

**JOINT INQUIRY STAFF REPORT  
ADDITIONAL VIEWS  
SENATOR JON KYL, SENATOR PAT ROBERTS**

**I. The Need for Additional Views**

The Report is a product of the Joint Inquiry Staff (JIS), not the Senators and Representatives who sit, respectively, on the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI). The Chairman and Vice Chairman of the SSCI and the Chairman and Ranking Member of the HPSCI (the “Big Four”) made most decisions and supervised the JIS. The JIS should be commended for putting together the first official account of the events leading up to the terrorist attacks of September 11, 2001.

It is difficult, however, for rank-and-file Members of the two committees to know how thorough or accurate the Report is because of the way the JIS and the “Big Four” conducted the inquiry, withholding information and decisions from the Members and SSCI and HPSCI staff throughout the process. While the Report should be a useful historical document on which to base further inquiries, we cannot vouch for its contents.

Beyond that, the investigation was deficient for what it did not include. While intelligence community failures were identified, they were presented frequently in a mode of “mistakes were made” rather than as the beginning of an inquiry as to why they were made.

After prodding by several Senators, some underlying causes of these failures were identified, but even then, they were not further probed to determine what might have been done differently. And the fact that the prodding was necessary illustrates our concern that the JIS either ran out of time or did not have the inclination or instruction to examine, for instance, why

U.S. government agencies were risk-averse, who is responsible for the inadequate resources devoted to counter-terrorism efforts, why legal authorities were so confusing, and why leadership was so lacking. Without this examination, the Report will be of limited value in determining “lessons learned.”

The record should also reflect some of the differences in opinion among Members on how the Report was (or should have been) prepared. The inquiry was conducted and overseen in a way that left rank-and-file Members at a distinct disadvantage, and left insufficient time to examine many relevant issues. The final draft of the Report -- which is several hundred pages long and highly classified -- was delivered to Members four days before the one and only meeting scheduled for its consideration, when most Members were out of town. There was no debate about the Report, only about the Recommendations. But there was little basis for debate since the product was strictly the work of the JIS -- more like an Inspector General’s report than a typical congressional committee report. Throughout the process, rank-and-file Members complained about irregularities. Specific examples include:

- \$ Upon instructions from the Chairmen -- and in violation of SSCI rules -- the JIS often failed to tell Members and staff of important non-compartmented information it discovered in a timely manner.
- \$ Information relating to open hearings -- such as the JIS staff statement and witness statements -- were routinely provided only late on the night before the hearing.
- \$ Committee staff, and sometimes even the staff directors, were often excluded from meetings of the “Big Four,” whose decisions were often made without consultation. Members’ liaison staff, and, therefore, the Members themselves, were in the dark about these decisions.

- \$ Despite repeated requests, records of JIS interviews with key witnesses conducted in the spring were not made available to committee staff for review until fall, when the final draft report was already in the late drafting stages.
- \$ Over the strong objections of several Members, and key officials of the intelligence community, the “Big Four” scheduled a series of open hearings that sidetracked the ongoing investigation from mid-July to late October.

Here is a representative example of the lack of meaningful rank-and-file input into “Big Four” decisions: During the JIS hearing of September 24, 2002 on “U.S. Government Counter-Terrorism Organizations and the Evolution of the Terrorist Threat,” Chairman Goss asked unanimous consent to include in the record several documents relating to that day’s hearing. However, among these documents were requests to the administration regarding its decision not to declassify certain information. These requests from the “Big Four” were made without consultation with the rank-and-file Members -- a fact that Senator Kyl noted for the record at that time. He stated: “Mr. Chairman, I have no objection, but I would like the record to note that the matter that the four of you spoke to is not a matter that has been discussed by the full membership of the committee. Therefore, at least I for one am in no position to judge whether the requests that you have made are warranted or not.”

The holding of open hearings was particularly frustrating. The decision to hold them was apparently made by the “Big Four” despite the concerns of the JIS and the objections of other Senators. The JIS was forced to focus on them for three months, and from there had to go right into drafting the Report in order to meet the year-end deadline.

