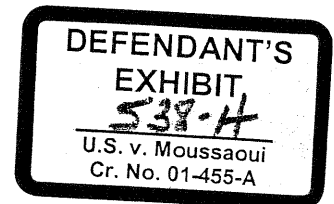


COVER SHEET FOR PORTIONS OF THE JICI REPORT REGARDING
KHALID AL-MIHDHAR AND NAWAF AL-HAZMI

In February 2002, the U.S. Senate Select Committee on Intelligence and the U.S. House Permanent Select Committee on Intelligence agreed to conduct a joint inquiry into the activities of the U.S. intelligence community in connection with the September 11, 2001 terrorist attacks. During the course of the inquiry, the committees held nine public hearings as well as thirteen closed sessions. In addition, the joint inquiry staff reviewed almost 500,000 pages of documents from the intelligence community agencies and other sources. The staff also conducted approximately 300 interviews, and participated in numerous briefings and panel discussions, that have involved almost 600 individuals from the intelligence community agencies, other U.S. Government organizations, state and local entities, and representatives of the private sector and foreign governments.

On December 20, 2002, the committees filed their final report, entitled "Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001" (the "JICI Report"). One part of that report discussed the handling, by the intelligence community and the F.B.I., of the pre-9/11 information concerning Khalid al-Mihdhar and Nawaf al-Hazmi, two of the 9/11 hijackers. Attached hereto, is a copy of portions of the declassified JICI Report discussing that matter. Specifically, the following pages, some excerpted, are attached: 1, 11-16, 143-157, and the CTC Watchlisting Guidance (12/99) in the Appendix to the Report.



PART ONE—FINDINGS AND CONCLUSIONS

[Terrorist Communications in 1999}

5.a. [During 1999, the National Security Agency obtained a number of communications – none of which included specific detail regarding the time, place or nature of the September 11 attacks -- connecting individuals to terrorism who were identified, after September 11, 2001, as participants in the attacks that occurred on that day].

(Page 12)

Discussion: [In early 1999, the National Security Agency (NSA) analyzed communications involving a suspected terrorist facility in the Middle East that had previously been linked to al-Qa'ida activities directed against U.S. interests. Information obtained [—] included, among other things, the full name of future hijacker Nawaf al-Hazmi. Beyond the fact that the communications involved a suspected terrorist facility in the Middle East, the communications did not, in NSA's view at the time, feature any other terrorist-related information. The information was not published because the individuals mentioned in the communications were unknown to NSA, and, according to NSA, the information did not meet NSA's reporting thresholds. NSA has explained that these thresholds are flexible, sometimes changing daily, and consist of several factors, including: the priority of the intelligence requirement; the apparent intelligence value of the information; the level of customer interest in the topic; the current situation; and the volume of intercept to be analyzed and reported].

[During the summer of 1999, NSA analyzed additional communications involving a suspected terrorist facility in the Middle East that included the name of Khaled. At about the same time, the name Khallad also came to NSA's attention. This information did not meet NSA's reporting thresholds and thus was not disseminated].

[In late 1999, NSA analyzed communications involving a suspected terrorist facility in the Middle East that included the names of Khaled and Nawaf. At this time, NSA did not associate the latter individual with the Nawaf al-Hazmi it had learned about in early 1999. Later, the two individuals [—] were determined to be Khalid al-Mihdhar and Nawaf al-Hazmi, now known to be two of the September 11 hijackers. [—]. This information was passed to the CIA as well as the FBI in late 1999. In early 2000, NSA also [—] passed additional information about Khalid to the CIA, FBI, FAA, the Departments of State, Treasury, Transportation, and Justice, and others in the U.S. Government].

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Malaysia Meeting and Travel of al-Qa'ida Operatives to the United States

5.b. The Intelligence Community acquired additional, and highly significant, information regarding Khalid al-Mihdhar and Nawaf al-Hazmi in early 2000. Critical parts of the information concerning al-Mihdhar and al-Hazmi lay dormant within the Intelligence Community for as long as eighteen months, at the very time when plans for the September 11 attacks were proceeding. The CIA missed repeated opportunities to act based on the information in its possession that these two Bin Ladin-associated terrorists were traveling to the United States, and to add their names to watchlists.

Discussion: [By early January 2000, CIA knew al-Mihdhar's full name and that it was likely Nawaf's last name was al-Hazmi, knew that they had attended what was believed to be a gathering of al-Qa'ida associates in Malaysia, was aware that they had been traveling together, and had documents indicating that al-Mihdhar held a U.S. B-1B-2 multiple entry visa that would allow him to travel to and from the United States until April 6, 2000. CIA arranged surveillance of the meeting and the DCI was kept informed as the operation progressed].

Despite having all this information, and despite the republication of CTC guidance regarding watchlisting procedures in December 1999 (see Appendix, "CTC Watchlisting Guidance – December 1999"), CIA did not add the names of these two individuals to the State Department, INS, and U.S. Customs Service watchlists that are used to deny individuals entry into the United States. The weight of the record also

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suggests that, despite providing the FBI with other, less critical, information about the Malaysia meeting, the CIA did not advise the FBI about al-Mihdhar's U.S. visa and the very real possibility that he would travel to the United States. The CIA stated its belief that the visa information was sent to the FBI and produced a cable indicating that this had been done.*

The FBI, for its part, had no record the visa information was received. Although the facts of the Malaysia meeting were included in several briefings for senior FBI officials, including FBI Director Louis Freeh, no record could be found that the visa information was part of these briefings.

