicating that he may have gotten explosive and car bomb training in Afghanistan. In August 2001, the same individual applied for a visa to re-enter the United States and, as a result of the watchlisting, was denied entry.

In May 2001, after a brief time investigating a series of arsons, the Phoenix special agent was reassigned to work international terrorism matters. To get back up to speed, he reviewed case files of terrorism cases on his squad. In the course of the review, he became increasingly concerned by the number of individuals of potential investigative interest enrolled in aviation training. At that point, he began to draft the EC, which he completed by July 10, 2001.

The Phoenix EC focuses on 10 individuals who were the subjects of FBI investigations. These individuals were Sunni Muslim, and were from Kenya, Pakistan,

Algeria, the United Arab Emirates, India, and Saudi Arabia. Not all were in flight training; several were aeronautical engineering students, and one was studying international aviation security. One of the individuals under investigation was the primary focus of the Phoenix EC.

This individual had come to the Phoenix agent's attention when it was learned that he was a member of the al-Muhajiroun, whose spiritual leader was a strong supporter of Bin Ladin and who had issued a number of *fatwas* against the United States, one mentioning airports as a possible target. The subject of the Phoenix investigation was enrolled at Embry Riddle University and was taking aviation-related security courses. As a member of the al-Muhajiroun, he was organizing anti-U.S. and anti-Israeli rallies and calling for jihad. The investigation of this individual led to the opening of investigations on six of his associates, also involved in aviation training. The remaining three subjects in the Phoenix EC, although involved in aviation subjects, were not known to associate with the others.

We asked the Phoenix agent whether he had received any intelligence from FBI headquarters or from other Intelligence Community agencies that contributed to the suspicions he raised in the EC. According to him, the Phoenix office did not receive FBI, Intelligence Community, or foreign intelligence service products on a regular basis. He told us that he believes that prior to September 11, 2001 the FBI was not running counterterrorism as a national level program; he often has felt that he's "out on an island" in Phoenix. He said that, prior to headquarters downsizing, the FBI used to do a better job of disseminating intelligence products to the field. He does not believe that sufficient resources are devoted to counterterrorism even though it is officially a Tier I program. In his words, counterterrorism and counterintelligence have always been considered the "bastard stepchild" of the FBI because these programs do not generate the statistics that other programs do, such as Violent Crimes/Major Offenders or drugs.

The Phoenix EC makes four recommendations and requests that FBI headquarters consider implementing them:

- Headquarters should accumulate a list of civil aviation university/colleges around the country;
- FBI offices should establish liaison with the schools;
- Headquarters should discuss the Phoenix theories with the intelligence community;
- Headquarters should consider seeking authority to obtain visa information on individuals seeking to attend flight schools.

Phoenix Office's Actions Prior to Sending the EC

While he was developing the EC, the Phoenix agent attended a meeting in May/June 2000 of a local intelligence working group. At the meeting the agent told the attendees about the individual under investigation who was attending Embry Riddle University. He asked if anyone had information on Islamic extremists showing up at

aviation schools. No one offered any information. The agent told the Joint Inquiry Staff that he had also discussed his theories with other members of the Phoenix Joint Terrorism Task Force. The Joint Inquiry Staff's examination of records has determined that he also requested that routine intelligence community checks be run on the subjects of the EC. In March 2001, the agent's supervisor in Phoenix attended a meeting in Long Beach where he mentioned the Phoenix theories about civil aviation. The CIA was made aware of the FBI information, but had no relevant information to offer.

As he was drafting the EC, the Phoenix agent contacted an Intelligence Operations Specialist (IOS) at FBI headquarters whom he had known for a number of years to use as a sounding board. The IOS provided him with several names to include on the addressee list. Around the same time, another agent on the same Phoenix squad called the FAA's counterterrorism representative at FBI headquarters to inquire about the legality of the Middle Eastern students attending aviation schools. The FAA representative said that, as long as the students were in legal immigration status, their attendance was legal.

Headquarters' Response to the EC

When he sent the EC to the Counterterrorism Division at FBI headquarters the Phoenix agent requested in a "lead""[1] that both the RFU and UBLU consider implementing the suggested actions that he had set out. On July 30, 2001, an Intelligence Assistant (IA) in the RFU at FBI headquarters assigned the lead to an IOS. The IOS appears to have been picked, not because the assignment was within her programmatic area of responsibility, but because her name was the first non-supervisory name on the addressee list. At the time, this was typical of the way in which leads were assigned in the unit. The IOS recalls the lead arriving in her electronic folder on the system but did not receive a hard copy of the document from the IA. After reviewing the EC, the IOS determined that the project should be handled by someone in the UBLU.

The RFU IOS contacted a UBLU IOS to effect a transfer. The UBLU IOS did not want the lead transferred but agreed to take responsibility for her unit's response. The UBLU IOS also received a hard copy of the document. The UBLU IOS then consulted two other IOSs in her unit, mentioning specifically the paragraph in the EC about obtaining visa information. Their discussion centered on the legality of the proposal and whether it raised profiling issues. The IOS also decided to forward the EC to the Portland office because an individual named in the EC, with ties to suspected terrorists arrested in the Middle East in early 2001, was an employee of an airline and had previously lived and studied in the northwestern United States.

