

Testimony of Attorney General John Ashcroft
The National Commission on Terrorist Attacks Upon the United States
April 13, 2004

Thank you.

It is with great sorrow that I join this Commission today in reflection on September 11, 2001. Even today, 31 months after the attacks, I struggle to learn the lessons of that day without being overwhelmed by the losses of that day. I feel sorrow for the loss of life, sorrow for the loss of promise, sorrow for the lost innocence of a nation forever scarred.

My sorrow for the victims of September 11 is equaled only by my rage at their killer. Usama Bin Laden is to blame for my anger. I blame his hatred for our values, his perversion of a faith, his idolatry of death. It was his hand that took the lives of nearly 3,000 innocents on September 11. It is his face that is the face of evil.

September 11 revealed not just our enemy's capacity for murder but our fellow Americans' thirst for justice. The men and women of the Department of Justice have embraced the cause of our time: the protection of the lives and liberties of Americans. Working within the Constitution, we fight any battle and shoulder any burden -- no matter personal or political cost -- to prevent additional terrorist attacks. And for the time being, al Qaeda's slaughter has ceased on American soil.

We have been aggressive. We have been tough. And we have suffered no small amount of criticism for our tough tactics. We accept this criticism for what it is: the price we are privileged to pay for our liberty.

Had I known a terrorist attack on the United States was imminent in 2001, I would have unloaded our full arsenal of weaponry against it -- despite the inevitable criticism. The Justice Department's warriors, our agents, and our prosecutors would have been unleashed. Every tough tactic we have deployed since the attacks would have been deployed before the attacks.

But the simple fact of September 11 is this: we did not know an attack was coming because for nearly a decade our government had blinded itself to its enemies. Our agents were isolated by government-imposed walls, handcuffed by government-imposed restrictions, and starved for basic information technology. The old national intelligence system in place on September 11 was destined to fail.

This Commission can serve a noble purpose. Your responsibility is to examine the root causes of September 11 and to help the United States prevent another terrorist attack. Your duty is solemn and sobering. But I, too, have a duty today. I have sworn to tell the whole truth, and I intend to fulfill this obligation.

Today I will testify to four central issues which have not been developed fully in the Commission's work and deserve your attention.

First, this Commission has debated the nature of the covert action authorities directed at Usama Bin Laden prior to 2001. In February 2001, shortly after becoming Attorney General, I reviewed these authorities.

Let me be clear: My thorough review revealed no covert action program to kill Bin Laden. There was a covert-action program to capture Bin Laden for criminal prosecution. But even this program was crippled by a snarled web of requirements, restrictions and regulations that prevented decisive action by our men and women in the field.

When they most needed clear, understandable guidance, our agents and operatives were given the language of lawyers. Even if they could have penetrated Bin Laden's training camps, they would have needed a battery of attorneys to approve the capture. With unclear guidance, our covert action team's risk of injury may have exceeded the risk to Usama Bin Laden.

On March 7, 2001, I met with National Security Advisor Condoleezza Rice. I recommended that the covert-action authorities be clarified and be expanded to allow for decisive, lethal action; we should end the failed "capture" policy. We should find and kill Bin Laden. I recall that Dr. Rice agreed and gave Director Tenet responsibility for drafting, clarifying, and expanding the new authorities.

My second point today goes to the heart of this Commission's duty to uncover the fact: The single greatest structural cause for September 11 was the wall that segregated criminal investigators and intelligence agents. Government erected this wall. Government buttressed this wall. And before September 11, government was blinded by this wall.

In 1995, the Justice Department embraced flawed legal reasoning, imposing a series of restrictions on the FBI that went beyond what the law required. The 1995 Guidelines and the procedures developed around them imposed draconian barriers to communications between the law enforcement and intelligence communities. The wall "effectively excluded" prosecutors from intelligence investigations. The wall left intelligence agents afraid to talk with criminal prosecutors or agents. In 1995, the Justice Department designed a system destined to fail.

In the days before September 11, the wall specifically impeded the investigation into Zacarias Moussaoui, Khalid al-Midhar and Nawaf al-Hazmi. After the FBI arrested Moussaoui, agents became suspicious of his interest in commercial aircraft and sought approval for a criminal warrant to search his computer. The warrant was rejected because FBI officials feared breaching the wall.

When the CIA finally told the FBI that al-Midhar and al-Hazmi were in the country in late August, agents in New York searched for the suspects. But because of the wall, FBI Headquarters refused to allow criminal investigators who knew the most about the most recent al Qaeda attack to join the hunt for the suspected terrorists.

At that time, a frustrated FBI investigator wrote Headquarters, quote, "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 decision then, especially since the biggest threat to us, UBL, is getting the most protection."

FBI Headquarters responded, quote: "We are all frustrated with this issue ... These are the rules. NSLU does not make them up."

But somebody did make these rules. Someone built this wall.