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[On March 5, 2000, CIA Headquarters received a cable from an overseas CIA station indicating that Nawaf al-Hazmi had traveled to Los Angeles, California on January 15, 2000. The following day, March 6, CIA Headquarters received a message from another CIA station noting its "interest" in the first cable's "information that a member of this group had traveled to the U.S." The CIA did not act on either message, again did not watchlist al-Hazmi or al-Mihdhar, and, again, did not advise the FBI of their possible presence in the United States. In 2000, these same two individuals had numerous contacts with an active FBI counterterrorism informant while they were living in San Diego, California].

On January 4, 2001, CIA acquired information that Khallad, a principal planner in the bombing of *USS Cole*, had, along with al-Mihdhar and al-Hazmi, attended the January 2000 meeting in Malaysia. Again, the CIA did not watchlist these two individuals. At the time, al-Mihdhar was abroad, but al-Hazmi was still in the United States. FBI Director Robert Mueller testified to the Joint Inquiry that: "al-Mihdhar's role in the September 11 plot . . . before his re-entry into the United States may well have been that of the coordinator and organizer of . . . the non-pilot hijackers."

In May 2001, the CIA provided FBI Headquarters with photographs taken in Malaysia, including one of al-Mihdhar, for purposes of identifying another *Cole* bombing

* In interviews, CIA personnel could not confirm that the visa information had in fact been provided to the FBI.

suspect. Although the CIA told FBI Headquarters about the Malaysia meeting and about al-Mihdhar's travel in Southeast Asia at that time, the CIA did not advise the FBI about al-Mihdhar's or al-Hazmi's possible travel to the United States. Again, the CIA did not watchlist the two individuals. While CIA personnel were working closely with the FBI in support of the *USS Cole* bombing investigation, the importance and urgency of information tying suspected terrorists to the domestic United States apparently never registered with them. CIA Director Tenet testified that CIA personnel:

... in their focus on the [*USS Cole*] investigation, did not recognize the implications of the information about al-Hazmi and al-Mihdhar that [page 15] they had in their files.

On June 11, 2001, FBI Headquarters and CIA personnel met with the New York FBI field office agents who were handling the *USS Cole* investigation. The New York agents were shown the Malaysia photographs, but were not given copies. Although al-Mihdhar's name was mentioned, the New York agents' requests for more information about al-Mihdhar and the circumstances surrounding the photographs were refused, according to one of the field office agents. The FBI Headquarters analyst recalls that she said at the meeting that she would try to get the information the agents had requested.

In Joint Inquiry hearing testimony, one of the New York FBI agents who was present described his recollection of the meeting:

When these photos were shown to us, we had information at the time that one of the suspects had actually traveled to the same region of the world that this might have taken place, so we pressed the individuals there for more information regarding the meeting. So we pressed them for information. [A]t the end of the meeting – some of them say it was because I was able to get the name out of the analyst, but at the end of that day we knew the name Khalid al-Mihdhar but nothing else. The context of the meeting was that we continued to press them two or three times on information regarding, “Why were you looking at this guy? You couldn't have been following everybody around the Millennium. What was the reason behind this?”

And we were told that that information – as I recall, we were told that that information could not be passed and that they would try to do it in the days and weeks to come. That meeting – I wouldn't say it was very contentious, but we were not very happy, the New York agents at the time were not very happy that certain information couldn't be shared with us.

Again, in that meeting, the CIA had missed yet another opportunity to advise the FBI about al-Mihdhar's visa and possible travel to the United States and, again, the CIA took no action to watchlist these individuals. Just two days later, al-Mihdhar obtained a new U.S. visa and, on July 4, 2001, he re-entered the United States.

It was not until mid July 2001, that a concerned CIA officer assigned to the FBI triggered a CIA review of its cables regarding the Malaysia meeting, a task that, [page 16] ironically, fell to an FBI analyst assigned to the CTC. Working with the Immigration and Naturalization Service (INS), the FBI analyst determined that both al-Mihdhar and al-Hazmi had entered the United States. As a result of that effort, on August 23, 2001, the CIA finally notified the FBI and requested of the State Department that the two individuals should be watchlisted.

Even then, there was less than an all-out effort to locate what amounted to two Bin Ladin-associated terrorists in the United States during a period when the terrorist threat level had escalated to a peak level. For example, neither CIA, FBI, nor State Department informed the FAA. On August 21, 2001, coincidentally, FAA had issued a Security Directive, entitled "Threat to U.S. Aircraft Operators." That Directive alerted commercial airlines that nine named terrorism-associated individuals -- none of whom were connected to the 19 hijackers -- were planning commercial air travel and should receive additional security scrutiny if they attempted to board an aircraft. The Directive was updated on August 24 and August 28, 2001. Had FAA been advised of the presence of al-Hazmi and al-Mihdhar in the United States, a similar directive could have been issued, subjecting the two, their luggage and any carry-on items to detailed, FAA-directed searches.