Several Members voiced their opposition to holding open hearings before the investigative work was completed and the Report written (and, we had supposed, agreed to). We

objected, mostly in closed committee business meetings, that it was premature to convene open hearings before the investigation was complete. And indeed, at the point when the JIS began preparing for them (July, 2002), its investigations into the causes of 9/11 largely ground to a halt. Due to dramatic media leaks and the potential for further compromise, intelligence agencies “pushed back” against open hearings, causing further friction with the JIS investigation.

The hearings distracted these agencies, our “front line troops” on the war on terrorism, and they distracted Members and congressional staff from our traditional oversight responsibilities. They also, in our view and the view of Vice Chairman Shelby, publicly revealed a lot of sensitive information from which our enemies could profit. Most of the information presented had already been revealed in closed hearings, which were far more productive because those who participated could delve freely into classified information.

Key figures in our counter-terrorism efforts were unnecessarily compromised by these public hearings. A case in point is the Arizona resident whose identity came out in the media. His name and face were even broadcast on Al-Jazeera. His family was harassed and was potentially in danger from extremists. Our hard-working people deserve better treatment than that. We should have been more circumspect about publicly releasing results before the investigation was complete and the two intelligence committees had had a chance to adequately review the final Report.

## **II. Deficiencies in the Report**

These inadequacies in the process resulted in a Report that falls well short of addressing the core problems that led to 9/11. Because the fundamental problems that led to 9/11 are almost certainly rooted in poor policy and inadequate leadership, the investigation should have delved more deeply into conflicting interpretations of legal authorities (including presidential directives), budget allocations, institutional attitudes, and other key areas. Only penetrating these areas will tell us how policymakers, including Congress, contributed to the failures the Report identifies. In other words, only such a thorough exercise will help us to make sure the failures are not repeated.

What best shows the tendency of the JIS investigation to go to the water's edge but no farther is that, in the Report, there is a pronounced tendency to identify problems as "facts," or "realities," rather than as matters to be plumbbed for underlying causes. For instance, we have the following JIS testimony to the joint committees: "The 1996 Khobar Towers attack, the 1998 African embassies attacks, and the 2000 *USS Cole* attack led the Departments of State and Defense to focus heavily on force protection, but not on meeting the challenge of Afghanistan, even though they recognized the dangers emanating from terrorist camps there."<sup>1</sup> So, the problem of Afghanistan as a haven for terrorists was widely recognized. But the CIA and FBI lacked the

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<sup>1</sup>Emphasis added. Written statement of Eleanor Hill, in testimony before a hearing of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence (hereafter "the joint committees"), October 8, 2002.

means, and also lacked a plan, to go after training camps in Afghanistan in a comprehensive manner. It would be reasonable to wonder at this point: What efforts were made to penetrate various groups in Afghanistan (or if there were efforts, why were they not successful), and why was there no attempt to beef up the military for a comprehensive response? The record shows that little effort was made to effectively utilize the military even after President Clinton's post-embassy bombing declaration in 1998 that "there will be no sanctuary for terrorists." Again, it is reasonable to ask why actions did not match words. These are questions we believe have not been asked, or at best have been asked superficially, by the JIS.

Other areas were treated similarly:

### **Risk Aversion**

The JIS did not examine risk aversion as a distinct and separate issue, despite the fact that several witnesses and interviewees told the staff that it was a big problem. Indeed, no intelligence or law-enforcement agency escaped being described by its own officials as hampered by an aversion to taking risks of one sort or another.