[1]This is an FBI system through which the office sending a communication can request that the receiving office(s) take some follow-up action or conduct additional investigation. In the "lead" section of the communication, the sending office can outline exactly what action or investigation that it is requesting that the receiving office conduct. Once the lead has been completed (or "covered" in FBI vernacular), the receiving office will inform the sending office as to the results of the investigation or as to the action taken.

On August 7, 2001, after receiving no objection from the Phoenix office, the EC was forwarded to an intelligence analyst in Portland via e-mail, stating that the document "basically puts forth a theory on individuals being directed to come here to study aviation and their ties to extremists. Nothing concrete or whatever, but some very interesting coincidences. I thought it would be interesting to you considering some of the stuff you were coming up with in PD [Portland]. Let me know if anything strikes you." The Portland analyst has told the Joint Inquiry Staff that she had spoken to the UBLU IOS on several occasions about the aviation-related ties of terrorist subjects in the Portland and Seattle areas. She did not take action on the communication or disseminate it any further, as it was only sent to her for informational purposes.

The UBLU IOS informed the Joint Inquiry Staff that she affixed a note to her copy of the EC, on which she jotted down several items to follow up on. She recalls that her first item was to review the intelligence investigations of another individual who was the only Usama Bin Ladin pilot she knew about.[2] She assumes she would have also written that she should call agents in two FBI field offices who were familiar with this individual. The note was on her copy of the EC that she provided to the Department of Justice Inspector General (IG). The IG has informed the Joint Inquiry Staff that they recall seeing the note during their interview of the IOS but cannot locate it.

On August 7, 2001, both IOSs decided that the lead should be closed. In the electronic system, the RFU IOS noted that the lead was "covered- consulted with UBLU, no action at this time, will reconvine [sic] on this issue." The UBLU IOS maintains that she fully intended to return to the project once she had time to do additional research, but that September 11 occurred, and she had not yet had an opportunity to return to the project.

Both IOSs also said they considered assigning the Phoenix project to a headquarters analytic unit but decided against it. In an interview with a supervisory agent in the UBLU, the Joint Inquiry Staff was told that the EC should have been assigned to an analytic unit because it was a long-term, labor-intensive suggestion, and the analytic units would have more time to devote to it then the operational units. There appear to be a number of factors bearing on why the project was not assigned to the analysts that will be discussed later in this statement.

Did FBI Headquarters Management Review the Phoenix EC Prior to September 11?

The chiefs of both the RFU and UBLU informed the Joint Inquiry Staff that they did not see the Phoenix communication prior to September 11. Moreover, neither remembers even hearing about the flight school issue until after September 11. At the Joint Inquiry Staff's the FBI audited their central records system; the audit supports their statements.

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[2] According to documents reviewed by the Joint Inquiry, this individual was not the only pilot with ties to Usama Bin Ladin known to the FBI at that time.

Both the IOSs are unsure, but think they might have mentioned the EC to their unit chiefs prior to September 11. The UBLU IOS said in an interview with the Joint Inquiry Staff that she told her supervisor that Phoenix had sent in a communication about Usama Bin Ladin sending pilots for training and that she planned to do some research before determining what to do about the recommendations in the EC. However, in her interview with the Department of Justice IG in November 2001, she stated that she had not discussed the EC with any supervisory personnel until after the EC was closed. The RFU IOS said she could not recall but might have mentioned the EC to her supervisor in passing.

FBI Headquarters Weaknesses Demonstrated by Handling of Phoenix EC

The manner in which FBI headquarters handled the Phoenix EC provides a valuable window into the FBI's operational environment prior to September 11 and illustrates several procedural weaknesses that have been recognized and are currently being corrected.

The manner in which the Phoenix EC was handled demonstrated how strategic analysis took a back seat to operational priorities prior to September 11. That many in the U.S. Government believed an attack of some type was imminent in the summer of 2001 apparently only served to further de-emphasize strategic analysis. For example, the IOS handling the Phoenix EC was primarily concerned with an individual in the EC who was connected to individuals arrested overseas; the IOS paid less attention to the flight school theories. For his part, the RFU Chief said he was seeing about 100 pieces of mail daily and could not keep up. His solution was to assign the review of intelligence reports to his IOS. Even the analytic unit responsible for strategic analysis was largely producing tactical products to satisfy the operational section. In fact there was no requirement to handle projects with nationwide impact, such as Phoenix, any different than any other project. This has now been changed. Any lead of the type such as Phoenix represented must now be raised to the section chief level.

The handling of the Phoenix EC also exposed information sharing problems between FBI headquarters elements. A number of analysts commented that the UBLU and RFU frequently do not share information with the International Terrorism analytic unit. The supervisor of the UBLU said that the Investigative Services Division, of which the analytic unit is a part, was not a major player and that often information was not shared with it.

Had the project been transferred to the analytic unit the capability to conduct strategic analysis on al-Qa'ida was limited because five of the unit's analysts had transferred into operational units. The Joint Inquiry Staff has been told that every time a competent new analyst arrived, the UBLU or RFU would either try to recruit them as IOSs or would refuse to share information. This allowed the UBLU and RFU to control the information flow. The end result, unfortunately, is that there is no one left whose role is to perform strategic analysis.