Further, only the FBI's New York field office received a request from FBI Headquarters to conduct a search for the two prior to September 11, 2001. The Headquarters written instruction to the New York field office only identified al-Mihdhar in its subject line. Nawaf al-Hazmi was mentioned in the text, and it is not clear whether it was intended that he be a subject of the search as well. It was not until September 11, 2001 that the Los Angeles FBI field office was asked to conduct a search. Other FBI

offices with potentially useful informants, such as San Diego, were not notified prior to September 11.

A New York FBI field office agent testified that he urged FBI Headquarters on August 28, 2001 to allow New York field office criminal agents to participate in the search with FBI intelligence agents, given the limited resources that are often applied to [page 17] intelligence investigations. The request was refused by FBI Headquarters because of concerns about the perceived "wall" between criminal and intelligence matters. Looking back, the New York FBI agent testified about his hope that the Intelligence Community would overcome this kind of restriction in the future:

...after everything happened and we had ramped up where thousands of FBI agents all over the world were trying to find somebody, I thought to myself – and I don't necessarily know how to do it, but we've got to be able to get there – when we find out a Khalid al-Mihdhar is in the country, intelligence, criminal, or whatever, we've got to be able to get to the level we were at September 12, the afternoon of September 11. We've got to be able to get there before September 11, not September 12.

Joint Inquiry witnesses testified that other federal agencies with potentially valuable information databases were never asked to assist in FBI's search.

II. Pentagon Flight Hijackers Khalid al-Mihdhar, Nawaf al-Hazmi, and Salem al-Hazmi

A. The Malaysia Meeting and Identification of Khalid al-Mihdhar and Salem and Nawaf al-Hazmi - Watchlist Opportunity Lost

[In late 1999, the Intelligence Community launched a worldwide effort to disrupt terrorist operations that were planned to occur during the Millennium celebrations. A CIA officer told the Joint Inquiry that, as the Intelligence Community reviewed information from the 1998 East Africa embassy bombings, “a kind of tuning fork . . . buzzed when two individuals reportedly planning a trip to Kuala Lumpur were linked indirectly to what appeared to be a support element . . . involved with the Africa bombers.” One traveler, Khalid al-Mihdhar, started his journey to Malaysia from the Middle East, where, according to Joint Inquiry testimony from DCI Tenet, he

had been at a “suspected al-Qa’ida logistics facility.” The other, Nawaf al-Hazmi, began his trip to Malaysia from Pakistan. Initially, only the travelers’ first names were known. From the outset, information circulated throughout the Intelligence Community that identified them as “terrorist operatives.” For example, a CIA cable stated, “Nawaf’s travel may be in support of a terrorist mission].”

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The intelligence preceding the Malaysian meeting also showed that a person whose first name was Salem would attend. An intelligence analyst observed at the time that “Salem may be Nawaf’s younger brother,” and that observation was reported to other Intelligence Community agencies.

The Kuala Lumpur meeting took place between January 5 and 8, 2000. There has been no intelligence about what was discussed at the meeting, but, according to DCI Tenet, surveillance [—————] that began with al-Mihdhar’s arrival on January 5 “indicated that the behavior of the individuals was consistent with clandestine activity.”

It was later determined that Khallad bin-Atash, a leading operative in Bin Ladin’s network, also attended the meeting. According to DCI Tenet, Khallad was “the most important figure at the Kuala Lumpur meeting” and he would later become “a key planner in the October 2000 *USS Cole* bombing.”

The principal location of the meeting was a condominium owned by Yazid Sufaat, who DCI Tenet identified to the Joint Inquiry as “a Malaysian chemist . . . directed by a terrorist leader to make his apartment available.” Later in 2000, Sufaat signed letters of introduction for Zacarias Moussaoui as a representative of his company, letters Moussaoui took with him to the United States.

DCI Tenet testified that, “[i]n early January 2000, we managed to obtain a photocopy of al-Mihdhar’s passport as he traveled to Kuala Lumpur.” This gave the CIA al-Mihdhar’s full name, his passport number, and birth information. It also showed that al-Mihdhar held a U.S. visa, issued in Jeddah, Saudi Arabia in April 1999, that would not expire until April 2000. These

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facts were verified at the U.S. consulate in Jeddah before the meeting started. The DCI told the Joint Inquiry:

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

Surveillance photographs of the meeting were taken by the [—————] and transmitted to CIA Headquarters. When the meeting ended, al-Mihdhar, al-Hazmi, and Khallad (under a different name) flew to Thailand seated side by side.

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Soon after the travelers left Malaysia on January 8, the CIA received evidence that Nawaf's last name might be al-Hazmi when it learned that someone with that last name had been seated next to al-Mihdhar on the flight from Malaysia. That information could have led to Nawaf al-Hazmi's watchlisting.