The basic architecture for the wall in the 1995 Guidelines was contained in a classified memorandum entitled "Instructions on Separation of Certain Foreign Counterintelligence and Criminal Investigations." The memorandum ordered FBI Director Louis Freeh and others, quote: "We believe that it is prudent to establish a set of instructions that will more clearly separate the counterintelligence investigation from the more limited, but continued, criminal investigations. These procedures, which go beyond what is legally required, will prevent any risk of creating an unwarranted appearance that FISA is being used to avoid procedural safeguards which would apply in a criminal investigation."

This memorandum established a wall separating the criminal and intelligence investigations following the 1993 World Trade Center attack, the largest international terrorism attack on American soil prior to September 11. Although you understand the debilitating impact of the wall, I cannot imagine that the Commission knew about this memorandum, so I have declassified it for you and the public to review. Full disclosure compels me to inform you that its author is a member of this Commission.

By 2000, the Justice Department was so addicted to the wall, it actually opposed legislation to lower the wall. Finally, the USA PATRIOT ACT tore down this wall between our intelligence and law enforcement personnel in 2001. And when the PATRIOT ACT was challenged, the FISA Court of Review upheld the law, ruling that the 1995 guidelines were required by neither the Constitution nor the law.

The third issue I would like to raise with the Commission this afternoon is another limitation government placed on our ability to "connect the dots" of the terrorist threat prior to September 11: the lack of support for information technology at the FBI.

After I became Attorney General in February 2001, it soon became clear that the FBI's computer technology and information management was in terrible shape. The Bureau essentially had 42 separate information systems, none of which were connected. Agents lacked even the most basic Internet technology.

These problems did not just hamper interagency communication; they hindered information sharing with the Justice Department, the intelligence community, and state and local law enforcement. It is no wonder, given the state of its technology, that the Phoenix memo warning that terrorists may be training in commercial aviation was lost in the antique computers at Washington headquarters.

Yet for year after year, the FBI was denied the funds requested for its information technology. Over eight years, the Bureau was denied nearly \$800 million of its information technology funding requests. To put this \$800 million shortfall in perspective, the Trilogy program, which is now revolutionizing computer, data and information sharing at the Bureau, has cost \$580 million.

On September 11, 2001, the FBI's annual technology budget under the prior Administration was actually \$36.1 million less than the last Bush budget eight years before. The FBI's information infrastructure had been starved and by September 11 it collapsed from budgetary neglect.

When the Hannsen and McVeigh failures fully exposed that this neglect cost national security, I ordered four independent external reviews of the FBI's information infrastructure under coordination from the Deputy Attorney General. And my first two budgets, both proposed before 9/11, requested a 50 percent increase for FBI information technology.

Finally, the Commission should study carefully the National Security Council plan to disrupt the al Qaeda network in the U.S. that our government failed to implement fully seventeen months before September 11.

The NSC's Millennium After Action Review declares that the United States barely missed major terrorist attacks in 1999 -- with luck playing a major role. Among the many vulnerabilities in homeland defenses identified, the Justice Department's surveillance and FISA operations were specifically criticized for their glaring weaknesses. It is clear from the review that actions taken in the Millennium Period should not be the operating model for the U.S. government.

In March 2000, the review warns the prior Administration of a substantial al Qaeda network and affiliated foreign terrorist presence within the U.S., capable of supporting additional terrorist attacks here.

Furthermore, fully seventeen months before the September 11 attacks, the review recommends disrupting the al Qaeda network and terrorist presence here using immigration violations, minor criminal infractions, and tougher visa and border controls.

These are the same aggressive, often criticized law enforcement tactics we have unleashed for 31 months to stop another al Qaeda attack. These are the same tough tactics we deployed to catch Ali al- Marri, who was sent here by al Qaeda on September 10, 2001, to facilitate a second wave of terrorist attacks on Americans.

Despite the warnings and the clear vulnerabilities identified by the NSC in 2000, no new disruption strategy to attack the al Qaeda network within the United States was deployed. It was ignored in the Department's five-year counterterrorism strategy.

I did not see the highly-classified review before September 11. It was not among the 30 items upon which my predecessor briefed me during the transition. It was not advocated as a disruption strategy to me during the summer threat period by the NSC staff which wrote the review more than a year earlier.

I certainly cannot say why the blueprint for security was not followed in 2000. I do know from my personal experience that those who take the kind of tough measures called for in the plan will feel the heat. I've been there; I've done that. So the sense of urgency simply may not have overcome concern about the outcry and criticism which follows such tough tactics.

I am aware that the issues I have raised this afternoon involve at times painful introspection for this Commission and for the nation. I have spoken out today not to add to the nation's considerable stock of pain, but to heal our wounds. This Commission's heavy burden -- to probe the causes of September 11 -- demands that the record be complete. Our nation's heavy burden -- to learn from the mistakes of our past -- demands that this Commission seek the whole truth.

May this Commission be successful in its mission. And may we learn well the lessons of history.

I thank members of the Commission for their service and for the opportunity to testify today.