

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 [page 160] 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