Even if the project had been assigned to the al-Qa'ida analyst in the analytic unit, there can be no guarantee that the various reports about using airplanes as weapons and terrorists sending students to flight school in the United States would have been pieced together. However, there was only one analytic unit at FBI headquarters responsible for counterterrorism, and there were five operational units. It is easier to share information within one unit than it is among five units.

The handling of the Phoenix EC also illustrates the extent to which technological limitations affect information flow at the FBI. A number of individuals who were addressees on the EC have stated that they did not see it prior to September 11. Audits of the system support their statements. The FBI's electronic system is not designed to ensure that all addressees on a communication actually receive it. Instead the electronic version of the document is sent to the unit and then forwarded electronically only to the individual to whom the lead is assigned. Furthermore, the system is capable of recognizing units only if they are precisely designated in the leads section; otherwise, a unit would not receive the communication. In the case of an inaccurate address the communication would be sent into either the Counterterrorism Division's main electronic folder or to the International Terrorism Operations Section's folder where it would sit until the secretaries checked their folders and forwarded it on to the appropriate unit for handling. In fact, the electronic system was considered so unreliable that many FBI personnel, both at the field offices and at FBI headquarters, use e-mail instead. In the case of important communications, they double-check to ensure it is not being neglected. Several FBI personnel interviewed conceded that it was possible that "routine" leads, on which there was no direct communication, were falling through the cracks. RFU and UBLU policies in effect at the time the Phoenix EC was sent gave the person to whom the lead was assigned the discretion to make the determination as to which people in the unit needed to see the report. One person said that he was not certain why the Phoenix agent put all the addressees on the EC but believes the IOS probably made the decision that this was more of an issue for the UBLU and did not need to be routed around to all of the people on the addressee list in the RFU.

The Joint Inquiry Staff has been informed that the FBI recently determined that there are 68,000 outstanding and unassigned leads assigned to the counterterrorism division dating back to 1995. Since many FBI personnel have not been using the electronic system for these purposes, it is difficult to know how many of these leads have actually been completed. The counterterrorism division's management is currently looking into this situation.3

Links from the Phoenix EC to September 11, 2001

FBI officials have noted, both in public statements and Congressional testimony that the September 11 hijackers did not associate with anyone of investigative interest. However, there is evidence that hijacker Hani Hanjour, who was unknown to the Intelligence

3 The Joint Inquiry Staff has asked the FBI for further details and explanation on the status of these outstanding leads, and what actions are being taken to address this situation.

Community and law enforcement agencies prior to September 11, 2001, was an associate of an individual mentioned in the Phoenix EC. This individual had been engaged in flight training in the United States, and the FBI believed that he was possibly a radical fundamentalist. The evidence connecting this individual to Hanjour is described below. There are several possible reasons, which will also be discussed below, why this individual's association with Hanjour did not bring Hanjour to the FBI's attention prior to September 11, 2001.

The FBI believes that, beginning in 1997, Hanjour and the individual named in the Phoenix EC trained together at a flight school in Arizona. Several instructors at the flight school say they were associates and one thinks they may have carpooled together. Through various record checks, the FBI has confirmed five occasions when the Phoenix subject and Hanjour were at the flight school on the same day. On one occasion in 1999, the flight school logs indicate that Hanjour and this individual used the same plane. According to the flight instructor, the individual mentioned in the Phoenix EC was there as an observer. The rules of the flight school were such that for this individual to observe, Hanjour would have had to approve of his presence in the aircraft. Another individual informed the FBI after September 11, 2001 that this individual and Hanjour knew each other, both from flight training and through a religious center in Arizona.

The FBI's evidence linking the two in the summer of 2001 is not as strong. The FBI has located records from a flight school in Phoenix indicating that on one day in June 2001, Hanjour and several other individuals signed up to use the Cessna simulator. The next day, the two individuals who signed up with Hanjour the previous day, came to the facility with the individual mentioned in the Phoenix EC. An employee of the flight school has informed the FBI that he recalls a fourth individual being there with him but cannot remember who. Another employee of the flight school has placed Hanjour and this individual together during that time frame, although she was not completely confident in her identification.

The FBI attempted to investigate this individual in May 2001, but discovered that he was out of the country. The FBI was apparently unaware that he returned to the United States soon after, and may have been associating with Hanjour and several other Islamic extremists. 4 A Phoenix agent told the JIS that had the individual been in the country in May 2001, they would have opened an investigation. However, the Phoenix office generally did not open investigations on individuals whom they believed had permanently left the United States. Although there were no legal bars to opening an investigation, FBIHQ discouraged this practice. The Phoenix office also did not notify the INS, State Department, or the CIA of their interest in this individual.

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4 The Joint Inquiry Staff is still attempting to determine whether the FBI's Phoenix office was aware of this individual's presence in the United States in the summer of 2001. The JIS has interviewed three agents in Phoenix about this issue, and received slightly contradictory answers. The JIS has asked the FBI for clarification on this issue.