Unknown to the CIA, since early 1999 the National Security Agency had information associating al-Hazmi by his full name with the Bin Ladin network, information it did not disseminate. NSA Director Hayden, told the Joint Inquiry:

We did not disseminate information we received in early 1999 that was unexceptional in its content except that it associated the name of Nawaf al-Hazmi with al-Qa'ida. . . . At the time of the meeting in Kuala Lumpur, we had the al-Hazmi brothers, Nawaf and Salem, as well as Khalid al-Mihdhar, in our sights. We knew of their association with al-Qa'ida, and we shared this information with the Community. I've looked at this closely. If we had handled all of the above perfectly, the only new fact that we could have contributed at the time of Kuala Lumpur was that Nawaf's surname (and perhaps that of Salem, who appeared to be Nawaf's brother) was al-Hazmi.

Although NSA did not disseminate this information to the Intelligence Community before September 11, it was available in NSA databases. However, no one at CIA or elsewhere asked NSA before September 11 to review its database for information about Nawaf al-Hazmi.

Knowledge of Nawaf's last name also pointed to his brother Salem's last name, which meant that the Intelligence Community had in its grasp the full names of three of the future hijackers. In addition, the State Department had in the records of its Jeddah consulate the fact

that Nawaf and Salem al-Hazmi had obtained U.S. visas in April 1999, several days before al-Mihdhar obtained his U.S. visa at that consulate.

Thus, at the time of the Malaysia meeting, the CIA had passport information regarding al-Mihdhar, including his U.S. visa. A CIA officer, who was working as a CTC Supervisor, testified before the Joint Inquiry that a CTC cable in early 2000 noted that al-Mihdhar's passport information had been "passed to the FBI," but the CIA was unable to "confirm either passage or receipt of the [redacted] information" and, thus, could not identify "the exact details . . . that were passed." The Joint Inquiry found no record of the visa information at FBI Headquarters.

While the Malaysia meeting was in progress, a CIA employee sent an e-mail to a CIA colleague describing "exactly" the briefings he had given two FBI agents on al-Mihdhar's activities. The CIA employee had been assigned to the FBI's Strategic Information Operations Center to deal with problems "in communicating between the CIA and the FBI." The e-mail did not mention that al-Mihdhar held a U.S. visa, but did report that the CIA employee told the second FBI agent the following:

This continues to be an [intelligence] operation. Thus far, a lot of suspicious activity has been observed but nothing that would indicate evidence of an impending attack or criminal enterprise. Told [the first FBI agent] that as soon as something concrete is developed leading us to the criminal arena or to known FBI cases, we will immediately bring FBI into the loop. Like [the first FBI agent] yesterday, [the second FBI agent] stated that this was a fine approach and thanked me for keeping him in the loop.

An e-mail from the second FBI agent to FBI Headquarters discussed the conversation with the CIA employee. This e-mail also did not mention al-Mihdhar's visa information. None of the participants in these communications now recalls discussing the visa information.

B. Khalid al-Mihdhar and Nawaf al-Hazmi Travel to the United States – Watchlist Opportunity Lost

[For six weeks, CIA sought to locate al-Mihdhar in Thailand. It was unsuccessful, however, because, according to a CIA officer's testimony, "[w]hen they arrived [in Thailand] we were unable to mobilize what we needed to mobilize." Nonetheless, in February 2000, CIA rejected a request from foreign authorities to become involved because CIA was in the middle of an investigation "to determine what the subject is up to]."

[In early March 2000, CIA Headquarters, including CTC and its Bin Ladin unit, received a cable from a CIA station in [—] noting that Nawaf al-Hazmi had traveled to Los Angeles on January 15, 2000. The cable was marked "Action Required: None, FYI [For Your Information]." The following day, another station, which had been copied on the cable by the originating station, cabled [page 154] CTC's Bin Ladin unit that it had read the cable "with interest," particularly "the information that a member of this group traveled to the U.S. following his visit to Kuala Lumpur." No action resulted at CIA].*

Once again, the CIA did not add Nawaf al-Hazmi's name to the State Department's watchlist for denying admission to the United States. It also did not notify the FBI that a "terrorist operative," as al-Hazmi was described in January, had entered the United States. The CIA did not consider the possibility that al-Mihdhar and al-Hazmi, who had flown together to Thailand, continued on together to the United States. In fact, al-Mihdhar had flown with al-Hazmi to the United States on January 15, 2000.

The CIA Headquarters employee who had direct responsibility for tracking the movement of the attendees at the Malaysia meeting does not recall either the March 5 or March 6, 2000 messages concerning al-Hazmi's travel to the United States. The CTC Supervisor, referred to earlier, testified before the Joint Inquiry:

It's very difficult to understand what happened with [the March 5] cable when it came in. I don't know exactly why it was missed. It would appear that it was missed.

* This occurred even though CTC had republished guidance reminding personnel of the importance of watchlisting in December 1999. (see Appendix, "CTC Watchlisting Guidance – December 1999").

DCI Tenet also testified about this omission: "Our receipt of the information in March should have triggered the thought to watchlist al-Hazmi, but no CTC officer recalls even having seen the cable on his travel to LA when it arrived." In fact, the DCI explained: "[n]obody read that cable in the March time frame." Summing up these early watchlisting failures, the DCI told the Joint Inquiry:

During the intense operations to thwart the Millennium and Ramadan threats, the watchlist task in the case of these two al-Qa'ida operatives slipped through. The error exposed a weakness in our internal training and an inconsistent understanding of watchlist thresholds.