For instance, at the September 24, 2002 JIS open hearing, a cloaked "Minneapolis FBI Agent" testified about risk aversion in the FBI. He was asked if he thought previous disciplinary actions involving agents making erroneous applications to the Foreign Intelligence Court of Review (the court set up under the Foreign Intelligence Surveillance Act, or FISA) had made

agents reluctant to file FISA applications. He responded that these did indeed have a chilling effect.<sup>2</sup>

FBI fears of being seen as committing racial or religious profiling were acknowledged by a Phoenix special agent who attempted to alert FBI headquarters about suspicious individuals seeking pilot training. The special agent's now-famous electronic communication to headquarters recommended that it consider seeking authority to obtain visa information from the State Department on individuals who got visas to attend flight school. The intelligence operations specialists at FBI headquarters who reviewed the "Phoenix Memorandum" told the JIS that they had decided among themselves that seeking that authority raised profiling concerns. FBI qualms in this regard were stimulated by public allegations of racial profiling that were made against FBI agents who questioned two Middle Eastern men who had acted suspiciously on an Air West flight from Phoenix to Washington, D.C. in 1999.

JIS director Eleanor Hill described the latter incident at the September 24, 2002 hearing: "During a physical surveillance of the subject of the Phoenix [electronic communication], the agent determined that he was using a vehicle registered to another individual. In 1999, the owner of the car and an associate of his were detained for trying to gain access to the cockpit of a

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<sup>2</sup> Statements of a Minneapolis FBI Agent before the joint committees, September 24, 2002.

commercial airliner on a domestic flight. They told the FBI that they thought the cockpit was the bathroom and they accused the FBI of racism.”<sup>3</sup>

During the same hearing, Senator Hatch pressed the FBI witnesses on problems brought on by perceived racial profiling. Michael Rolince of the FBI remarked on his colleagues' interactions as they pursued leads on possible terrorist attacks during Y2K celebrations around the world: “I think you only need to go back to the millennium . . . There was a proposal on the table to interview every subject of every full and every preliminary inquiry investigation [regarding Osama Bin Laden] . . . and we were concerned about follow-on events for the Y2K. That met with overwhelming resistance by the [Special Agents in Charge] in the field for a lot of different reasons, one of which is we would be hounded unmercifully over the profiling issue.”<sup>4</sup>

The head of the National Security Agency, Lieutenant General Michael Hayden, told the JIS that, in 2000, his agency found itself having to fend off -- in an unusual public hearing -- Representative Robert Barr's public criticisms. Representative Barr had criticized the National Security Agency for what he believed were inappropriate collection activities.<sup>5</sup>

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<sup>3</sup>Written statement of Eleanor Hill, in testimony before the joint committees, September 24, 2002.

<sup>4</sup> Michael Rolince, testimony before the joint committees, September 24, 2002.

<sup>5</sup> Joint Inquiry Staff, Memorandum from the Joint Inquiry Staff to Eleanor Hill, dated November 6, 2002, Subject: “October 31, 2002, Questions from Senators Kyl and Roberts.”

Many comments on risk aversion alluded to congressional oversight and/or investigations dating back to the Church and Pike investigations of the 1970s. In the 1980s, congressional investigation and litigation involving the FBI's investigation of the Committees in Solidarity with the People of El Salvador led indirectly to newer agents being "warned to be careful that they do not violate religious groups' First Amendment rights."<sup>6</sup> It is quite possible -- though this theme was not fully explored by the JIS -- that a legacy of caution left by these historical episodes contributed to timidity in tackling the Al Qaeda problem before Al Qaeda struck on 9/11.

A good example of comments that gave prominence to this subject is that of Richard Clarke, the National Security Council counter-terrorism coordinator from 1993 to October, 2001, who discussed in a JIS briefing on June 11, 2002 the atmosphere he would like to see engendered within our intelligence agencies. Mr. Clarke said the ethos should be: "Don't be afraid to make mistakes. Encourage a climate in the military and in the law-enforcement communities and in the CIA that says, perfection is not the goal here; and if you have good intentions and you mess up along the way, you will not be punished as an organization or as an individual. Get away from this risk-averse culture, where one mistake and you are out." He added that "we need a thousand more Colleen Rowleys, and you are never going to get them until you provide them with some encouragement, both from the Director of the FBI, from the President of the United States and,

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<sup>6</sup>Joint Inquiry Staff, Memorandum from the Joint Inquiry Staff to Eleanor Hill, dated November 6, 2002, Subject: "October 31, 2002, Questions from Senators Kyl and Roberts."