No one can say whether the FBI would have developed an investigative interest in Hanjour had they opened an investigation on the individual mentioned in the Phoenix EC prior to September 11, 2001. The Joint Inquiry Staff is also not suggesting that if they had, it would have necessarily led to the discovery of the September 11 plot. However, this example provides additional evidence that at least some of the hijackers may have been less isolated and more integrated into their communities than was previously thought. If the hijackers were, in fact, associating with individuals of investigative interest, and were not keeping to themselves as has been portrayed, there are more significant questions as to whether or not they should have come to the FBI's attention prior to the attacks. These associations continue to raise questions about the FBI's knowledge and understanding of the radical fundamentalist network in the United States prior to September 11, 2001.

This case also raises questions about the FBI's policy and practice prior to September 11, 2001 regarding the initiation of investigations on individuals outside of the United States. The Phoenix FBI agent noted that this policy and practice have since been changed. It also provides a valuable illustration of how crucial it is for the FBI to coordinate its investigations internally and with other U.S. Government agencies, particularly when individuals are traveling into and out of the United States.

For this system to work effectively, and for the FBI to be aware when individuals of previous investigative interest return to the United States, they have to have close contact with INS and CIA. Unfortunately, it appears that prior to September 11, 2001, there was no system in place to ensure coordination. In this case, the FBI did not notify the INS, State Department, or the CIA of their interest in the Phoenix subject. Therefore, this individual was able to get into the United States without any notification to the FBI that he had returned. Supposedly coordination with INS and CIA is much better now, and the FBI does a better job of notification to those agencies.

Finally, the Phoenix subject's name was not provided to the TIPOFF watchlist at the State Department nor to the NAILS watchlist at INS. The individual's name and information regarding his terrorist associations and background were provided to the TIPOFF program by the FBI and the CIA after the September 11 attacks. It is only by identifying this individual to the TIPOFF and NAILS watchlist that the FBI could have been assured that he would be kept out of the United States.

Previous FBI Focus at U.S. Flight Schools

The Phoenix EC was not the first occasion that the FBI had been concerned about terrorist groups sending individuals to the United States for aviation study. The EC should be understood in this broader context. It is also important to note that the neither individuals involved in drafting the Phoenix EC nor the FBI personnel who worked on it at FBI headquarters were aware of this broader context.

In 1981, the U.S. military was involved in hostilities with the Libyan Air Force in the Gulf of Sidra. President Reagan made the decision to deport all Libyan students in

the United States involved in either aviation or nuclear studies. In March 1983, the INS published a rule in the Federal Register, terminating the nonimmigrant status of Libyan nationals or individuals acting on behalf of Libyan entities engaged in aviation- or nuclear-related education. The INS turned to the FBI for assistance in locating any such individuals. On May 6, 1983, FBI headquarters sent a "priority" communication to all field offices, asking the field offices for assistance in complying with the INS request. The Joint Inquiry Staff has not been able to locate all of the relevant records, so it is not clear how many students the FBI located and deported.

In 1998, the Chief Pilot of the FBI's Oklahoma City Field Office contacted an agent on the office's counterterrorism squad to inform him that he had observed a large numbers of Middle Eastern males at Oklahoma flight schools. An intra-office communication to the counterterrorism squad supervisor was drafted noting the Chief Pilot's concern that the aviation education might be related to planned terrorist activity, and his speculation that light planes would be an ideal means of spreading chemical or biological agents. The communication was sent to the office's "Weapons of Mass Destruction" control file. It appears to have been for informational purposes only. There is no indication that any follow-up action was either requested or conducted.

The FBI received reporting in 1998 that a terrorist organization might be planning to bring students to the United States for training at a flight school. The FBI was aware that individuals connected to the organization had performed surveillance and security tests at airports in the United States and made comments suggesting an intention to target civil aviation. There is no indication that this organization actually followed through on their plans.

In 1999, reporting was received that yet another terrorist organization was planning to send students to the United States for aviation training. The purpose of this training was unknown, but the terrorist organization leaders viewed the requirement as being "particularly important" and were reported to have approved an open-ended amount of funding to ensure its success. In response, an operational unit in the Counterterrorism Section at FBI headquarters sent a communication to 24 field offices, asking them to pay close attention to Islamic students in their area from the target country who were engaged in aviation training. This communication was sent to the Phoenix Office's International Terrorism squad, but the Phoenix SA does not recall this reporting. The Phoenix SSA was not assigned to the Phoenix Office at the time.

The communication requested that field offices "task sources, coordinate with the INS, and conduct other logical inquiries, in an effort to develop an intelligence baseline" regarding this terrorist group's use of students. To this point, there is no indication that the FBI field offices conducted any investigation after receiving the communication. The analyst who drafted the communication indicated that he did receive several calls from field offices, but that the calls were either to seek additional guidance or to raise concerns about the Buckley Amendment implications of investigating at schools. (The Buckley Amendment is part of the 1974 Family Educational Rights and Privacy Act, which bars

post secondary educational institutions which receive federal funding from releasing students' personal information without their written consent.)

In November 1999, to address these concerns, the FBI sent a letter to INS explaining the intelligence and requesting a database search for individuals studying in the United States from the target country. Any information provided by the INS would be sent to the field offices, which would conduct appropriate investigations in coordination with local INS agents. According to interviews, the INS never provided any information in response to the request.