C. Khalid al-Mihdhar Leaves the U.S. and Nawaf al-Hazmi Applies for a Visa Extension

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By February 2000, al-Mihdhar and al-Hazmi had settled in San Diego, California where they used their true names on a rental agreement. They did the same in obtaining California driver's licenses.

[In May 2000, they took flight lessons in San Diego. While in San Diego, the two had numerous contacts with a long-time FBI counterterrorism informant].

On June 10, al-Mihdhar flew from Los Angeles to Frankfurt, and then on to Oman. Al-Hazmi remained in the United States. On July 12, two days before the expiration of the six-month visa he had been granted on arriving in January, al-Hazmi applied to the INS for an extension, using the address of the San Diego apartment he had shared with al-Mihdhar.

The INS does not have a record of any additional extension request by al-Hazmi, who remained in the United States illegally after his extension expired in January 2001. In December 2000, al-Hazmi moved to Mesa, Arizona, with Hani Hanjour, another hijacker.

D. The Attack on *USS Cole* and the Identification Of Khallad – Watchlist Opportunity Lost

On October 12, 2000, two Al Qa'ida terrorists attacked *USS Cole* as the destroyer refueled in Yemen. In investigating the attack, the FBI developed information that Khallad bin

Attash had been a principal planner of the bombing and that two other participants in the *Cole* conspiracy had delivered money to Khallad in Malaysia at the time of the Malaysia meeting. The FBI shared this information with the CIA, whose analysts decided to conduct a review of what was known about the meeting.

In January 2001, CIA concluded, based on statements by a joint CIA/FBI human source, that Khallad appeared in one of the surveillance photos taken during the Malaysia meeting. The CIA recognized that Khallad's presence at the meeting was significant because it meant that the other attendees, including al-Mihdhar and al-Hazmi, had been in direct contact with the key planner of the *Cole* attack for Bin Ladin's network. DCI Tenet described the import of this development to the Joint Inquiry: [page 154]

The Malaysian meeting took on greater significance in December 2000 when the investigation of the October 2000 USS *Cole* bombing linked some of Khalid al-Mihdhar's Malaysia connections with *Cole* bombing suspects. We further confirmed the suspected link between al-Mihdhar and al-Hazmi and a person thought to be one of the chief planners of the *Cole* attack, via a joint FBI-CIA [human] asset. This was the first time that CIA could definitively place al-Hazmi and al-Mihdhar with a known al-Qa'ida operative.

Although al-Mihdhar and al-Hazmi had now been "definitively" placed "with a known al-Qai'ida operative," the CIA once again did not act to add them to the State Department's watchlist. In January 2001, Khalid al-Mihdhar was abroad, his visa had expired, and he would have to clear a watchlist check before obtaining a new visa to re-enter the United States.

The DCI testified that the information about Khallad resulted from a "joint case" the FBI and the CIA were conducting. The CTC Chief at the time also testified that the CIA ran "a joint operation with the FBI to determine if a *Cole* suspect was in a Kuala Lumpur surveillance photo":

Both agencies wanted to find out who killed our sailors. Both agencies were working to bring those terrorists to justice. We were in the business of providing information to the FBI, not withholding it.

The day after the photo identification by the joint CIA/FBI human source in January 2001, the asset's identification of Khallad in the photo was reported to CIA Headquarters. However, the Joint Inquiry found no information showing that the FBI representative on the scene, who also worked with that source, was told about the identification or that the information

was provided to FBI Headquarters. To the contrary, contemporary documents over the next month strongly suggest that the FBI did not know of this development. It was not until August 30, 2001, that CIA Headquarters transmitted to the FBI a memorandum stating, "We wish to advise you that, during a previously scheduled meeting with our joint source," Khallad was identified in a surveillance photo.

E. The June 11, 2001 FBI/CIA Meeting and Khalid al-Mihdhar's Return to the United States

[Page 157]

On May 15, 2001, the CTC Supervisor, who had just been detailed to the FBI, sent a request to CIA Headquarters for the surveillance photographs of the Malaysian meeting. In a May 18 e-mail to a CIA analyst, the CIA officer described the basis for his interest:

. . . the reason (aside from trying to find a photo of the second *Cole* bomber) I'm interested in is because Khalid Mihdhar's two companions also were couriers of a sort, who traveled between [the Far East] and Los Angeles at the same time (hazmi and salah).

"Salah" was the name under which Khallad traveled during the Malaysian meeting. Thus, information about al-Hazmi's travel to the United States began to attract attention at CIA at least as early as May 18, 2001.

Toward the end of May 2001, a CIA analyst contacted an Intelligence Operations Specialist (IOS) at FBI Headquarters about the surveillance photographs. The CIA wanted the FBI to review the photographs to determine whether a person in the custody of [—] officials in connection with the FBI's *Cole* investigation, who had carried money to Southeast Asia for Khallad in January 2000, could be identified. When interviewed, the FBI IOS explained to the Joint Inquiry that the CIA had told her that the photographs had been taken during the Malaysia meeting, but had said nothing about al-Mihdhar's potential travel to the United States. The CIA also did not tell the FBI IOS that the photographs were of a meeting Khallad had attended.