most importantly, from the Congress. . . . [B]elieve it or not, a lot of people in the executive branch are scared stiff about being up in front of a congressional committee.”<sup>7</sup>

Changing the culture of risk aversion in these agencies is a major undertaking. It should be a central focus of any corrective actions we may attempt following this investigation. Yet the Report seems only to document the “fact” of risk aversion, rather than get at why it existed. Without knowing the causes, how can we be certain the conditions that led to it in the 1990s have been corrected? The two congressional intelligence committees should be very careful when it comes to recommending that individuals who were “to blame” for 9/11-related failures be aggressively punished, lest we promote the scapegoating of junior government employees by those who actually bore more responsibility. (See Recommendation #16.)

### **Insufficient Resources**

Throughout this investigation, top intelligence officials cited a lack of money and people, in the years before the 9/11 attacks. One CIA witness described intelligence resources fighting terrorism as “a platoon in a brigade-sized field and doing the best they can.”<sup>8</sup> This was known, yet little was done to correct it.

During the 1990s, intelligence community budgets stayed roughly even in constant dollars, or slightly declined. Overall capabilities declined. Primarily by taking from other budgets, counter-terrorism funds doubled. The Report states that, “in spite of increased counter-terrorism

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<sup>7</sup> Richard Clarke, testimony before the joint committees, June 11, 2002.

<sup>8</sup> Statements of a CIA witness before the joint committees, September 20, 2002.

resources, the overall decreases in Intelligence Community resources made it difficult to expand the counter-terrorism effort significantly to meet the growing threat. . . . The number of people working on terrorism rose steadily, despite overall decreases in Intelligence Community staffing. Nonetheless, the number of people in counter-terrorism remained small.”<sup>9</sup>

One notices a lack of clarity here. The Report spends many pages cataloging why it is difficult to pinpoint how much money was expended on counter-terrorism; yet the document does not really grapple with the contradiction between the high-ranking officials’ complaints about inadequate resources and the fact that, according to the Office of Management and Budget, the intelligence agencies usually got what they asked for. Some excerpts describing this disconnect follow:

\$ “DCI Tenet testified that the CIA regularly asked OMB for more money, but had little success.”<sup>10</sup>

\$ “Agency leaders testified that their requests for resources were sometimes not satisfied, even though Congress appropriated as much or more than the President requested. This is because OMB often reduces agency requests before sending them to Congress.”<sup>11</sup>

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<sup>9</sup> Final JIS Report, Tab E, pp. 2-3.

<sup>10</sup>Final JIS Report, Tab E, p. 7.

<sup>11</sup>Final JIS Report, Tab E, p. 9.

\$ “In general, CIA appropriations for counter-terrorism met or exceeded the requests that were submitted by the President to Congress.”<sup>12</sup>

\$ “[National Security Agency] appropriations consistently met or exceeded Presidential requests to Congress.”<sup>13</sup>

\$ “The FBI usually received more -- at times far more -- than the amounts the President initially requested from Congress.”<sup>14</sup>

\$ “Budget requests specifically tied to counter-terrorism were generally approved, according to OMB officials.”<sup>15</sup>

Yet officials from the intelligence agencies contended after the fact that the enhanced resources they received were not sufficient to meet the growing threat. One officer of the Counter-Terrorism Center claimed she was told when appeals for more resources were rejected: “People [will] have to die for them to get resources.”<sup>16</sup>

Director of Central Intelligence George Tenet is in a rare and privileged position of having a personal audience with the President on a near-daily basis. When the Director of Central Intelligence declares war on Al Qaeda, as George Tenet did in 1998, we should see a dramatic

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<sup>12</sup>Final JIS Report, Tab E, p. 10.

<sup>13</sup>Final JIS Report, Tab E, p. 12.

<sup>14</sup>Final JIS report, Tab E, p. 11.

<sup>15</sup>Final JIS Report, Tab E, p. 19.