The project was subsequently assigned to the International Terrorism Analytic Unit at FBI headquarters. The analyst assigned to the project determined that there were 75 academic institutions offering flight education in the United States. He also located, via the Internet, an additional 1000 flight schools. In November 2000, the analyst sent a communication to the FBI field offices, informing them that no information was uncovered concerning this terrorist group's recruitment of students studying aviation and stated that "further investigation by FBI field offices is deemed imprudent" by FBI headquarters.

The former unit chief of the operational unit involved in this project told the Joint Inquiry Staff that he was not surprised by the apparent lack of vigorous investigative action by the field offices. He believes that the field offices' calls requesting additional guidance or raising Buckley Amendment issues were just "excuses" and that the field offices should have known full well how to go about this effort. In his view, this type of project was like "drilling for oil," in that you drill in many different spots, almost all of which are unsuccessful but the reward from one successful "drilling" is worth the effort. In his opinion, the field offices did not like to undertake difficult labor-intensive projects like this with a high risk of failure. The FBI's culture often prevented headquarters from forcing field offices to take investigative action that they were unwilling to take. He told us that the FBI was so decentralized, and the Special Agents in Charge wielded such power, that when field agents complained to a supervisor about a request from headquarters, FBI headquarters management would generally back down.

Missed Opportunity to Connect Phoenix to Similar Investigations?

The personnel working on the Phoenix EC at FBI headquarters were not aware of the prior reporting on terrorist groups sending aviation students to the United States and did not know that FBI headquarters had undertaken a systematic effort in 1999 to identify Middle Eastern flight students in the United States. This is not surprising considering the lack of information sharing in the FBI. According to interviewees, this is a problem not only at FBI headquarters but at the field offices as well. Agents often will only be familiar with cases on their own squad and will not know about investigations on other squads.

Had the headquarters personnel working on the Phoenix EC known about the 1999 efforts by FBI headquarters to locate foreign nationals at flight schools, it might

have affected how they handled the EC. The IOSs handling the EC were concerned about the legal implications of following through on the recommendations but were unaware of similar efforts in the past whereby the INS and FBI had established an arrangement to provide the FBI with foreign nationals' student visas for investigative purposes. Unfortunately, instead of approaching FBI lawyers to determine whether there were legal obstacles to implementation, the IOSs decided among themselves that the EC raised profiling issues.

This lack of information sharing among personnel working different targets poses increasing problems for the FBI faced with a national security environment and the growth of the "International Jihad" movement, making it difficult to link individuals to specific foreign powers or terrorist groups. Some FBI personnel expressed concern that the FBI's labeling of individuals as associated with particular terrorist organizations is not always accurate. For example, an individual affiliated with al-Qa'ida may associate with Hamas members in the United States and be labeled Hamas based on these associations. If such an individual is being worked out of another unit, the traditional lack of information sharing makes it unlikely the al-Qa'ida unit will learn about the investigation. This affects the unit's ability to develop a comprehensive understanding of al-Qa'ida presence and operations in the United States. There may also be al- Qa'ida information directly relevant to the investigation about which personnel working Hamas are unaware.

New York FBI Office Actions in Connection with the Phoenix EC

The Phoenix EC was sent to two investigators in the FBI's New York field office who specialize in Usama Bin Ladin cases. They were asked to "read and clear" but were not asked to take any follow-up action. A Joint Inquiry Staff audit of electronic records shows that at least three people in New York saw the EC prior to September 11. It does not appear to have received much attention or elicited concern. Two of the three do not recall the communication prior to September 11, 2001. The third remembered reading it but said it did not resonate with him because he found it speculative.

The New York agents interviewed stated that they were well aware that Middle Eastern men frequently came to the United States for flight training. This was not surprising as it was considered the best and most reasonably priced place to train. According to them, many foreign nationals got their commercial flight training here.

A communication noting that Middle Eastern men with ties to Usama Bin Ladin were receiving flight training in the United States would not necessarily be considered particularly alarming because New York personnel knew that individuals connected to al-Qa'ida had previously received flight training in the United States. In fact, one of these individuals trained at the Airman Flight School in Norman, Oklahoma, the same place where Zacarias Moussaoui trained prior to his arrival in Minnesota. Mohammed Atta and another of the hijackers visited this same flight school but decided not to enroll there. The commonly held view at the FBI prior to September 11 was that Bin Ladin needed pilots to operate aircraft he had purchased in the United States to move men and material.

Also, several pilots with al-Qa'ida ties testified for the U.S. Government during the course of the Embassy bombing trial.

However, the FBI had also received reporting that was not entirely consistent with this view of Usama Bin Ladin's pilots. Two of the pilots had been through al Qa'ida training camps in Afghanistan where they were trained to conduct terrorist operations. One of them was trained in surveillance and intelligence, apparently being selected for the course due to his aviation skills.

The FBI also received reporting that, in 1994, individuals with terrorist connections had requested and received training in the technical aspects of aviation including instruction on takeoff and landing procedures, approach altitudes, and aircraft identification methods. They stated that they would be passing on the information to other individuals with terrorist connections, but did not mention any specific plan. The FBI disseminated the information to the FAA, the State Department, and the CIA.

