

Further, as a result of the FISA Court decision, NSA placed a caveat on all its [———] terrorism intelligence products requiring OIPR approval before information could be shared with criminal investigators. This stemmed from NSA's concern that it could not determine which of its intelligence reports were the result of information obtained through FBI-conducted FISA surveillances (and therefore subject to the "wall" requirements) and which were not. The effect of this NSA effort to comply with the FISA Court's decision was an unnecessary restriction on the sharing of NSA-acquired intelligence information with criminal investigators.

In August 2001, when the FBI was attempting to locate al-Hazmi and al-Mihdhar in the United States, an FBI Headquarters e-mail prohibited New York field office criminal agents from participating in the search because the information had originated in intelligence channels. However, because this information was not derived from a FISA surveillance, there was no reason it could not be shared with FBI criminal agents. Expressing his utter frustration with the system, a New York FBI agent responded by e-mail: [page 89]

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 will stand behind their decisions then, especially since the biggest threat to us now, UBL, is getting the most "protection."

10. Finding: Serious problems in information sharing also persisted, prior to September 11, between the Intelligence Community and relevant non-Intelligence Community agencies. This included other federal agencies as well as state and local authorities. This lack of communication and collaboration deprived those other entities, as well as the Intelligence Community, of access to potentially valuable information in the "war" against Bin Ladin. The Inquiry's focus on the Intelligence Community limited the extent to which it explored these issues, and this is an area that should be reviewed further.

Discussion: This Inquiry confirmed that, prior to September 11, problems in information sharing reached beyond the boundaries of the Intelligence Community to encumber the flow of information to and from various other entities. At each level, communications with potentially valuable partners in the war against terrorism – other