<sup>16</sup>Final JIS Report, Tab E, p. 14.

effect. Did he press his case with President Clinton that he did not have enough people or resources? What he said in written testimony before the joint committees on October 17, 2002 is that the CIA prepared a policy-and-objectives statement in early 1997 that reflected a determination to go on the offensive against terrorism. Director Tenet:

“The submission outlined our Counter-Terrorism Center’s offensive operations, listing as their goals to ‘render the masterminds, disrupt terrorist infrastructure, infiltrate terrorist groups, and work with foreign partners.’ . . . It highlighted efforts to work with the FBI in a bold bid to destroy the infrastructure of major terrorist groups worldwide.

“. . . The FY99 submission -- prepared in early 1998 -- continued the trend in requesting a substantial funding increase for offensive operations against terrorism. . . . The FY 2000 budget submission prepared in early 1999 described Bin Laden as ‘the most significant individual sponsor of Sunni Islamic extremism and terrorism activity in the world today.’ Our FY 2000 submission noted our use of a wide range of operational techniques, joint operations with foreign partners, and the recruitment of well-placed agents.”<sup>17</sup>

Director Tenet continued: “Despite these clear intentions and the daring activities that went with them, I was not satisfied that we were doing all we could against this target. In 1998, I told key leaders at CIA and across the intelligence community that we should consider ourselves

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<sup>17</sup>George Tenet, testimony before the joint committees, October 17, 2002.

‘at war’ with UBL. I ordered that no effort or resource be spared in prosecuting this war. In early 1999, I ordered a baseline review of CIA’s operational strategy against Bin Laden.”<sup>18</sup>

In spite of Director Tenet’s claims of “daring activities” and not being satisfied that the CIA was doing all it could against terrorists, the JIS found that “There was a reluctance to take risks in which CIA officers might die.”<sup>19</sup>

But, back to the question of resources: What did Tenet do to follow up? Did he request more? Were the requests rejected? By whom? Why? If requests for money had been granted, would that have made any difference? And finally, how much has changed since 9/11?

The JIS was able to get the personnel and fiscal counter-terrorism requests of the FBI dating to the early 1990s. These contained the total number of additional positions or monies requested by the FBI of the Department of Justice, requested by the Department of Justice of the Office of Management and Budget, requested by the OMB of Congress, and enacted by Congress. Within these data are indications of irrational, ad hoc budgeting and funding decisions.<sup>20</sup> The

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<sup>18</sup>Ibid.

<sup>19</sup>Joint Inquiry Staff, Memorandum from the Joint Inquiry Staff to Eleanor Hill, dated November 6, 2002, Subject, “October 31, 2002, Questions from Senators Kyl and Roberts.”

<sup>20</sup>Final JIS Report, Chart 1.5 (“FBI Resource Requests”); Joint Inquiry Staff briefing to the joint committees, “An Overview of Counter-Terrorism Resources,” Slide #6 (“FBI Requests for Additional Counter-Terrorism Resources and the DOJ, OMB, and Congressional Response”).

positions approved by each entity in turn, as the requests wended their way from the FBI to Congress, sometimes showed wild disparities and inconsistencies. Yet the root causes for this remain unexplored. Without this information, the JIS contended it could not determine the “failure mechanisms” in the budgeting process. What was the impact on counter-terrorism as a result of the administration’s budget requests and congressional responses, and what changes would be required to rectify the problems? The JIS Report does not provide answers.

### **A Flawed Legal/Institutional Framework**

It is also evident that some of the pre-9/11 failings were caused by government officials operating under unclear authorities. The joint committees heard testimony from a number of senior officers from the intelligence agencies, the National Security Council, and the Pentagon. The committees were presented with divergent perspectives on exactly what authorities existed in our efforts to take the war to the terrorists.

National Security Council officials said they provided all the tools, both physical and legal, to do the job; intelligence agency officials said the National Security Council provided neither. Stated former National Security Advisor Anthony Lake: “In June, 1995, Presidential Decision Directive 39 mandated increased efforts to capture terrorists abroad.”<sup>21</sup> His successor as National Security Advisor, Sandy Berger, said in response to our questions for the record:

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<sup>21</sup>Written statement of Anthony Lake, in testimony before the joint committees, September 19, 2002.