[On June 11, 2001, the CIA analyst and FBI IOS traveled to New York to meet with FBI criminal case agents handling the *Cole* investigation. The New York agents were shown, but not given copies of [—] of the [—] surveillance photographs taken in Malaysia and were asked if they could identify anyone in them. A New York FBI agent testified to the Joint Inquiry that the agents pressed for information about the photographs and asked: "Why were you

looking at this guy? You couldn't have been following everybody around the Millennium. What was the reason behind this?" Nonetheless, the agent said, "at the end of the day we knew the name Khalid al-Mihdhar but nothing else." The agent testified that he was told that "the information could not be passed" at that time, but might be "in the days and weeks to come." However, no additional information was transmitted for use in a criminal case until after September 11].

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In addition to not being told why al-Mihdhar was being surveilled, the New York agents were not told about his U.S. visa, Nawaf al-Hazmi's travel to the United States, the January 2001 photo identification of Khallad, or the fact that the analyst had come upon material in a CIA database that led him to conclude that "Al-Hazmi was an experienced [Mujahadeen]." The FBI IOS had none of that information, but the CIA analyst who attended the New York meeting acknowledged to the Joint Inquiry that he had seen all of it. In fact, he had received an e-mail just three weeks earlier that referred to al-Hazmi's travel to the United States. That information, he related in a Joint Inquiry interview, "did not mean anything to him," since he was interested in terrorist connections to Yemen. The CIA analyst explained to the Joint Inquiry that the information was operational in nature and he would not disclose it outside CIA unless he had prior authority to do so.

Summing up the New York meeting and all that preceded it, the same CTC Supervisor on detail to the FBI, who did not attend the meeting but knew of it testified:

[E]very place that something could have gone wrong in this over a year and a half, it went wrong. All the processes that had been put in place, all the safeguards, everything else, they failed at every possible opportunity. Nothing went right.

On June 13, 2001, al-Mihdhar obtained a new U.S. visa in Jeddah, using a different passport than the one he had used to enter the United States in January 2000. On his visa application, he checked "no" in response to the question whether he had ever been in the United States. On July 4, al-Mihdhar re-entered the United States.

F. The Watchlisting of Khalid al-Mihdhar and Nawaf al-Hazmi

In early July 2001, the same CTC Supervisor located in a CIA database the cable for which he had been searching that contained information the CIA had acquired in January 2001 about Khallad's attending the Malaysia meeting. He told the Joint Inquiry that Khallad's presence at the meeting deeply troubled him and he immediately sent an e-mail from FBI Headquarters to CTC stating, "[Khallad] is a major league killer, who orchestrated the *Cole* attack and possibly the Africa bombings."

[Kaus 159]

A review was launched at CIA of all cables regarding the Malaysia meeting. The task fell largely to an FBI analyst assigned to CTC. On August 21, 2001, the analyst put together two key pieces of information: the intelligence the CIA received in January 2000 that al-Mihdhar had a multiple entry visa to the United States, and the information it received in March 2000 that al-Hazmi had traveled to the United States. Working with an INS representative assigned to CTC, the analyst learned that al-Mihdhar had entered the United States on January 15, 2000, had departed on June 10, and had re-entered the United States on July 4, 2001. Suspicions were further aroused by the fact that al-Mihdhar and al-Hazmi had arrived in Los Angeles in January 2000, when Ahmed Ressam would have been in Los Angeles to conduct terrorist operations at Los Angeles Airport, but for his apprehension at the U.S./Canada border in December 1999.

On August 23, 2001, the CIA sent a cable to the State Department, INS, Customs, and FBI requesting that "Bin Ladin-related individuals," al-Mihdhar, al-Hazmi, Khallad, and one other person at the Malaysia meeting, be watchlisted immediately and denied entry into the United States "due to their confirmed links to Egyptian Islamic Jihad operatives and suspicious activities while traveling in East Asia." Although the CIA believed that al-Mihdhar was already in the United States, placing him on the watchlist would enable authorities to detain him if he attempted to leave. The CIA cable stated that al-Hazmi had arrived in Los Angeles on January 15, 2000 on the same flight as al-Mihdhar and that there was no record of al-Hazmi's departure. On August 24, the State Department watchlisted al-Mihdhar, al-Hazmi, and the others listed in the CIA cable. On August 27, it revoked the visa that al-Mihdhar had obtained in June.

G. The Search for Khalid al-Mihdhar

FBI Headquarters promptly sent to the FBI New York field office a draft communication recommending the opening of "an intelligence investigation to determine if al-Mihdhar is still in

the United States.” It stated that al-Mihdhar’s “confirmed association” with various elements of Bin Ladin’s terrorist network, including potential association with two individuals involved in the attack on *USS Cole*, “make him a risk to the national security of the United States.” The goal of the intelligence ~~from 1998~~ investigation was to “locate al-Mihdhar and determine his contacts and reasons for being in the United States.”