The FBI Investigation of Zacarias Moussaoui, August 16 to September 11, 2001

Zacarias Moussaoui came to the attention of the FBI during a period of time when the Intelligence Community was detecting numerous indicators of an impending terrorist attack against U.S. interests somewhere in the world. Moussaoui was in the custody of the INS on September 11, 2001. Our review has, in part, focused on whether information resulting from the FBI's investigation of Moussaoui could have alerted the U.S. Government to the scope and nature of the attacks that occurred on September 11, 2001.

Moussaoui has been indicted and faces a criminal trial this fall. Among other things, Moussaoui has been charged with conspiracy to commit aircraft piracy "with the result that thousands of people died on September 11, 2001." In order to avoid affecting the course of that proceeding, the Joint Inquiry Staff has limited the amount of detail in this presentation while attempting to provide a general understanding of the facts of the investigation.

Our review of the FBI's investigation to date has identified three issues in particular, to which I would draw Members' attention:

- Differences in the way the FBI's field offices and headquarters components analyzed and perceived the danger posed by the facts uncovered during the FBI's investigation of Moussaoui prior to September 11, 2001;

- The tools available to the FBI under the Constitution and laws of the United States to investigate that danger, notably the Foreign Intelligence Surveillance Act (FISA), and whether FBI personnel were well organized and informed about the availability of those tools; and

- Whether the substance, clarity, and urgency of the threat warning provided by the FBI to other parts of the Intelligence Community corresponded to the danger that had been identified.

For purposes of this interim report, the American public should understand that, under FISA, the FBI can obtain a court order authorizing a physical search or electronic surveillance, such as a wiretap, if it can demonstrate that the subject: (1) is an agent of a foreign power, which can be a foreign country or an international terrorist group, and (2) is, among other things, engaged in international terrorism, or activities in preparation therefor, on behalf of that foreign power. Court orders issued under FISA are classified and are issued by the Foreign Intelligence Surveillance Court (FISC).

The FBI's focus at the time Moussaoui was taken into custody appears to the Joint Inquiry Staff to have been almost entirely on investigating specific crimes and not on identifying linkages between separate investigations or on sharing information with other U.S. Government agencies with counterterrorist responsibilities. No one at FBI headquarters apparently connected Moussaoui, the Phoenix memo, the possible presence of Khalid al-Mihdhar and Nawaf al-Hazmi in the United States, or the flood of warnings about possible terrorist attacks during the summer of 2001.

The Joint Inquiry Staff has determined that Moussaoui contacted the Airman Flight School in Norman, Oklahoma by e-mail on September 29, 2000 and expressed interest in taking lessons to fly a small Cessna aircraft. On February 23, 2001, he entered the United States at Chicago's O'Hare Airport. He was traveling on a French passport and this allowed him to stay in the United States without a visa for 90 days, until May 22, 2001. On February 26, 2001, he began flight lessons at Airman Flight School.

On August 11, 2001, Moussaoui and his roommate, Hussein al-Attas, arrived in Egan, Minnesota and checked into a hotel. Moussaoui began classes at Pan Am Flight School there on August 13, 2001.

While Airman Flight School provided flight lessons in piloting Cessnas and similar small aircraft, Pan Am Flight School provided ground training and access to a Boeing 747 flight simulator used by professional pilots. Most of Pan Am's students are either newly hired airline pilots who use the flight simulator for initial training or are active airline pilots who use the equipment for an update or refresher training. Although anyone can sign up for lessons at Pan Am, the typical student has a pilot's license, is employed by an airline, and has several thousand flight hours. Moussaoui had none of these qualifications.

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

The FBI's Minneapolis Field Office hosts and is part of a Joint Terrorism Task Force, or JTTF. Agents of the INS share space and work closely with the FBI in Minneapolis and were able to immediately determine that Moussaoui had been

authorized to stay in the United States only until May 22, 2001. Thus, Moussaoui was "out of status" at the time – August – that the FBI began investigating him.

On the same day the Minneapolis field office learned about Moussaoui, it asked both the CIA and the FBI's legal attaché in Paris for any information they had or could get on Moussaoui. At the same time, they also informed FBI headquarters of the investigation. The supervisory agent in Minneapolis told the Joint Inquiry Staff that FBI headquarters had suggested that Moussaoui be put under surveillance, but that Minneapolis did not have enough agents to do that. Furthermore, the Minneapolis agents believed that it was more important to prevent Moussaoui from getting any additional flight training.

After conducting several interviews, the FBI agents, along with two INS agents, went to Moussaoui's hotel. The INS agents temporarily detained Moussaoui and his roommate, Hussein al-Attas, while checking to determine if they were legally in the United States. Al-Attas showed the INS that he had a valid student visa and agreed to allow the agents to search his property in the hotel room.[5] The INS agents determined that Moussaoui had not received an extension to allow him to stay in the United States beyond May 22, 2001, so they took him into custody. The agents packed Moussaoui's belongings, noticing that he had a laptop computer among his possessions.

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

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

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

The Joint Inquiry Staff has been told in interviews with the Minneapolis agents that FBI headquarters advised against trying to obtain a criminal search warrant as that might prejudice any subsequent efforts to get a search warrant under FISA. Under FISA, a search warrant could be obtained if they could show there was probable cause to believe Moussaoui was an agent of a foreign power and either engaged in terrorism or was preparing to engage in terrorism. FBI headquarters was concerned that if a criminal

5 Al-Attas was recently convicted of making false statements to the FBI regarding statements by Moussaoui and the extent of his relationship with Moussaoui. He remains in custody as a material witness.

warrant was denied and then the agents tried to get a warrant under FISA, the court would think the agents were trying to use authority for an intelligence investigation to pursue a criminal case.