“President Clinton approved every strike or other action against bin Laden proposed by his intelligence, military, and national security advisors.”<sup>22</sup>

On the other side of this divide, Members heard from intelligence officials, such as Cofer Black, former chief of the Counter-Terrorism Center, comments about being hampered by a lack of operational flexibility. Mr. Black: “I want to make this very clear. I do not feel that I had sufficient authorities to do the best job that we could.”<sup>23</sup> He underlined this point at a later hearing: “All I want to say is that there was before 9/11 and after 9/11. After 9/11 the gloves came off.”<sup>24</sup>

While the details of this debate remain classified, the JIS Report, as it does in so many other respects, documents the fact that there were discordant views without digging to find the point of failure that allowed this confusion to persist.

Uncertainty about a particular legal authority is shown in the FBI’s decision-making surrounding the search of Zaccarias Moussaoui’s computer. Minneapolis agent Rowley thought a FISA warrant could be obtained. Headquarters personnel thought not, because it was not clear

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<sup>22</sup>Memorandum from Sandy Berger to Senator Graham dated November 4, 2002, Subject: “Reply to Additional Joint Inquiry Questions.”

<sup>23</sup>Cofer Black, statements before the joint committees, September 12, 2002.

<sup>24</sup>Written statement of Cofer Black, in testimony before the joint committees, September 26, 2002.

Moussaoui was acting on behalf of an international terrorist organization.<sup>25</sup> More in-depth analysis of this issue might have resulted in a recommendation by our committees to revisit the legal definition, under FISA, of a “foreign power”—a term that currently only includes foreign governments or international terrorist organizations. A warrant for surveillance of an individual is only granted under FISA if a court finds probable cause to believe the target of the warrant is linked either to a foreign government or an established organization. This may have made sense when the Foreign Intelligence Surveillance Act was enacted during the Cold War, but apparently, as noted, U.S. authorities did not try to obtain a FISA warrant to search Moussaoui in the summer of 2001 because the FBI could not prove he was linked to a specific terrorist group. Senator Kyl has offered a three-word change to the statute that would permit a FISA warrant to be obtained if the person suspected of terrorist activity is a foreign person. This change is supported by the Department of Justice.

Another change in the law that could improve the institutional framework would be further congressional legislation to enable the U.S. Government to deter and punish unauthorized disclosure of security-related information.

### **Leadership Failures**

Al Qaeda’s attack on Washington and New York occurred after a long period of poor leadership at the highest levels of the U.S. Government regarding terrorism. Despite repeated

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<sup>25</sup> “F.B.I. Denial of Search Warrant for Suspect’s Belongings Is at Center of Inquiries,” Philip Shonan, New York Times, June 7, 2002.

assaults on the United States and its interests -- the 1993 World Trade Center attack, the bombing of the American embassies in Kenya and Tanzania in 1998, the attack on the *USS Cole* in 2000, to name a few -- the U.S. Government was still unwilling to treat terrorism as a true national security issue until 9/11. Indeed, the previous administration strove mightily to treat terrorism strictly as a law-enforcement issue, often thinking in terms of what evidence could be gathered on terrorists that would hold up in a court of law. Even when we did respond with military force – sending cruise missiles into Afghanistan and Sudan after the 1998 embassy attacks, for instance – it smacked of doing something for show, rather than a real attempt to treat the terrorist threat for what it is -- a war.

But these leadership failures at the political level do not absolve the decision-makers at the intelligence agencies of their own failures. The problem of inadequate allocation of resources, for example, appears to be a result of confused leadership in the intelligence community. Just about every person interviewed indicated that, before 9/11, he or she was overtasked and undermanned. Yet the Counter-Terrorism “Center” evidently did not fully use the resources already in the community. Analysts from agencies outside the CIA indicated to the JIS that they were not being tapped to assist counter-terrorism work inside the Counter-Terrorism Center. JIS information indicates that the Defense Intelligence Agency and the Federal Aviation Administration offered analytic support to the chief of the Counter-Terrorism Center, but both offers were rebuffed.<sup>26</sup>

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<sup>26</sup> Joint Inquiry Staff, Memorandum from the Joint Inquiry Staff to Eleanor Hill, dated November 6, 2002, Subject: “October 31, 2002, Questions from Senators Kyl and Roberts.”