That communication precipitated a debate between FBI Headquarters and New York field office personnel as to whether to open an intelligence or criminal investigation on al-Mihdhar. A New York FBI agent tried to convince Headquarters to open a criminal investigation, given the importance of the search and the limited resources available in intelligence investigations, but Headquarters declined to do so. An e-mail exchange between Headquarters and the New York agent described the debate:

- From FBI Headquarters:

“If al-Midhar is located, the interview must be conducted by an intel [intelligence] agent. A criminal agent CAN NOT be present at the interview. This case, in its entirety, is based on intel. If at such time as information is developed indicating the existence of a substantial federal crime, that information will be passed over the wall according to the proper procedures and turned over for follow-up criminal investigation. (Emphasis in original.)

- From the New York agent:

Whatever has happened to this - someday someone will die – and wall or not – the public will not understand why we were not more effective and throwing every resource we had at certain ‘problems.’ Let’s hope the [FBI’s] National Security Law Unit (NSLU) will stand behind their decisions [about the “wall”] then, especially since the biggest threat to us now, UBL, is getting the most ‘protection.’”

The agent was told in response: “we (at Headquarters) are all frustrated with this issue,” but “[t]hese are the rules. NSLU does not make them up.”

The former head of the FBI’s International Terrorism Operations Section explained to the Joint Inquiry why the search for al-Mihdhar was conducted as an intelligence, rather than a criminal matter: “Although we certainly suspect, and rightfully so, that they were probably

engaged in . . . criminal acts, the information brought to us came essentially in total in the intelligence channel, so an intelligence investigation was opened.”

[Page 161]

The FBI contacted the Bureau of Diplomatic Security at the State Department on August 27, 2001 to obtain al-Mihdhar and al-Hazmi’s visa information. This was provided to the FBI on August 29 and revealed that, on entering the United States in July 2001, al-Mihdhar claimed that he would be staying at a Marriott hotel in New York City. An FBI agent determined on September 5 that al-Mihdhar had not registered at a New York Marriott. The agent checked computerized national and New York criminal and motor vehicle indices on al-Mihdhar and al-Hazmi, but those checks were negative. On September 11, the agent sent an electronic communication to the FBI’s Los Angeles Field Office, asking it to look for al-Mihdhar and to check airline records.

III. NSA Communications Intercepts Related to Khalid al-Mihdhar, Nawaf and Salem al-Hazmi

[In the fall of 1998, NSA began to focus its analysis on a suspected terrorist facility in the Middle East. That facility had been associated with al-Qa'ida activities against U.S. interests. [—

_____].

[In early 1999, NSA analyzed communications involving a suspected terrorist facility in the Middle East, some of which were associated with Nawaf al-Hazmi and Khaled [—], who NSA now believes to have been Khalid al-Mihdhar. [_____

_____]. These communications were the first indication NSA had of a link between al-Mihdhar and al-Hazmi. They were not disseminated in NSA SIGINT reporting because the persons were unknown and the subject matter did not meet NSA reporting thresholds. Those thresholds vary, depending on the judgment of the NSA analyst who is reviewing the intercept and the subject, location, and content of the intercept].

[In early 1999, another organization obtained the same or similar communications and published the information in a report it gave to NSA. NSA's practice was to review such reports and disseminate those responsive to U.S. intelligence requirements. For an undetermined reason, NSA did not disseminate the [—] report. It was not until early 2002 during the Joint Inquiry that NSA realized that it had the [—] report in its databases and subsequently disseminated it to CIA and other customers].

[No additional activity of counterterrorism interest was associated with the suspected terrorist facility in the Middle East until summer 1999 when NSA analyzed additional communications involving Khaled, that is, al-Mihdhar, [—] and [_____].

_____]}. At about the same time, the name Khallad came to the attention of NSA for the first time].

[NSA analyzed communications associated with a suspected terrorist facility in the Middle East from later in the summer of 1999. These communications also involved the names of Khaled and others. None of this information was disseminated because the subject matter did not meet NSA reporting thresholds].

[In late 1999, NSA analyzed communications associated with a suspected terrorist facility in the Middle East involving Nawaf al-Hazmi, Khaled, and, for the first time, Salem. It was thought at the time that Salem might be al-Hazmi's younger brother, and this was later confirmed].

[In early [_____] 2000, NSA analyzed what appeared to be related communications concerning a Khaled [_____]. NSA reported this information in early January to CIA, FBI, and other counterterrorism customers].

[After this NSA report [_____], CIA submitted a formal request to NSA in early 2000 for approval to share information in the report with [_____] foreign intelligence liaison services, along with the fact that Khaled may have been connected to a suspected terrorist facility in the Middle East that had previously been linked to al-Qa'ida's activities against U.S. interests. CIA wanted to cite these connections to enlist liaison assistance [_____]. NSA allowed the information to be released].

[Page 154]

[On January 10, the Counterterrorist Center (CTC) at CIA gave NSA information regarding the [_____] Kuala Lumpur meeting, including information about al-Mihdhar [_____]; the name of the person who assisted him in Kuala Lumpur; the fact that al-Mihdhar's primary purpose in coming to Malaysia appeared to have been to meet with others [_____]; and other information

[_____].