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

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

On August 21, 2001, the Minneapolis case agent sent an e-mail to the supervisory special agent in the RFU who was handling this matter urging that the U. S. Secret Service in Washington, D. C. be apprised of the threat potential there indicated by the evidence. In an interview with the Joint Inquiry Staff, the RFU agent to whom the e-mail was addressed said that he told the Minneapolis agent that he was working on a notification to the entire Intelligence Community, including the Secret Service, about the threat presented by Moussaoui.

The RFU supervisory special agent sent a teletype on September 4, 2001, recounting the FBI's interviews of Moussaoui and al-Attas, and other information it had obtained in the meantime. The teletype, however, merely recounted the steps in the investigation. It did not place Moussaoui's actions in the context of the increased level of terrorist threats during the summer of 2001, nor did it provide its recipients with any analysis of Moussaoui's actions or plans, or information about what type of threat he may have presented.

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

On Wednesday, August 22, the FBI legal attache's office in Paris provided its report. That report began a series of discussions between Minneapolis and the RFU at FBI headquarters focusing on whether a specific group of Chechen rebels were a "recognized" foreign power, one that was on the State Department's list of terrorist groups and for which the Foreign Intelligence Surveillance Court had previously granted orders. The RFU agent believed that the Chechen rebels were not a "recognized" foreign power and that, even if Moussaoui were to be linked to them, the FBI could not obtain a search warrant under FISA. Thus, the RFU agent told the Minneapolis agents that they needed to somehow connect Moussaoui to al-Qa'ida, which he believed was a "recognized" foreign power. This led the Minneapolis agents to attempt to gather information showing that the Chechen rebels were connected to al-Qa'ida.

Unfortunately this dialogue was based on a misunderstanding of FISA. The FBI's Deputy General Counsel told the Joint Inquiry Staff that the term "recognized foreign power" has no meaning under FISA and that the FBI can obtain a search warrant under FISA for an agent of <u>any</u> international terrorist group, including the Chechen rebels. But because of the misunderstanding Minneapolis spent the better part of three weeks trying to connect the Chechen group to al-Qa'ida. The Minneapolis case agent contacted CTC, asking for additional information concerning connections between the group and al-Qa'ida; he also suggested that the RFU agent contact CTC for assistance on the issue. The RFU agent responded that he had all the information he needed and requested that Minneapolis work through FBI headquarters when contacting CTC. Ultimately, the RFU agent agreed to submit Minneapolis' FISA request to the attorneys in the FBI's National Security Law Unit (NSLU) for review.

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

Two FBI agents assigned to the Oklahoma City Field Office's international terrorism squad visited Airman Flight School in Norman, Oklahoma on August 23. In September of 1999, one of the agents had been assigned a lead from the Orlando Field Office to visit the flight school concerning another individual who had been identified as Usama Bin Ladin's personal pilot and who had received flight training at Airman. The agent had not been given any background information about this individual. Although he told us that he thought that this lead had been the most significant information he had seen in Oklahoma City, the agent did not remember the lead when he returned to the flight school two years later to ask questions about Moussaoui. He told the Joint Inquiry

Staff that he should have connected the two visits but that he did not have the time to do so.

During a conversation on August 27, 2001, the RFU agent told the Minneapolis supervisor that the supervisor was getting people "spun up" over Moussaoui. According to his notes and his statement to the Joint Inquiry Staff, the supervisor replied that he was trying to get people at FBI headquarters "spun up" because he was trying to make sure that Moussaoui "did not take control of a plane and fly it into the World Trade Center." The Minneapolis agent said that the headquarters agent told him, "[T]hat's not going to happen. We don't know he's a terrorist. You don't have enough to show he is a terrorist. You have a guy interested in this type of aircraft – that is it." The headquarters agent does not remember this exchange. The Minneapolis supervisor told the Joint Inquiry Staff that he had no reason to believe that Moussaoui was planning an attack on the World Trade Center; he was merely trying to get headquarters' attention.

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

On August 28, 2001, after reviewing the request for a search warrant, the RFU agent edited it and returned the request to Minneapolis for comment. The RFU agent says that it was not unusual for headquarters agents to make changes to field submissions in addition to changes made by the NSLU and OIPR. The major substantive change that was made was the removal of information about connections between the Chechen rebels and al-Qa'ida. The RFU agent said he removed it because he believed this information was insufficient and that, if he received approval from the NSLU to use the Chechen rebels as a foreign power, he would have added it back to an expanded section about Chechnya.

After the edit was complete, the RFU agent briefed the FBI Deputy General Counsel. The Deputy General Counsel told the Joint Inquiry Staff that he agreed with the RFU agent that there was insufficient information to show that Moussaoui was an agent of a foreign power, but that the issue of a "recognized" foreign power did not come up. After that briefing, the RFU agent sent an e-mail to Minneapolis saying that the information was even less sufficient than he had previously thought because Moussaoui would actually have to be shown to be a part of a movement or organization.

