

between al-Mihdhar and the *USS Cole* bombing necessary to open a criminal investigation. FBI attorneys took the position that criminal investigators “CAN NOT” (emphasis original) be involved and that criminal information discovered in the intelligence case would be “passed over the wall” according to proper procedures. An agent in the FBI’s New York field office responded by e-mail, [page 387] “Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.” Again, FBI Headquarters applied FISA “walls” to a non-FISA case.

The USA PATRIOT Act, enacted in response to September 11, provided unambiguous authority for the Attorney General and other law enforcement officials to disclose to the Director of Central Intelligence foreign intelligence collected in the course of a criminal investigation. The Act also requires that intelligence be “a significant purpose” of a FISA search rather than “the purpose.” These provisions were intended to reduce, if not remove restrictions that had grown up around FISA operations. The Foreign Intelligence Surveillance Review Court, in its first opinion since being established in 1979, has affirmed that the Act permits the free flow of intelligence to prosecutors, who may direct and control FISA surveillances.

XI. Technology Gaps

Technology is critical to the Intelligence Community’s efforts to collect, analyze, and disseminate information on terrorist identities, locations, capabilities, plans, and intentions. The Joint Inquiry examined a number of issues in order to assess how well-postured the Community was in regard to its use of technology as well as its understanding of the use of technology by terrorists. The NSA, which, of all the intelligence agencies, relies the most on technical collection, received most of the attention.

A. Technology Gaps at NSA

Al-Qa’ida members employed a variety of communications technologies, including modern ones such as [—————], in the conduct of their activities. In his testimony, NSA Director Lt. Gen. Hayden lamented the fact that terrorists have access to the three-trillion-dollar-a-year communications industry. The Joint