So, in spite of a 1998 DCI declaration of war on Al Qaeda, two key organizations were not allowed to fully throw their support behind the anti-terror effort. In this connection, Director Tenet stated before our committee – apparently with pride -- that, by 2001, the Counter-Terrorism Center “had 30 officers from more than a dozen agencies on board, [constituting] ten percent of its staff complement at that time.”<sup>27</sup> This means the CIA accounted for 90 percent of the personnel at the Counter-Terrorism Center, and the “more than a dozen” other agencies were only allotted the remaining 10 percent of the billets. Clearly, the Counter-Terrorism Center, created as an intelligence community entity to fuse information and analysis, did not fully leverage the assets resident throughout the law-enforcement and intelligence communities.

Instead we had fragmented counter-terrorism analytic centers at CIA headquarters, at the Pentagon, and at various FBI locations. The failure to concert the community’s activities had severe consequences. Did the intelligence community fail the Director of Central Intelligence by not offering more support to the Counter-Terrorism Center, or did the Director of Central Intelligence fail the Counter-Terrorism Center by not bringing in more government-wide talent and skills?

Only after 9/11 did the various intelligence and law-enforcement entities begin to put aside their parochialism and work together in a more productive manner. With better leadership of the intelligence community, this condition would not have been prevalent before 9/11. It would

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<sup>27</sup>Written statement of George Tenet, in testimony before the joint committees, October 17, 2002.

not have taken that monumental disaster for our nation to get the members of the community to cooperate with one another.

One of the purposes of the Joint Inquiry, as stated in the preamble to the House and Senate committees' "Initial Scope" document, was to "lay the basis for assessing the accountability of institutions and officials of government." The JIS Report, however, apparently fails to identify which officials within the intelligence community had responsibility, before 9/11, for strategic and tactical warning of terrorist activity. Instead, Recommendation #16 suggests that discovering who is accountable should be the job of the Inspectors General of the various agencies.

### **Inadequate Scope**

The failures that led to 9/11 occurred not only in the intelligence community. The JIS was selective about what threads of inquiry it was willing to follow beyond the intelligence community. Failure to examine the State Department's visa-issuance process must rank as the most glaring of these omissions because the answer to the question – could 9/11 have been prevented -- is yes, if State Department personnel had merely followed the law and not granted non-immigrant visas to 15 of the 19 hijackers in Saudi Arabia.

We repeat: If our own laws regarding the issuance of visas had been followed by the State Department, most of the hijackers would not have been able to obtain visas, and 9/11 would not have happened. Because the entire culture of the State Department is geared toward facilitating smooth relations with foreign governments, State Department personnel have tended to ignore the potential effect of their practices on national security.

An October, 2002 report of the General Accounting Office found that, before 9/11, there was among U.S. consular officers abroad a wide divergence of opinions and practices regarding “the authority of consular officers to deny questionable applicants a visa; the role of the visa process in ensuring national security; and the types of changes . . . appropriate given the need for heightened border security.”<sup>28</sup>

Section 214(b) of the Immigration and Nationality Act essentially creates a presumption against the issuance of visas to single young men without visible means of support. Consular officers are empowered with broad authority to deny visas in cases where the applicant fails to overcome this presumption. Section 214(b), which pertains to non-immigrant visas, specifically provides that applicants for such visas must demonstrate that they: 1) have a residence abroad and strong ties to a country that they have no intention of abandoning; 2) intend to leave the United States in a timely manner; and 3) intend to engage in legitimate activities related to the non-immigrant category.

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<sup>28</sup> “Border Security: Visa Process Should Be Strengthened as an Antiterrorism Tool,” General Accounting Office, October, 2002, p. 3.