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

On Thursday, September 4, 2001, FBI headquarters sent a teletype to the Intelligence Community and other U.S. Government agencies, including the Federal Aviation Administration (FAA), providing information about the Moussaoui investigation. The teletype noted that Moussaoui was being held in custody but did not describe any particular threat that the FBI thought he posed, for example, whether he might be connected to a larger plot. The teletype also did not recommend that the addressees take any action or look for any additional indicators of a terrorist attack, nor did it provide any analysis of a possible hijacking threat or provide any specific warnings. The following day the Minneapolis case agent hand-carried the teletype to two employees of the FAA's Bloomington, Minnesota office and orally briefed them on the status of the investigation. The two FAA employees told the Joint Inquiry Staff that the FBI agent did not convey any sense of urgency about the teletype and did not ask them to take any specific action regarding Moussaoui. He just wanted to be sure the FAA had received the cable.

Prior to September 11, 2001, no one at the FBI canvassed other individuals in the custody of and cooperating with the U.S. Government in connection with past terrorism cases to see if any of those individuals knew Moussaoui.

The final preparations for Moussaoui's deportation were underway when the September 11 attacks occurred.

Conclusion

The staff has described three series of events – pertaining to al-Mihdhar and al-Hazmi, the Phoenix EC, and Zacarias Moussaoui – each of which raises significant questions in their own right. In the wake of the September 11 attacks, they also illustrate the danger of seeing events in isolation from each other. In our view, taken together, they clearly demonstrate how our counterterrorist efforts must be based on a comprehensive and current understanding of the overall context in which terrorist networks like al-Qa'ida operate.

The first matter involved Khalid al-Mihdhar and Nawaf al-Hazmi, the two hijackers who came to the attention of the Intelligence Community in early 2000 but subsequently entered the United States unobserved and undetected later. The Intelligence Community succeeded in determining that these Bin Laden operatives were traveling in January 2000 to Malaysia and in collecting important information about them. The system broke down, however, in making the best use of that information and in ensuring that it was effectively and fully shared with agencies, like the FBI, the State Department and the INS, that could have acted on it to either prevent them from entering the United States or surveil them and uncover their activities while in the United States.

In addition, the FBI and the CIA had responsibilities to respond to the October 2000 attack on *USS Cole*. Each had information that the other needed to carry out those responsibilities. But, at a key meeting in New York on June 11, 2001, the CIA did not provide to the FBI information about the Malaysian meeting and its participants that

could have assisted the FBI in its investigation. These events reflect misunderstandings that have developed over the last several years about the use of information derived from intelligence gathering activities in criminal investigations.

The problem of communication demonstrated by the al-Mihdhar/al-Hazmi story existed not only between the CIA and FBI, but also within the FBI itself. Once it was determined in late August 2001 that Khalid al-Mihdhar was in the United States, the search to determine his whereabouts was constrained by FBI policies and practices regarding the use of intelligence information in FBI criminal investigations. This limited the resources that were made available for the FBI to conduct the search during a time in which al-Mihdhar and al-Hazmi were purchasing their September 11 tickets and traveling to their last rallying points.

The second matter – the Phoenix EC – also illustrates the Intelligence Community's strength and weaknesses. An FBI field agent perceived, amidst a profusion of cases, that terrorists could use the well-developed system of flight training education in the United States to prepare an attack against us. The field agent understood that it was necessary to go beyond individual cases and to undertake an empirical analysis broader than the geographic limits of a single field office. The idea was submitted to FBI headquarters, where, for a variety of reasons, it generated almost no interest. First, no one gleaned from the FBI's own records that others at the Bureau had previously expressed concerns about possible terrorists at U.S. flight education institutions. Second, anticipating future threats has not been a significant part of the FBI's general approach to its work. Third, the highest levels of the Intelligence Community had not communicated effectively to its personnel the critical importance of analyzing information in light of the growing awareness of an impending terrorist attack in the summer of 2001. Finally, FBI management did not perceive it would be useful to simply alert others at the FBI to the danger that one of its field offices perceived.

As for the third matter, one can see in the pre-September 11 handling of the case of Zacarias Moussaoui a myopic focus within both the FBI and the DCI's CTC on the case at hand. An FBI field agent and his supervisor saw a potential threat, were concerned about the possibility of a larger plot to target airlines, and reported their concerns to FBI headquarters. The Moussaoui information was also shared with the DCI's CTC. But, neither FBI headquarters nor the DCI's CTC linked this information to warnings emanating from the CTC in the summer of 2001 about an impending terrorist attack, nor did they see a possible connection to information available on August 23, 2001 that Bin Ladin operatives had entered the United States. The same unit at FBI headquarters also had the Phoenix EC, but still did not sound any alarm bells.

No one will ever know whether a greater focus on the connection between these events would have led to the unraveling of the September 11 plot. But, clearly, it might have drawn greater attention to the possibility of a terrorist attack in the United States, generated a heightened state of alert regarding such attacks, and prompted more aggressive investigation and intelligence gathering regarding the information our Government did possess prior to September 11.

Mr. Chairman, members of these two Committees, this completes my statement for today's hearing. Thank you.