

above deputy chief of a section within the Counterterrorism Division at FBI headquarters.

One of the *Cole* case agents read the lead with interest, and contacted “Jane” to obtain more information. “Jane” argued, however, that because the agent was designated a “criminal” FBI agent, not an intelligence FBI agent, the wall kept him from participating in any search for Mihdhar. In fact, she felt he had to destroy his copy of the lead because it contained NSA information from reports that included caveats ordering that the information not be shared without OIPR’s permission. The agent asked “Jane” to get an opinion from the FBI’s National Security Law Unit (NSLU) on whether he could open a criminal case on Mihdhar.⁸⁰

“Jane” sent an email to the *Cole* case agent explaining that according to the NSLU, the case could be opened only as an intelligence matter, and that if Mihdhar was found, only designated intelligence agents could conduct or even be present at any interview. She appears to have misunderstood the complex rules that could apply to this situation.⁸¹

The FBI agent angrily responded:

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 National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most “protection.”

“Jane” replied that she was not making up the rules; she claimed that they were in the relevant manual and “ordered by the [FISA] Court and every office of the FBI is required to follow them including FBI NY.”⁸²

It is now clear that everyone involved was confused about the rules governing the sharing and use of information gathered in intelligence channels. Because Mihdhar was being sought for his possible connection to or knowledge of the *Cole* bombing, he could be investigated or tracked under the existing *Cole* criminal case. No new criminal case was needed for the criminal agent to begin searching for Mihdhar. And as NSA had approved the passage of its information to the criminal agent, he could have conducted a search using all available information. As a result of this confusion, the criminal agents who were knowledgeable about al Qaeda and experienced with criminal investigative techniques, including finding suspects and possible criminal charges, were thus excluded from the search.⁸³

The search was assigned to one FBI agent, and it was his very first counterterrorism lead. Because the lead was “routine,” he was given 30 days to open an intelligence case and make some unspecified efforts to locate Mihdhar. He started the process a few days later. He checked local New York databases for