The failure of several of the terrorist hijackers, including the ringleader, Mohammed Atta, to completely fill out their applications provided ample reason for denying the visas. Only one of the 15 terrorists who were from Saudi Arabia provided an actual address; the rest listed only general locations, such as “California,” “New York,” “Hotel D.C.” and “Hotel.”<sup>29</sup> Only three of the 15 provided the name and street address of present employer or school as required on the application. Only one of these applications had additional documentation or explanatory notes provided by a consular officer that addressed any discrepancy or problem with the original application.

It was the official position of the State Department’s Bureau of Consular Affairs for over a year, that 13 of the 15 terrorists from Saudi Arabia had been personally interviewed and that there was nothing in their visa applications or in the interviews that should have prevented issuance of their visas. According to the GAO, however, only two of the Saudi applicants were actually interviewed, and all 19 hijackers had substantial omissions and inconsistencies on their visa applications that should have raised concerns about why they wanted visas.

The GAO reported that these applicants were presumed to be eligible based upon pre-9/11 internal State Department policies that stressed that all applicants from Saudi Arabia and the United Arab Emirates were to be considered “good cases” and, therefore, exempt from interviews. Moreover, the GAO noted that applicants from these two countries were not required to

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<sup>29</sup> “Visas for Terrorists,” Joel Mowbray, National Review, October 28, 2002.

“complete their applications or [provide] supporting documentation.”<sup>30</sup> Why was this so? The pervasiveness in Saudi Arabia of Wahhabism, a radical, anti-American variant of Islam, was well-known before 9/11. The JIS should have inquired why the country of Saudi Arabia was given such preferential treatment by the State Department and whether the intelligence agencies were complicit in the policy.

### **III. Comments on Recommendations**

When there is a crisis, there is a tendency to look for easy solutions. A case in point is the first and most publicized Recommendation to come out of this investigation: the creation of a new “Director of National Intelligence.” Good policies, good leadership, adequate resources, and will can better protect the American people from terrorism than simply creating new offices and rearranging organizational charts. And, as we have attempted to show, policy, resources, and leadership were issues that were not treated in sufficient depth by the JIS. It is not at all clear that a new intelligence “czar” could succeed where the Director of Central Intelligence has not. For that matter, the Report does not even conclude that DCI Tenet or any predecessor DCI did fail. The disconnect between the JIS’ investigative efforts and the Recommendation supposedly based on them is remarkable.

On the merits of the “Director of National Intelligence” idea itself, we would concur with some of the points made by Vice Chairman Shelby in his Statement of Additional Views.

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<sup>30</sup>GAO report, p. 17.

Separating the job of the head of the intelligence community from the directorship of the CIA is an idea of some value. It has been endorsed by a number of post-Cold War studies of intelligence-community reform. However, we in the House and Senate intelligence committees have not yet deliberated enough on this question to draw any conclusions.

As indicated above, we are particularly troubled by the JIS Report's Recommendation #16, calling for lower-level personnel to be held accountable by the various agencies' Inspectors General. It is doubtful whether this would improve the functioning of the intelligence agencies. Accountability of this kind would, in our view, have a troubling result: exacerbating what so many people quoted herein cited as a pervasive problem, namely, aversion to risk. Accountability of those at the very top is what is needed; it alone produces accountability at the intervening levels, and among officers in the field who run down the leads to find terrorists.

It would be expecting too much to think that U.S. authorities should have predicted that the attack of 9/11 would come. But the level of dysfunction in the security and intelligence agencies comes as a shock to Americans, who had faith in the expertise of the intelligence community. To restore that faith it must improve its performance, and in this regard, the proposition "First things first" is only common sense. Our duty to understand precedes our ability to improve. The JIS Report, in not fully coming to terms with what produced the intelligence failures it identified, left that duty unfulfilled. These Additional Views are offered not to criticize those who worked very hard under difficult circumstances to file a Report by the end of the 107<sup>th</sup> Congress, but to provide a more complete perspective for those who are charged to further investigate the terrorist attacks of September 11, 2001.