On January 13, NSA received CIA operational reporting from CTC. [_____

_____].

[In mid-January 2000, NSA queried its databases for information concerning Khaled [_____

_____]. These queries remained active until May 2000, but did not uncover any information].

[In early 2000, NSA analyzed communications involving Khaled and a suspected terrorist facility in the Middle East linked to al-Qa'ida activities directed against U.S. interests. The FBI determined, based on toll records it obtained after September 11, that Khaled had been in the United States at the time. [_____
_____]. Some of these communications met NSA reporting thresholds and were reported to FBI, CIA, and other customers, but some did not. [_____
_____].

[NSA analyzed additional communications in the summer of 2000 that were associated with a suspected terrorist facility in the Middle East, Salem and Khaled. [_____
[page 163] _____]. NSA did not believe this provided any new information, and there was no dissemination].

APPENDIX

CTC WATCHLISTING GUIDANCE

DECEMBER 1999

CTC WATCHLISTING GUIDANCE

December 1999

Questions raised by Senator Shelby and his staff in December 2002 prompted the Joint Inquiry to inquire further regarding whether CIA's Counterterrorist Center (CTC) had any established guidance concerning the watchlisting program. The Joint Inquiry had asked CTC about such watchlisting guidance in April 2002, and had been told in a written CIA response that no such guidance existed.

As a result of this renewed request, the Joint Inquiry was able to determine that CTC had sent a cable in December 1999 to all Directorate of Operations (DO) stations and bases, the subject of which was "Terrorism Guidance." The cable was designated as "Read and Retain," and its purpose was to remind DO personnel of pre-existing, periodically republished guidance regarding several important subjects of relevance to their counterterrorism efforts. The Joint Inquiry also determined that the unit in CTC that was responsible for matters relating to Usama Bin Ladin and al-Qa'ida received a copy of the cable.

One paragraph of the nine paragraph "Terrorism Guidance" cable (see attached copy) reminded recipients of the procedures for watchlisting "potential," "possible," "known," or "suspected" terrorists. The guidance stated, in part, that:

. . . It is important to flag terrorist personality information in DO intelligence reporting for [the State Department watchlist program] so that potential terrorists may be watchlisted. Information for inclusion in [the State Department watchlist program] must raise a reasonable suspicion that the individual is a possible terrorist . . . Information for [the State Department watchlist] program should be based on the following priorities:

-- known or suspected terrorists who pose or may pose a present threat to U.S. interests in the United States or abroad:

.....

Thus, CTC personnel and CIA station and base personnel abroad were reminded in December 1999 of the existence, importance and thresholds of the watchlisting program shortly before CTC learned in January 2000 that a known al-Qa'ida associate – al-Mihdhar – possessed a multiple entry U.S. visa; one month before the Malaysia meeting; and three months before CTC received information from the field indicating that at least one known al-Qa'ida associate – Nawaf al-Hazmi – had traveled to the United States.

~~SECRET~~

DOSE

DIRECTOR 676309

11 DECEMBER 1999

5. VISAVIPER PROGRAM:

THE VISAVIPER PROGRAM PROVIDES A CONSULAR CHANNEL FOR WATCHLISTING POTENTIAL TERRORISTS BY CONTRIBUTING TERRORIST PERSONALITY INFORMATION FOR THE STATE DEPARTMENT'S UNCLASSIFIED CLASS AND CLASSIFIED TIPOFF DATABASES. IT IS IMPORTANT TO FLAG TERRORIST PERSONALITY INFORMATION IN DO INTELLIGENCE REPORTING FOR VISAVIPER SO THAT POTENTIAL TERRORISTS MAY BE WATCHLISTED. INFORMATION FOR INCLUSION IN VISAVIPER MUST RAISE A REASONABLE SUSPICION THAT THE INDIVIDUAL IS A POSSIBLE TERRORIST, AND BIOGRAPHIC DATA MUST BE SUFFICIENT FOR IDENTIFICATION PURPOSES OR STATE DEPARTMENT WILL NOT MAKE A VISAVIPER ENTRY. INFORMATION FOR THE VISAVIPER PROGRAM SHOULD BE BASED ON THE FOLLOWING PRIORITIES:

--KNOWN OR SUSPECTED TERRORISTS WHO POSE OR MAY POSE A PRESENT THREAT TO U.S. INTERESTS IN THE UNITED STATES OR ABROAD;

--KNOWN OR SUSPECTED TERRORISTS NOT NOW KNOWN TO BE ENGAGED IN TERRORIST ACTIVITIES AGAINST U.S. INTERESTS BUT WHO WERE SO ENGAGED WITHIN THE PAST 15 YEARS;

--KNOWN OR SUSPECTED TERRORISTS WHO ARE CURRENTLY ENGAGING IN TERRORIST ACTIVITY AGAINST NON-U.S. INTERESTS, OR WHO WERE SO ENGAGED WITHIN THE PAST TEN YEARS.

~~SECRET~~